

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the  
Commission's Own Motion to address  
the issue of customers' electric and  
natural gas service disconnection.

Rulemaking 10-02-005  
(Filed February 4, 2010)

**REPLY COMMENTS  
OF THE DIVISION OF RATEPAYER ADVOCATES  
ON THE ADMINISTRATIVE LAW JUDGE'S RULING  
TO ADDRESS PHASE II ISSUES**

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**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

In accordance with Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission") and with the schedule adopted in the August 26, 2010 Administrative Law Judge ("ALJ") Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues ("Phase II ALJ Ruling"), the Division of Ratepayer Advocates ("DRA") submits these reply comments regarding rules and policies designed to drive down disconnection rates. DRA specifically responds to parties' Opening Comments and continues to recommend:

- The Commission require utilities to offer customers a choice of monthly billing date,
- The Commission expand the definition of "sensitive customers" to include elderly, disabled, and seriously ill customers, and
- The Commission uphold its determination in Decision ("D.")10-07-048 that utility costs recorded in memorandum accounts will be considered in each utility's General Rate Case.

Furthermore, DRA supports the ALJ's Ruling of September 21, 2010 identifying five additional issues to be addressed through a subsequent phase in this proceeding,

because it is consistent with the list of issues in D.10-07-048, pp 27-28, which the Commission found should be addressed in this proceeding. These issues are critical to establish the best possible policy guidance to utilities regarding strategies to assist customers and reduce disconnections.

Finally, DRA describes how the pending Joint Motion for Adoption of the Settlement<sup>1</sup> filed September 9, 2010 complements the Commission's determination of issues in R.10-02-005. DRA respectfully requests the Commission adopt the Settlement in order to resolve Phase I, II, and III issues most expeditiously for SDG&E and SoCalGas.

## **II. COMMENTS AND RECOMMENDATIONS**

### **A. Billing Date**

Choosing a billing date should be one of the “pre-delinquency” strategies the utilities employ to help customers avoid becoming delinquent and possibly facing disconnection. The utilities in their Opening Comments erroneously state that there are no known advantages to customers for choosing a billing date.<sup>2</sup> The utilities ignore research from the utility industry and from the lending industry that concludes: providing solutions to financially-troubled customers prior to the customer becoming delinquent is not only good for the customer, but good for the company as well. “Carefully targeted actions initiated early enough can help prevent delinquencies. Even when delinquencies happen, taking actions prior to their occurrence may enable lenders to reduce write-offs

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<sup>1</sup> See Joint Motion of San Diego Gas & Electric Company (“SDG&E”), the Southern California Gas Company (“SoCalGas”), Disability Rights Advocates (“DisabRA”), DRA, the Greenlining Institute (“Greenlining”), the National Consumer Law Center (“NCLC”), and The Utility Reform Network (“TURN”) For Adoption of the Settlement Agreement, September 9, 2010.

<sup>2</sup> See Pacific Gas and Electric Company’s (“PG&E”) (U 39 M) Opening Comments on Phase II Scoping Memo Issues, Sept. 15, 2010, at 7-8; Southern California Edison Company’s (“SCE”) (U 338-E) Opening Comments on the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues, Sept. 15, 2010, at 4; Opening Comments of San Diego Gas & Electric Company (U 902E) and the Southern California Gas Company (U 904G) to the Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues, Sept. 15, 2010, at 8.

and collection costs.”<sup>3</sup> In this proceeding, the Commission has repeatedly emphasized the importance of consumer education and assistance early on to avoid disconnection. “We want to identify more effective ways for the utilities to work with their customers and develop solutions that avoid unnecessary disconnections without placing an undue cost burden on other customers.”<sup>4</sup> Offering customers a choice of billing date is exactly the type of solution that a customer living paycheck-to-paycheck will appreciate. According to research from the lending industry, this type of customer offering strengthens the utility-customer relationship, extends the number of payments that will be made before the customer becomes delinquent (if a customer is going to become delinquent), and in the case of a default is likely to leave the utility with a much smaller unpaid bill to recover.

Pre-emptive collections give lenders the best opportunity to detect distressed accounts early. Lenders are then better positioned to compete successfully for payment ahead of other potential creditors and, in most cases, develop a promise to pay arrangement that has a high probability of success. Days sales outstanding and charge off levels will improve as a result of investing in pre-delinquency strategy development. Moreover, struggling customers are often grateful to have the chance to discuss payment options before their situation deteriorates and are likely to remain more loyal upon successful rehabilitation.<sup>5</sup>

The utilities also erroneously claim that picking a bill due date is unnecessary because there is no penalty for paying the bill at the preferred time of the month.<sup>6</sup> This objection misses the point entirely: picking a billing due date gives the customer the

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<sup>3</sup> *Reduce Exposure With Pre-Delinquent Treatments*, FICO, September 2009 Number 23, at [http://brblog.typepad.com/files/insights\\_predelinquent\\_treatments\\_2586wp-1.pdf](http://brblog.typepad.com/files/insights_predelinquent_treatments_2586wp-1.pdf)

<sup>4</sup> Order Instituting Rulemaking 10-02-005, p. 1.

<sup>5</sup> Experian Collections Strategies, August 2010, at <http://www.experian.co.uk/assets/consumer-information/brochures/quick-wins-in-collections-2.pdf>

<sup>6</sup> See PG&E Opening Comments, p. 7; SCE Opening Comments, p. 3; SDG&E/SoCalGas Opening Comments, p. 8.

ability to prioritize the utility bill at the time the customer has the resources to pay the bill. PG&E has identified payment prioritization as a primary reason that customers fail to pay their utility bills.<sup>7</sup> Again, lessons from other industries point toward the importance of payment priority. “Work with your customers – critical to maintaining position in their payment hierarchy.”<sup>8</sup>

## **B. Costs**

PG&E continues to prioritize utility compensation for reducing disconnections over the issues at hand.<sup>9</sup> Decision 10-07-048 appropriately directs that cost recovery of items recorded in each utility’s memorandum account will be considered in each utility’s General Rate Case (“GRC”), and only set as an issue herein, the sunset date for PG&E’s disconnection practices as mandated by the Commission.<sup>10</sup> The memorandum account, plus the direction to present the recorded costs in the GRC, gives PG&E the appropriate mechanism to determine which costs are outside the utility’s normal course of operations. As DRA described in its Opening Comments on the Order Instituting Rulemaking, the steps required to implement the Commission’s Rulemaking were not new or outside of the course of normal utility operations.

Prior the Commission’s Interim Order, waiving deposits and extending terms of payment arrangements were already discretionary activities. All the utilities’ tariffs governing service disconnection and reconnection allow the utilities the discretion to extend payment arrangements, inform customers of the option to make payment arrangements and waive

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<sup>7</sup> PG&E's Response of April 6, 2009 to DRA March 23, 2009 Data Request seeking clarification on certain customer arrearage and disconnection information and related practices

<sup>8</sup> *Positioning for Payment Share*, Janice Horn, FICO, November 9, 2009 at <http://www.lafferty.com/pdf/Positioning%20for%20Payment%20Share.pdf>

<sup>9</sup> PG&E Opening Comments, pp. 2-4.

<sup>10</sup> Decision 10-07-048, p. 28.

deposit requirements.<sup>11</sup> The utilities exercise that discretion routinely. For example, prior to the Rulemaking, and at the beginning of this year, PG&E decided to waive the deposit requirement for service restoration post disconnection. In addition, PG&E also initiated a new policy to waive deposit requirement if customers sign up for auto payment.<sup>12</sup>

Contrary to DRA's assertion that providing deposit waivers and extending terms of payment plans should not cause incremental costs, PG&E has recorded over \$3.4 million in its memorandum account with no explanation as of July 25, 2010.<sup>13</sup> In order for parties and the Commission to resolve which costs are indeed incremental, parties must be afforded the time, resources and opportunity for discovery which are presented in GRCs.

D.10-07-048 ordered the utilities to take additional steps beyond waiving deposits and extending payment plan term lengths. PG&E claims that the cost of "new business practices" will require consideration earlier than the GRCs. However, the Decision was careful to direct steps that would have minimal cost implications. "The adopted measures do not appear to have significant cost implications which would otherwise be borne by other ratepayers."<sup>14</sup> Therefore, any incremental costs PG&E records from these new business practices are likely to be minimal and do not require consideration earlier than the time of PG&E's next GRC.

In PG&E's opening comments, it argues in favor of advice letter filings to recover its costs. This is a collateral attack on D.10-07-048, p.28, which had explicitly held that costs should be recorded in memorandum accounts and the recovery of these costs should be addressed in the next GRC for each utility. PG&E did not file an application for

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<sup>11</sup> PG&E Tariff Rule 7: The amount of deposit required to reestablish credit for both residential and nonresidential accounts *may be* twice the maximum monthly bill as determined by PG&E. SCE has similar language.

<sup>12</sup> DRA Opening Comments of March 12, 2010, R.10-02-005, p. 23.

<sup>13</sup> PG&E Report filed on July 25, 2010 in accordance with R.10-02-005.

<sup>14</sup> D.10-07-048, p. 3.

rehearing within 30 days of the Commission's D.10-07-048 (issued on July 30, 2010), nor did PG&E enter into any settlement with parties and file a petition for modification of the Commission's decision. Therefore, PG&E's cost recovery arguments are not only beyond the scope of the issues to be addressed in the remainder of this proceeding, they also violate section 1709 of the California Public Utilities Code by improperly attacking the Commission's final order.

### **C. Definition of Sensitive Customers**

DRA in its Opening Comments recommended the Commission expand the definition of sensitive customers in accordance with the categories included in the definition of sensitive customers described in the proposed settlement agreement submitted on September 9, 2010 in this docket.<sup>15</sup> SCE, DisabRA, and Greenling support this definition.<sup>16</sup> Additionally, TURN and NCLC support including elderly customers aged 62 and older, disabled customers, and customers with serious illness in a definition of sensitive customers but recommend that additional customer categories be included as well.<sup>17</sup>

DRA also recommended that the self-identification be the means of identifying these customers, as in the proposed settlement agreement. However, DisabRA and Greenlining point out that if customers are not aware that special protections are offered to certain categories of customers, then customers would have no reason to self-identify.<sup>18</sup> DisabRA and Greenlining are correct that it is not enough for utilities to have a silent policy which allows for customer self-identification but does not solicit or

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<sup>15</sup> See Joint Motion of San Diego Gas & Electric Company, the Southern California Gas Company, Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center, and The Utility Reform Network For Adoption of the Settlement Agreement, September 9, 2010, Appendix A, Section II.E, pp. 9-10.

<sup>16</sup> See Opening Comments of Disability Rights Advocates Regarding ALJ DeBerry's Ruling, Sep. 15, 2010, at 2-3; SCE Opening Comments, p. 11; Opening Comments of Greenlining, Sep. 15, 2010, p.11.

<sup>17</sup> Opening Comments of NCLC, p. 4; Opening Comments of TURN, p. 11-12.

<sup>18</sup> DisabRA Opening Comments, p. 3; Greenlining Opening Comments, p. 11-12.

promote such self-identification. The Commission should ensure that customers are given the appropriate information to allow the customer to decide whether it is in her/his best interest to identify this type of information to customer service representatives. Additionally, at least SCE currently has a means of tracking these classes of customers.<sup>19</sup> SCE does not explain how its elderly customers are identified, but presumably SCE does not rely exclusively upon self-identification for elderly customers. DRA recommends the Commission direct the utilities to allow utilities to flag customers who fall into one of the protected groups, as SCE does, in addition to providing customers with the opportunity to self-identify upon learning of the additional protections that come with doing so.

**D. In Light of the High Level of Consumer Protection The Settlement Between The Joint Utilities and Consumer Parties' Will Immediately Provide, DRA Supports the Joint Utilities' Request for the Commission to Adopt the Settlement**

In their Opening Comments on Phase II, SDG&E and SoCalGas (“Joint Utilities”) state many Phase II issues have been resolved in the Settlement that the Joint Utilities, and DRA, DisabRA, Greenlining, TURN, and NCLC (collectively, the “Consumer Advocates”) request be adopted by the Commission.<sup>20</sup> DRA agrees with the Joint Utilities. Not only are many Phase I, Phase II, and Phase III issues (as identified in the ALJ Ruling of September 21, 2010) resolved in the Settlement, but these issues are resolved in a way that provides significant protections to consumers and vulnerable customers. With regard to the difference between D.10-07-048 directives and the Settlement, the Settlement trades very low disconnection rates of 2.08% (SDG&E) and 3.36% (SoCalGas) for the mandatory credit deposit waivers and minimum three month payment plans required by D.10-07-048. The reasoning behind this trade-off is that low levels of disconnections provide ample evidence that SDG&E and SoCalGas are indeed extending the appropriate assistance and flexibility to customers that keep customers off

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<sup>19</sup> See SCE Opening Comments, p. 12.

<sup>20</sup> SDG&E/SoCalGas Opening Comments, p. 6.



the disconnect list to begin with. In the event either SDG&E or SoCalGas exceed the benchmarks, the Settlement requires deposit waivers for slow/late payment, and for post-disconnection re-establishment of credit deposits, and reduces deposit amounts to twice the average bill. Additionally should SDG&E or SoCalGas exceed the benchmark, the Settlement requires minimum three month payment plans consistent with D.10-07-048, and goes further by requiring this offer at every stage of the collections process, renegotiated payment plans of specific terms, and notices in six languages and large print that these payment plans are available.

With regard to the Phase II issue of the Definition of Sensitive Customers for purposes of in-person field visits, the Settlement includes more customer categories in its Sensitive Customers than are contained in D.10-07-048.

With regard to the Phase III issue of reducing the discrepancy between CARE and non-CARE disconnect rates, the Settlement sets a CARE benchmark for SDG&E that will require SDG&E to reduce the discrepancy between CARE and non-CARE disconnect rates in order to meet the benchmark. SDG&E reports that its CARE-only disconnection rate is 3.79%. The Settlement's SDG&E CARE-only disconnection benchmark is 3.44%, which will require an improvement to meet.

With regard to effective communications for non English speaking and disabled customers, the Settlement requires the utility include a simple and instructive message in six languages and in large print. This message is: "You are at risk for disconnection. We can help. You may be eligible for a payment plan. Please call [insert appropriate CSF number for that language]" and this message will be included in every 48 hour notice, which will be delivered in person to all SDG&E customers receiving the notice, and in-person to all elderly, disabled, and seriously ill SoCalGas customers receiving the notice. The Settlement provides for many advances in accessible communication for disabled customers, such as providing Braille bills and 48 hour notices following a customer's one-time request, providing large print bills via website and agent assistance for accessing this format, repeating automated messages, and providing text messages.

With regard to the Phase III issue of remote disconnection procedures, the Settlement provides multiple protections to consumers while still allowing SDG&E's ratepayers to benefit from the costs savings and quick reconnection functionality of Advanced Metering Infrastructure.

Finally, with regard to cost recovery, SDG&E and SoCalGas agree not to levy any potential operational costs of implementing R.10-02-005 or the Settlement on ratepayers. To the extent that SDG&E and SoCalGas demonstrate that R.10-02-005 caused uncollectibles to rise above previous levels during a defined twelve month period, the Settlement provides for a modest amount of cost recovery. Should excess uncollectibles materialize, the cost recovery amount is calculated based on an estimate that utility shareholders and ratepayers will shoulder the majority of costs.

Finally, the consumer protections of the Settlement will persist for a minimum of over three years, in contrast to the directives in R.10-02-005 which will expire in just over one year.

### **III. CONCLUSION**

DRA appreciates the Commission's commitment to continue to develop utility strategies that encourage bill payment and avoid disconnection. To that end, DRA urges the Commission to require the utilities to pro-actively offer a choice of billing date to customers at-risk for disconnection. DRA recommends the Commission include in its definition of sensitive customers those customers ages 62 and older, disabled customers, and customers with serious illnesses. DRA recommends the utilities alert customers of the benefits of self-identifying as belonging to these customer groups, and also that utilities identify customers in these groups to the best of their ability. Finally, DRA supports the Commission's identification of the GRC as the appropriate mechanism through which to consider utility cost recovery for activities associated with R.10-02-005.

Respectfully submitted,

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September 24, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE ADMINISTRATIVE LAW JUDGE’S RULING TO ADDRESS PHASE II ISSUES**” to the official service list in **R.10-02-005** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **September 24, 2010**, at San Francisco, California.

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