

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Address the  
Issue of Customer's Electric and Natural Gas  
Service Disconnection

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

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON  
CERTAIN PHASE II ISSUES IDENTIFIED IN THE 8/26/2010  
ADMINISTRATIVE LAW JUDGE'S RULING**

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**I. Introduction**

On February 5, 2010, the Commission issued *Order Instituting Rulemaking to Establish Ways to Improve Customer Notification and Education to Decrease the Number of Gas and Electric Utility Service Disconnections* (OIR). On July 29, 2010, the Commission issued D.10-07-048, titled *Interim Decision Implementing Methods to Decrease the Number of Gas and Electric Utility Service Disconnections*. In that decision, the Commission, among other things, identified certain issues to be addressed in Phase II of the instant rulemaking, R.10-02-005. On August 26, 2010, the Commission issued *Administrative Law Judge’s Ruling Providing Opportunity for Comments and Addressing Other Phase II Issues* (8/26/10 ALJ Ruling), which provides an opportunity for comments and reply comments on a limited subset of the Phase II issues identified in D.10-07-048, including the following:

- Should customers be allowed to choose a monthly billing date for their payments?
- Should there be exceptions to deposit rules for certain customers demonstrating continued fraud or bad check activities?
- How should sensitive customers be defined, and how can utilities identify such customers?”<sup>1</sup>

Pursuant to the 8/26/10 ALJ Ruling and the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these reply comments.<sup>2</sup>

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<sup>1</sup> D.10-07-048, pp. 27-28.

<sup>2</sup> TURN does not address the issue of monthly billing date in these reply comments, as TURN extensively addressed this issue in our opening comments, and we understand that many other non-utility parties will

## II. Reply Comments on Issues in 8/26/10 ALJ Ruling

### A. Customers Who Have Bounced Checks Should Not Be Assessed a Re-establishment of Credit Deposit on That Basis.

Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SCE) propose that customers who bounce checks should be required to pay a re-establishment of credit deposit.<sup>3</sup> In D.10-07-048, the Commission required the utilities to waive “late payment” re-establishment of credit deposits for all residential customers,<sup>4</sup> and to waive re-establishment of credit deposits for CARE and FERA customers following disconnection.<sup>5</sup> As TURN understands PG&E’s and SCE’s proposal, the utilities would be able to require a re-establishment of credit deposit for delivery of bad checks (as well as for bankruptcy and unauthorized energy use, including fraud), even though D.10-07-048 prohibits re-establishment of credit deposits for other causes.<sup>6</sup>

While TURN does not oppose limiting customers who bounce checks to a “cash only” method of payment, as SCE currently employs,<sup>7</sup> TURN recommends against requiring a re-establishment of credit deposit. Customers who bounce checks but manage to pay the utility’s bounced check fee and underlying bill in time to avoid disconnection should be treated as late paying customers for purposes of deposits. Late paying

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address this issue in reply comments. We do, however, note our appreciation for PG&E’s current practice of and willingness to continue allowing customers to select a billing date provided that it doesn’t exceed PG&E’s daily capacity. (PG&E, p. 7).

<sup>3</sup> PG&E Comments, pp. 8-9; SCE Comments, p. 7.

<sup>4</sup> D.10-07-048, Ordering Paragraphs 3 and 4. PG&E seems to misunderstand this prohibition, as PG&E suggests that only CARE and FERA customers shall continue to be exempt from slow pay and disconnection-related credit deposits. (PG&E Comments, p. 8).

<sup>5</sup> D.10-07-048, Ordering Paragraph 2.a.

<sup>6</sup> TURN understands that the National Consumer Law Center (NCLC) is addressing the issue of bankruptcy-related deposits in its reply comments filed today, and TURN supports NCLC’s position on that matter.

<sup>7</sup> SCE Comments, p. 9 (“If a customer has two or more returned checks during a 12-month period, he/she is considered “cash only” for six months, during which time he/she is not allowed to make a payment by check, direct pay, or electronic funds transfer.”).

customers (as opposed to disconnected customers seeking reconnection) manage to pay in time to avoid disconnection, even if they don't successfully tender payment by the due date, and they may not be assessed a re-establishment of credit deposit on the basis of late payment, per D.10-07-048. If a customer bounces a check and doesn't remedy the situation in time to avoid disconnection, the utility would be able to require a disconnection-related re-establishment of credit deposit, as long as the customer is not on CARE or FERA, pursuant to D.10-07-048.

Unfortunately, PG&E refers to customers who bounce checks as “repeat offenders” who engage in “deliberate behavior to ‘game the system’ and prevent the utility from obtaining compensation for services provided.”<sup>8</sup> SCE similarly characterizes bouncing checks as “the poor, and oftentimes illegal, choices made by a few customers.”<sup>9</sup> The Commission must reject the unreasonable and unfair assumption of PG&E and SCE that customers who bounce checks intend to deceive the utility, as a general matter, when bouncing checks can simply be the fallout from living paycheck to paycheck, where ends don't quite meet up.

As The Greenlining Institute (Greenlining) points out,

The California Budget Project recently found that the “hourly wage needed to earn the basic family budget for families with children is three to four times the state’s minimum wage (\$8.00 per hour).” Moreover, in California, a single parent must earn \$64,239 to support a family, and a two-working-parent family must earn \$75,500. In contrast, the median household income in California is \$61,021. This demonstrates that many customers live paycheck-to-paycheck, and thus their ability to pay is likely to depend on whether they have money available at the time the bill comes due.<sup>10</sup>

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<sup>8</sup> PG&E Comments, pp. 8, 9.

<sup>9</sup> SCE Comments, p. 7.

<sup>10</sup> Greenlining Comments, p. 6 (citations omitted).

Timing is often the problem with bounced checks, not intent, which is similar to the late pay situation. A check may bounce based on when the utility cashes the check, relative to when the customer's paycheck clears the bank, without the customer intending anything other than to pay the utility bill.<sup>11</sup> Accordingly, TURN recommends that the utilities not be permitted to require re-establishment of credit deposits from customers on the sole basis of bounced checks.

**B. PG&E Exaggerates the Impact of Expanding the Definition of “Sensitive” Customers Who Warrant Additional Protections From Remote Service Disconnections.**

PG&E alone advocates maintaining the very narrow definition of “sensitive” customers adopted by the Commission in D.10-07-048.<sup>12</sup> The Commission initially determined that customers who are “on medical baseline or life support” should receive heightened protection against the health and safety risks associated with service disconnection (particularly remote disconnection), and as such, these “sensitive customers ... should have an in-person visit including a field person who could provide an opportunity for bill collection before disconnection.”<sup>13</sup> The question of whether to

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<sup>11</sup> Greenlining at p. 10 makes a similar point, in warning that automatic payment plans could offer customers living paycheck to paycheck very little relief, “if the utility debits the customer’s account a day or two before a paycheck clears, providing the necessary funds. As such, if APPs are offered, they must be accompanied with additional customer education and outreach. Moreover, customers enrolling in an APP must be able to choose their payment date.”

<sup>12</sup> See SCE Comments, p. 11 (“The protections provided to sensitive customers, including an in-person visit at the time of disconnection, should be limited to critical-care, disabled, and elderly customers.”). All other parties explicitly support the definition of “sensitive customers” contained within the Settlement Agreement supported by SDG&E/SoCalGas, Disability Rights Advocates, the Division of Ratepayer Advocates, Greenlining, the National Consumer Law Center, and TURN and filed on Sept. 9, 2010, or an even broader definition. The Settlement Agreement defines “sensitive customers” as including households with a full-time elderly resident (age 62 or older), households with a full time resident with a disability, Medical Baseline customers, or households with a full time resident with a serious illness (a condition that could become life-threatening if service is disconnected). (Settlement Agreement, Para. II.E).

<sup>13</sup> D.10-07-048, p. 23 and Finding of Fact 15.

expand this definition is at issue in this phase of R.10-02-005.<sup>14</sup> PG&E appears to support the status quo, if not a more restrictive definition, though PG&E's comments are confusing.

First, PG&E claims,

PG&E defines sensitive customers as customers that have a life support or medical baseline status. To obtain such status, a customer must obtain a signature on a pre-printed form from a licensed physician or other health care provider certifying as to the customer's condition. Each of the utilities have processes in place to protect customers who have taken steps to have themselves identified as life support or critical care i.e., where service termination could be life-threatening.<sup>15</sup>

While it would appear that PG&E defines sensitive customers as those who *either* receive a Medical Baseline allowance *or* have a life support designation (or both), based on this statement, PG&E elsewhere suggests that it currently defines sensitive customers as those who receive a Medical Baseline allowance *and* have a life support designation. PG&E warns,

Costs of field visits are doubled by including medical baseline customers within the protected class, i.e., the class of customers requiring field visits before disconnection. Including within the group of protected customers those with a medical baseline status increases the number of customers receiving field visits and other additional communication from 75,036 to 146,178.<sup>16</sup>

It is unclear whether PG&E is simply warning the Commission that the definition adopted in D.10-07-048 already has this impact, or if PG&E intends to suggest that expanding the definition to include all Medical Baseline customers (rather than only those with a life support designation) will have this sweeping impact. If the latter, then

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<sup>14</sup> D.10-07-048, p. 20, fn 40 ("Sensitive customers are those who are on medical baseline or life support as these customers are currently identified on utilities' billing systems. We will consider the definition of sensitive customers in Phase 2 of this proceeding.").

<sup>15</sup> PG&E Comments, p. 5.

<sup>16</sup> PG&E Comments, p. 5.

PG&E would appear to be erroneously implementing the directive of D.10-07-048, which clearly includes all Medical Baseline customers within the definition of “sensitive customers.”<sup>17</sup>

Moreover, PG&E’s assertion that including Medical Baseline customers within the protected class doubles the costs of field visit is grossly misleading. According to PG&E’s “Monthly Report on Disconnection Data, per Ordering Paragraphs 13 and 14 of Decision 10-07-048” filed on August 25, 2010, PG&E had 113,106 active Medical Baseline accounts in July 2010, which was 2.17% of the 5,207,978 active residential accounts. That month, PG&E disconnected 10 Medical Baseline customers, slightly lower than the monthly average of 17 customers from January 2010 – July 2010. Thus, the practical cost impact of including all Medical Baseline customers within the protected class of “sensitive customers” is simply not that sizeable. To the extent PG&E is suggesting that the cost estimate of treating all Medical Baseline customers as “sensitive customers” should be based on an assumption that all customers in the class would face disconnection and receive a field visit, this position flies in the face of PG&E’s recorded data and is completely unreasonable.

PG&E also argues that the “unnecessary expansion of the definition of sensitive customer, as well as the added processes, would significantly increase costs,” referring to customer segments beyond Medical Baseline and life support.<sup>18</sup> For the reasons presented in TURN’s opening comments and those of Greenlining, Disability Rights

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<sup>17</sup> D.10-07-048, p. 20, fn 40; pp. 21-22 (“We are mindful that customers on medical baseline or who are on life support may not respond to the utilities’ various notices, letters, or phone calls. Furthermore, this vulnerable customer group represents a very small portion of all residential customers. Therefore, we will require as an interim practice, all utilities must provide a field representative who can collect a payment in-person or make arrangements for payment from those customers who are on medical baseline or life-support prior to any disconnection.”).

<sup>18</sup> PG&E Comments, p. 6.

Advocates (DisabRA), the Division of Ratepayer Advocates (DRA) and the National Consumer Law Center (NCLC), the Commission should dismiss PG&E’s unreasonably restrictive approach to defining “sensitive” customers.

**C. PG&E’s Cost Recovery “Preferred” Proposal Should Be Rejected.**

PG&E requests to be able to recover costs recorded in the memorandum account it established pursuant to R.10-02-005 through an annual Tier 3 Advice Letter process, rather than in its next General Rate Case.<sup>19</sup> PG&E explains, “This process would permit interested parties to provide appropriate input and would allow the Commission to render a timely Resolution on an annual basis and thus avoid shifting costs into future years that are significantly removed in time from the benefits realized by ratepayers.”<sup>20</sup>

A Tier 3 advice letter process, as proposed by PG&E, is inappropriate for several reasons. A Tier 3 advice letter is subject to disposition under Commission General Rule 7.6.2, which provides for Commission disposition of the advice letter by a formal resolution. As the Commission explains in General Order 96-B:

The advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions. The advice letter process does not provide for an evidentiary hearing; a matter that requires an evidentiary hearing may be considered only in a formal proceeding.<sup>21</sup>

Consistent with this “expedited” approach to adjudication, interested parties have 20 days

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<sup>19</sup> PG&E Comments, pp. 3-4. Specifically, PG&E seeks to “transfer the costs recorded in the memorandum account on an annual basis to the appropriate balancing account for recovery in rates, if available (i.e. For PG&E this would be the Distribution Revenue Adjustment Mechanism-for electric and the Core Fixed Cost Account and Non Core Distribution Fixed Cost Account for gas). Recovery of these costs will be part of PG&E’s annual revenue requirement and rate consolidation process (i.e. Annual Electric True-Up and Annual Gas True-up Advice Letter filings).”

<sup>20</sup> PG&E Comments, p. 3.

<sup>21</sup> General Order 96-B, General Rules, Rule 5.1.

within which to protest or respond to an advice letter after it is filed by the utility.<sup>22</sup> It is entirely unclear whether PG&E would file advice letters that raise controversial issues, making the advice letter process a poor fit. Further, it is imperative that interested parties be given an opportunity to conduct discovery on the reasonableness of the utility's request for cost recovery for costs related to R.10-02-005. The very limited review period afforded protestants -- a mere 20 days -- is wholly inadequate to conduct the kind of review necessary to ensure that the utility is seeking recovery of truly incremental costs caused by R.10-02-005 and consistent with the Commission's directives.

In contrast, a general rate case presents parties and the Commission with an opportunity to review costs recorded in the utility's R.10-02-005 memorandum account in the context of the utility's other related operational costs (i.e., call center costs, IT costs, costs for customer outreach and education related to rates and other bill-lowering programs, uncollectibles, etc.). This type of comprehensive review will enable the Commission to ensure that ratepayers only pay for costs reasonably incurred by the utility and directly arising from the requirements of R.10-02-005, rather than business as usual.

TURN additionally opposes PG&E's request for the reasons presented by DRA in reply comments filed today. TURN has reviewed DRA's comments in advance of this filing and expressly concurs with DRA that PG&E's proposal to change the cost recovery process adopted by the Commission in D.10-07-048 should be rejected as improper and imprudent.

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<sup>22</sup> General Order 96-B, General Rules, Rule 7.4.1.

**D. TURN Agrees with Greenlining and Disability Rights Advocates That the Scope of Phase II Should Include All Issues Identified in D.10-07-048.**

Both Greenlining and DisabRA argue that the August 26, 2010 ALJ Ruling errs in excluding issues from consideration in Phase II that were identified by the Commission in D.10-07-048 for resolution in Phase II, or otherwise should be addressed here.

Greenlining asserts that the Commission should “take steps to correct the discrepancies in disconnection rates [across utilities and between CARE and all residential customers] by establishing a benchmark during Phase II of this proceeding.”<sup>23</sup> Greenlining also urges the Commission to “ensure that the IOUs provide adequate service for their non-English speaking customers” by addressing in-language communication issues in Phase II.<sup>24</sup> Similarly, DisabRA argues that Phase II should “more directly address effective communications with disabled customers.”<sup>25</sup>

Subsequent to the filing of opening comments, ALJ DeBerry issued a ruling modifying his prior August 26, 2010 Ruling. ALJ DeBerry’s September 21, 2010 *Administrative Law Judge’s Ruling* concludes that the following issues, “if not addressed in this phase of the proceeding, will be addressed in a subsequent phase of this proceeding”:<sup>26</sup>

1. Discrepancies between utilities regarding CARE and non-CARE customer disconnection rates.
2. The role of customer service representatives.
3. Establishing remote disconnection procedures.

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<sup>23</sup> Greenlining Comments, p. 2.

<sup>24</sup> Id., pp. 4-5.

<sup>25</sup> Disability Rights Advocates Comments, p. 4.

<sup>26</sup> *Administrative Law Judge’s Ruling*, issued September 21, 2010, p. 3 and Ruling Paragraph 4.

4. Disconnection notice practices.
5. A sunset date for PG&E's interim practices.

The September 21, 2010 ALJ Ruling provides no further elaboration on the content of these topics.

Because TURN supports the recommendations of Greenlining and DisabRA about inclusion of issues in Phase II, TURN hopes that the September 21, 2010 ALJ Ruling intends for these short-handed descriptions to correspond to the issue list in D.10-07-048, as indicated in the following table.

<b>September 21, 2010 ALJ Ruling Issue</b>	<b>Description of Issue in D.10-07-048 (lettering in original)<sup>27</sup></b>
1. Discrepancies between utilities regarding CARE and non-CARE customer disconnection rates	<p>a. What is causing the discrepancy between the disconnection rates of CARE versus non-CARE customers? How can we limit this discrepancy? For example, should the recertification of CARE customers be waived for some period and, if so, for how long?</p> <p>b. What is causing the discrepancy between the disconnection rates of PG&amp;E and SCE as compared to SDG&amp;E and SoCalGas? Are there certain customer service policies or practices of SDG&amp;E and SoCalGas that PG&amp;E and SCE should adopt in order to further decrease the number of customer service disconnection in the PG&amp;E and SCE service territories?</p>
2. The role of customer service representatives	c. What is the role of CSRs in educating customers about assistance programs and assisting in completing CARE applications and what are the costs of this additional work?
3. Establishing remote disconnection	e. Should the utilities establish a uniform

<sup>27</sup> D.10-07-048, p. 27.

procedures	protocol for remote disconnections?
4. Disconnection notice practices	d. Should utilities provide an opportunity for customers to select a language for utility communications, and what are the associated costs?  h. Should particular disconnection notice practices be adopted for all utilities?
5. A sunset date for PG&E's interim practices	i. What should be the sunset date for PG&E's interim practices?

TURN likewise recommends that the customer communication issues raised by DisabRA be included in issues (2) and (4) above, or otherwise addressed by the Commission in this proceeding.

### III. Conclusion

TURN appreciates the Commission's commitment to adopting policies that limit customer disconnections for nonpayment. To that end, TURN recommends that the Commission adopt the policies we advocate herein, as well as in our opening comments filed September 15, 2010.

Date: September 24, 2010

Respectfully submitted,

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