

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

Order Instituting Rulemaking on the
Commission's Own Motion to Consider
Revising Energy Utility Tariff Rules
Related to Deposits and Adjusting Bills as
They Affect Small Business Customers

Rulemaking 10-05-005
(Filed May 6, 2010)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE ON THE
PROPOSED DECISION OF COMMISSIONER BOHN
REVISING TARIFF RULES FOR SMALL BUSINESS CUSTOMERS**

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I. INTRODUCTION

In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") the Greenlining Institute ("Greenlining") submits its opening comments on the Proposed Decision ("PD") of Commissioner Bohn Revising Tariff Rules for Small Business Customers in the above captioned proceeding.

The PD continues the Commission's commendable efforts to alleviate the burdens on small businesses during the ongoing economic crisis in California. Greenlining supports the measures adopted in the PD, such as the limit on back-bills to three months and the extension of refunds for both billing and meter errors to three years. However, certain issues require further clarification and direction from the Commission. In addition, the PD fails to provide adequate relief for those customers who are paying their bills, but struggle to do so in a timely fashion. Greenlining commends the Commission for its leadership and urges it to adopt the PD with the suggested revisions discussed below.

II. DISCUSSION

A. The Definition of Small Business Customers

Greenlining supports the definition of small business customers adopted by the PD, which permits a customer to qualify based on their usage¹ or by satisfying the requirements of the government code.² Greenlining suggested and has long supported this hybrid approach because it ensures that no small business is excluded based on disproportionately high usage.³ Moreover, the near unanimity that was reflected in the Staff Report indicates that this hybrid definitional structure is also administratively feasible for the Investor Owned Utilities (“IOUs”) at minimal cost.⁴

However, Greenlining is concerned that if customers are not aware of the option to self-certify under the government code definition, this hybrid approach will fail to effectively protect them. Hence, the IOUs must inform small business customers who fall outside the usage parameters that they have this alternative certification process. This is particularly relevant for those customers who at one time fell within the usage thresholds but have subsequently been informed that they no longer qualify.⁵ Greenlining urges the Commission to direct the IOUs to inform the non-residential customers who do not fall within the usage parameters that they may self-certify under the government code.

B. Back-billing

Greenlining supports the Commission’s decision to reduce the back-billing period from three years to three months for undercharges resulting from billing or metering errors.⁶ Greenlining appreciates the Commission’s clarification indicating that no small business shall be

¹ Non-residential electric customers using less than 40,000 kilowatt hours with a demand of 20 kilowatts or less, or gas customers using 10,000 therms or less. PD at 14.

² PD at 6-7; CAL. GOV’T CODE § 14837 (Deering 2010).

³ Reply Comments of the Greenlining Institute on the Small Business and Community Outreach Staff Report 2-3, R.10.05.005 (Aug. 17, 2010); Opening Comments of the Greenlining Institute on the Small Business and Community Outreach Staff Report 2-3 R.10.05.005 (Aug. 6, 2010); Reply Comments of the Greenlining Institute 3, R.10.05.005 (June 28, 2010).

⁴ Administrative Law Judge’s Ruling Providing Opportunity for Comments on Staff Report, Attachment A at 13, R.10.05.005 (July 28, 2010).

⁵ PD at 7.

⁶ PD at 15.

excluded from the small business definition based on usage due to back-billing.⁷ The reduction in back-bills and clarification as to its implementation should provide significant relief to small businesses facing unanticipated back-bills.

C. Refunds

Greenlining is pleased to note the Commission's decision to align the refund periods for overcharges resulting from metering and billing errors at three years.⁸ This eliminates Greenlining's concern about the classification of SmartMeter errors and advanced metering infrastructure errors.⁹ While this determination is made specifically in the context of providing additional protections to small businesses, it is not a unique issue facing small businesses. As such, Greenlining hopes that the Commission will extend this revision to all customers, in particular residential customers.

D. Deposits

Greenlining also supports the Commission's determination that the deposit amount should be limited to twice the average, rather than twice the maximum, monthly bill.¹⁰ This more equitably reflects the credit risk borne by the IOUs without unduly burdening small businesses, and aligns California practice with the majority of other states.¹¹ Greenlining recommends that the Commission clarify that this limit applies not only to initial deposits but also to re-establishment of credit deposits.

i. Alternatives to cash deposits

The Commission is foregoing the opportunity to require the IOUs to offer alternative credit mechanisms.¹² While the Commission encourages, supports, and acknowledges that alternative credit mechanisms provide a valuable alternative to a cash deposit, it has not directed

⁷ PD at 8.

⁸ PD at 15.

⁹ Reply Comments of the Greenlining Institute *supra* note 3, at 5; Opening Comments of the Greenlining Institute 5-7, R.10.05.005 (June 14, 2010).

¹⁰ PD at 15

¹¹ PD at 9 (recognizing that only five other states require deposits equal to twice the maximum bill).

¹² PD at 9.

the IOUs to offer them. The Commission provides no rationale for why this decision was made. Alternative credit mechanisms, such as automatic or direct pay plans, are becoming increasingly common and provide much-needed flexibility to small business customers. The Commission need not specify which alternative credit mechanisms an IOU should offer, however Greenlining urges it to direct the IOUs to offer small business customers at least one alternative credit mechanism in lieu of a cash deposit.

ii. Re-establishment of Service Deposit

Greenlining recommends that the Commission’s discussion of “re-establishment of service deposits” be clarified.¹³ Greenlining supports the Commission’s determination that no additional deposits may be requested where disconnection is due to failure to pay charges related to back-billing. However, under as the rules are currently written an odd result may ensue. Greenlining understands “re-establishment of service deposit” to be a reference to a *re-establishment of credit deposit assessed following a disconnection*.¹⁴ If this is the correct reading, it is not clear how a re-establishment of credit deposit following slow payments will be treated. The incongruous result is as follows: a person may *not* be charged a re-establishment of credit deposit following a disconnection for failure to pay a back-bill; however, they *may* be charged a re-establishment of credit deposit for two late-payments of amounts owing due to back-billing. As such, the Commission should clarify that no re-establishment of credit deposits may be assessed for slow payment or non-payment of amounts related to back-billing.

iii. Slow Pay

In addition to the clarification noted above, Greenlining is disheartened that the Commission did not take this opportunity to protect customers who are struggling to pay their bills on time. Greenlining supports the requirement that the IOUs must send a warning letter to a slow paying customer prior to assessing any additional deposits.¹⁵ However, Greenlining feels

¹³ PD at 9, 15.

¹⁴ As opposed to re-establishment of credit deposits assessed due to late payments or where the conditions of service have materially changed. *See, e.g.*, PG&E Electric Rule No. 6.B; SCE Electric Rule No. 6.C; SDG&E Electric Rule No. 6.C.

¹⁵ PD at 10, 15.

that even with a warning, slow payment twice within a calendar year does not justify the imposition of additional re-establishment of credit deposits.

Many small business customers are facing a cash crunch as their own accounts receivable are paid on increasingly longer cycles. Historically small businesses could mitigate the impact of working capital fluctuations by securing short term credit. Yet, during this recession, lines of credit are increasingly difficult to secure, especially when the intended utilization is to mitigate cash flow shortfalls.¹⁶ Consequently, many small businesses have been forced to rely on high-cost lenders in the private sector, further exacerbating their cash crunch.¹⁷ These businesses are not trying to defraud the IOUs by paying late; they are merely struggling to make ends meet. The Commission should recognize this and implement meaningful protections for these vulnerable businesses.

Greenlining recommends that the Commission require the IOUs to waive reestablishment of credit deposits for slow payment of bills, at least as an interim measure. However, Greenlining is sensitive to the fact that a customer should not be permitted to slow pay indefinitely. As such, there should be a limited exception for those customers who demonstrate a pattern of late-payment. Greenlining acknowledges that deposits are valuable in mitigating the risk of non-payment; however a slow-paying business does not present this risk. It is only once the late-payments become endemic or the customer demonstrates a pattern of late-payment that the risk accrues. Simply put, two late payments in one calendar year is not a pattern and does not present a risk of non-payment sufficient to justify an additional deposit requirement.

On the other hand, a deposit may be justified if the customer slow-pays for six consecutive months or more than six times during a calendar year. At this point the customer is either struggling under the onus of a cash crunch or potentially engaging in tactics to avoid its payment obligations, either of which deserves heightened scrutiny from the IOU. Greenlining stresses the need for the IOUs to engage their small business customers to determine what is causing the pattern of late payments and whether a payment plan or automatic payment option may resolve the issue. Without open channels of communication, many honest small businesses,

¹⁶ WILLIAM J. DENNIS, NFIB RESEARCH FOUNDATION, *SMALL BUSINESS CREDIT IN A DEEP RECESSION* 21 (2010), available at <<http://www.nfib.com/Portals/0/PDF/AllUsers/research/studies/Small-Business-Credit-In-a-Deep-Recession-February-2010-NFIB.pdf>>.

¹⁷ Sharon Bernstein, *Desperate for Capital, Small Businesses Turn to Private Lenders*, L.A. TIMES, July 31, 2010, available at <<http://articles.latimes.com/2010/jul/31/business/la-fi-0731-smallbiz-hardmoney-20100731>>.

which could greatly benefit from alternative payment options, may be unduly burdened due to the unfortunate actions of a small few. For the aforementioned reasons, Greenlining urges the Commission to waive the re-establishment of credit deposits for slow payment, with the narrow exception for when a customer demonstrates a verifiable pattern of late payments.

E. Sunset Date

Greenlining supports the Commission’s determination that it would not be appropriate to sunset the tariff measures for small businesses.¹⁸

F. Costs

Greenlining agrees with the Commission’s conclusion that it is unlikely that the decision will have a significant financial impact on the utilities.¹⁹ Greenlining supports the Commission’s decision that General Rate Case is the appropriate forum to address related costs, if any.²⁰

III. CONCLUSION

Greenlining appreciates the efforts of the parties and the Commission to collaboratively address the issues facing small businesses. Greenlining commends the Commission’s initiative in opening this Rulemaking and the IOUs’ willingness to come to the table to discuss how to alleviate the burden of excessive and unanticipated back bills and credit deposits. In most respects the PD strikes an appropriate balance between protecting small businesses and allowing the IOUs to mitigate their uncollectible risk. Thus, Greenlining respectfully requests the Commission adopt the PD, as modified by Greenlining’s comments herein.

¹⁸ PD at 11, 15.

¹⁹ PD at 12.

²⁰ *Id.*

Dated: October 18, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alicia Miller, am 18 years of age or older and a non-party to the within proceeding. I hereby certify that I have this day served a copy of the

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on all known parties to R.10-05-005 by transmitting an e-mail message with the document attached to each party named in the official service list and by faxing or mailing a properly addressed copy by first-class mail with postage prepaid to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on October 18, 2010

/s/ Alicia Miller
Alicia Miller

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