

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 OF CONSUMER GROUPS TO RESPONSES TO  
PETITION TO MODIFY D.10-07-048**

MELISSA W. KASNITZ  
Managing Attorney  
DISABILITY RIGHTS ADVOCATES  
2001 Center Street, Fourth Floor  
Berkeley, California 94704  
510-665-8644 (Tel); 510-665-8511 (Fax)  
TTY: 510-665-8716  
[pucservice@dralegal.org](mailto:pucservice@dralegal.org)

HARVEY Y. MORRIS  
MARION PELEO  
Attorneys  
DIVISION OF THE RATEPAYER ADVOCATES  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
415-703-2130 (Tel); 415-703-2262 (Fax)  
[map@cpuc.ca.gov](mailto:map@cpuc.ca.gov)

SAMUEL KANG  
STEPHANIE CHEN  
Attorneys  
GREENLINING INSTITUTE  
1918 University Avenue, 2nd Floor  
Berkeley, CA 94704  
(510) 926-4009 (Tel); 510-926-4010 (Fax)  
[stephaniec@greenlining.org](mailto:stephaniec@greenlining.org)

JOHN HOWAT  
Senior Policy Analyst  
DARLENE R. WONG  
Staff Attorney  
NATIONAL CONSUMER LAW CENTER  
7 Winthrop Square, 4th Floor  
Boston, MA 02110  
617-542-8010 (Tel); 617-542-8028 (Fax)  
[darlenewong@nclc.org](mailto:darlenewong@nclc.org)

HAYLEY GOODSON  
Attorney  
THE UTILITY REFORM NETWORK  
115 Sansome Street, Ste. 900  
San Francisco, CA 94104  
415-929-8876 (Tel); 415 -929-1132 (Fax)  
[hayley@turn.org](mailto:hayley@turn.org)

October 6, 2010

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OF THE STATE OF CALIFORNIA

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**I. INTRODUCTION**

In accordance with Rule 16.4(g) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), and with the authorization granted by Assistant Chief Administrative Law Judge TerKeurst on October 5, 2010<sup>1</sup> to file replies to the responses to the petition to modify Decision ("D.") 10-07-048 ("Interim Decision"), Disability Rights Advocates ("DisabRA"), the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center and The Utility Reform Network (jointly, "Consumer Groups") submit this reply to the responses of Pacific Gas and Electric Company ("PG&E") and Southern California Edison Company ("SCE") to the petition to modify D.10-07-048 ("Petition") filed by San Diego Gas & Electric Company ("SDG&E"), Southern California Gas Company ("SoCalGas") (jointly, "Sempra Utilities") and the Consumer Groups on September 9, 2010.<sup>2</sup>

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<sup>1</sup> On October 1, 2010, a request for leave to file replies to the responses to the petition to modify D.10-07-048 was sent by email to Assistant Chief ALJ TerKeurst. On October 5, ALJ TerKeurst verbally granted the request in a telephone conversation with DRA counsel.

<sup>2</sup> See Petition of San Diego Gas & Electric Company (U 902E), the Southern California Gas Company (U 904G), Disability Rights Advocates, the Division of Ratepayer Advocates, the Greenlining Institute, the National Consumer Law Center, and The Utility Reform Network to Modify Decision 10-07-048 ("Petition"), Sept. 9, 2010.

The Consumer Groups and the Sempra Utilities (jointly, “Petitioners” or “Settling Parties”) filed the Petition in conjunction with a joint motion for adoption of a proposed settlement agreement (“Settlement Agreement”) between those parties.<sup>3</sup> Rather than filing responses to the motion, PG&E and SCE have submitted their comments on the Settlement Agreement via responses to the Petition.<sup>4</sup>

The Settlement Agreement offers SDG&E and SoCalGas customers stronger protections to achieve reduced service disconnections, in keeping with the goal of this Rulemaking. Indeed, the Settlement Agreement incorporates nearly all of the same protections as the Commission’s Interim Decision, D.10-07-048, and on some issues goes even further. Some of these protections will be implemented based on a disconnection rate benchmark and others will be implemented regardless of disconnection rates. Beyond its precedent-setting consumer protections, the Settlement Agreement limits the cost risk to ratepayers for enjoying these protections. Moreover, the Settlement Agreement offers these protections to consumers for nearly three times longer than does the Interim Decision. In filing the Petition and the motion to adopt the Settlement Agreement, the Consumer Groups are proud to be helping California achieve a higher standard of consumer protection for energy utility customers.

## II. DISCUSSION

### A. The Settlement Agreement Is Not Opposed by Any Party.

As an initial matter, Petitioners note that neither PG&E nor SCE opposes adoption of the Settlement Agreement or grant of the Petition. PG&E states that it has “concerns” regarding the Settlement Agreement and the Petition, “but is not actively opposing

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<sup>3</sup> See Joint Motion of San Diego Gas & Electric Company (U 902E), the Southern California Gas Company (U 904G), 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, Sept. 9, 2010.

<sup>4</sup> See Pacific Gas and Electric Company’s (U 39 M) Comments in Response to the Settling Parties’ Petition to Modify Decision 10-07-048 (“PG&E Comments”), Sept. 29, 2010; Southern California Edison Company’s (U 338-E) Response to the Petition 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 to Modify Decision 10-07-048 (“SCE Comments”), Sept. 29, 2010.

adoption of the Agreement and the granting of the Petition.”<sup>5</sup> SCE states that it declined to join the settlement because of cost considerations but that it “does not oppose the requested modifications so long as they apply to the Sempra Utilities *only*.”<sup>6</sup> Indeed, both the Settlement Agreement and the motion to adopt it provide that the Settlement is without prejudice to any other party in the proceeding.<sup>7</sup> However, because PG&E appears to be challenging the Settlement Agreement in PG&E’s responsive comments to Settling Parties’ Petition, the Consumer Groups respond accordingly.

**B. The Basis for the Petition to Modify Is that the Settlement Agreement Furthers the Commission Objective to Reduce Disconnections.**

As PG&E correctly recites, Rule 16.4 requires that a petition for modification of a Commission decision “must concisely state the justification for the requested relief.” However, PG&E erroneously suggests that the primary basis for Petitioners’ request for modification of D.10-07-048 is that “SDG&E and SoCalGas already have relatively low rates of service disconnections due to their customer service practices.”<sup>8</sup>

The basis for Petitioners’ request to modify the Interim Decision is that the Settlement Agreement would not only achieve the Commission’s overarching goal in initiating R.10-02-005 – to “decrease the number of gas and electric utility service disconnections” for SDG&E and SoCalGas – but go even further.<sup>9</sup> As the Commission explained in R.10-02-005, “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>10</sup> The Consumer Groups joining the Settlement Agreement and petitioning the Commission for modification of

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<sup>5</sup> PG&E Comments, p. 2.

<sup>6</sup> SCE Comments, pp. 1, 2 (emphasis in original).

<sup>7</sup> See Joint Motion, p. 19; Settlement Agreement (Appendix A to Joint Motion), p. 14. While the City and County of San Francisco did not join in the Settlement, that party actively participated in negotiations and does not oppose the Settlement. See Joint Motion, p. 19.

<sup>8</sup> PG&E Comments, p. 3 (citing Petition, p. 5).

<sup>9</sup> Rulemaking (“R.”) 10-02-005, p. 1.

<sup>10</sup> R.10-02-005, p. 1.

D.10-07-048 do so because the policies and practices enshrined in that document preserve the best of the practices of SDG&E and SoCalGas, expand the scope of consumer protections intended to prevent disconnection, and minimize the cost burden on other customers, as discussed below.

**1. The Settlement Agreement Adequately Addresses Phase I Issues.**

As Petitioners explain in their Petition to Modify, “the Settlement Agreement represents a comprehensive resolution of all the material issues identified in Phase I and Phase II of this rulemaking, as they relate to SDG&E and SoCalGas.”<sup>11</sup> In fact, the Settlement Agreement goes beyond the reach of D.10-07-048, offering consumers protections that are both broader in scope and longer in duration. For instance, the Settlement Agreement includes “enhanced reporting requirements and performance-based residential disconnection benchmarks, which will allow the Commission, the Utilities, Intervenors, and other stakeholders a better opportunity to evaluate the Utilities’ success in assisting customers to reduce disconnections.”<sup>12</sup>

**2. The Settlement Agreement Resolves Phase II and Phase III Issues.**

The Settlement Agreement also includes consumer protections that address Phase II and Phase III issues that otherwise are not yet resolved. The disconnection benchmarks contained in the Settlement Agreement address the discrepancy between California Alternative Rates for Energy (“CARE”) and non-CARE customer disconnection rates.<sup>13</sup> While SDG&E’s average annual disconnection rate for CARE customers is 3.79%, the Settlement Agreement places downward pressure on this rate by adopting a CARE-only disconnection benchmark for SDG&E of 3.44%, thus providing

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<sup>11</sup> Petition, p. 5.

<sup>12</sup> Petition, p. 6.

<sup>13</sup> *Administrative Law Judge’s Ruling*, issued Sept. 21, 2010 in R.10-02-005, p. 3.

an incentive for SDG&E to narrow the discrepancy between its CARE and non-CARE disconnections.<sup>14</sup>

Additionally, the Settlement Agreement adopts the following progressive consumer protections: an expanded definition of “sensitive customers” to include greater numbers of customers who will receive heightened protections prior to service disconnection; new disconnection-related protections for all customers regarding remote disconnection; an extreme weather policy; accessibility requirements for certain utility communications for customers who have hearing or vision disabilities and those who speak languages other than English; and certain clarifications related to deposits assessed in cases of customer fraud or bankruptcy.<sup>15</sup> Most significantly, all of these protections endure through December 31, 2013, two years *after* the sunset of protections adopted by the Commission in D.10-07-048.<sup>16</sup> Finally, the Settlement Agreement resolves the highly contentious issue of cost recovery.<sup>17</sup> It does so by permitting limited and clearly defined recovery of costs for SDG&E and SoCalGas associated with the practices required by the Commission in R.10-02-005 and by the Settlement Agreement.<sup>18</sup>

### **3. Sempra Utilities’ Existing Best Practices Have Resulted in Low Disconnection Rates.**

Last but certainly not least, Petitioners point to the low disconnection rates reported by SDG&E and SoCalGas (for CARE-only and all residential customers) in seeking modification of D.10-07-048. Petitioners assert that the practices developed and employed by SDG&E and SoCalGas to help customers avoid disconnections appear to “have been successful in assisting customers who are at risk of having their utility services disconnected, and in furthering the Commission’s goals as articulated in this

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<sup>14</sup> See Petition, p. 5 (SDG&E disconnection rate); Settlement Agreement, Section II.B (SDG&E disconnection benchmark).

<sup>15</sup> See Petition, pp. 5-6 and Settlement Agreement, Section II.

<sup>16</sup> Settlement Agreement, Section II.A.

<sup>17</sup> See Opening Comments on Phase II Issues filed by PG&E on September 15, 2010, and Reply Comments filed by DRA and TURN on September 24, 2010.

<sup>18</sup> Settlement Agreement, Section II.C.

rulemaking.”<sup>19</sup> Given the outcome of these “best practices” – the lowest disconnection rates in the State – the Settlement would enable the Sempra Utilities to continue these as best practices as long as their disconnection rates do not increase above the benchmarks established in the Settlement.<sup>20</sup> If the Sempra Utilities’ disconnection rates are not at or below these benchmarks, they will then have to adhere, at minimum, to the rules adopted in D.10-07-048.

For all of these reasons, the Consumer Groups maintain that the Settlement Agreement delivers important benefits to SDG&E and SoCalGas customers at risk of disconnection, as well as ratepayers as a whole, consistent with the Commission’s goals for this proceeding, the law and prior Commission decisions, the record in R.10-02-005, and the public interest. These benefits, described in the Petition to Modify and further expounded upon in the Motion for Adoption of the Settlement Agreement, provide the basis for Petitioners’ request that D.10-07-048 be modified to allow SDG&E and SoCalGas to substitute the requirements of the settlement for the requirements imposed in D.10-07-048. PG&E’s more narrow construction of the basis for modification put forth by Petitioners pursuant to Rule 16.4 is simply inaccurate.

**C. Commission Approval of the Settlement Agreement Is An Exercise of Jurisdiction and Advances Sound Public Policy of Reducing Disconnection Rates.**

PG&E states that by adopting the Settlement Agreement, the Commission would be forgoing jurisdiction and acting contrary to good public policy.<sup>21</sup> This claim is both misguided and misleading. By adopting the Settlement Agreement the Commission would not be forgoing jurisdiction, but in fact would be exercising it. The Commission is tasked with determining whether the Settlement Agreement, on the merits, is a reasonable outcome based on the record in this proceeding, is in the public interest, and is consistent

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<sup>19</sup> Petition, pp. 5-6.

<sup>20</sup> *Id.*, p. 5.

<sup>21</sup> PG&E Comments, p. 5.

with the law.<sup>22</sup> In making such determination and approving the Settlement Agreement, the Commission will be invoking its jurisdiction and exercising its authority over the Sempra Utilities.

Moreover, PG&E errs when it claims that by adopting the Settlement Agreement the Commission would “forgo its ability to implement any customer safeguards.”<sup>23</sup> First, there is nothing in the Settlement Agreement that would prevent the Commission from exercising its jurisdiction over PG&E and SCE. Second, adoption of the Settlement Agreement will in fact implement many customer safeguards. As discussed above, the Settlement Agreement resolves all Phase I and many Phase II and III issues by memorializing and advancing the Sempra Utilities’ effective customer service practices. The Commission has already recognized the efficacy of the Sempra Utilities’ existing practices and has urged PG&E and SCE to “implement similar if not exact customer service practices.”<sup>24</sup> The Sempra Utilities have committed to improve on their exemplary track record and have agreed to additional measures to further protect consumers facing disconnection. Thus, by adopting the Settlement Agreement the Commission will be implementing a comprehensive set of customer safeguards, adding new protections for customers of utilities which have already proven effective at maintaining low disconnection rates.

**D. The Settlement Agreement Appropriately Includes Forward-Looking Consumer Protections.**

PG&E suggests that the Settling Parties have somehow inappropriately included within the Settlement Agreement “prohibitions of certain business practices that are not even being utilized by SDG&E and SoCalGas,” including remote disconnections of “an expanded sensitive customer group.”<sup>25</sup> PG&E cites to no authority for the proposition that a utility cannot or should not put consumer protections in place for its

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<sup>22</sup> See CPUC Rule 12.1(d).

<sup>23</sup> *Id.*

<sup>24</sup> Decision (“D.”) 10-07-048, p. 10.

<sup>25</sup> PG&E Comments, p. 5.

customers that are intended to address new technological capabilities the utility intends to deploy in the near future. In fact, such a proposition is nonsensical.

The Commission is obliged to consider whether any settlement put forth for its approval is in the public interest.<sup>26</sup> In the instant case, the Settlement Agreement includes forward-looking consumer protections, capable of *preventing* future harms to the customers of SDG&E and SoCalGas. Surely PG&E does not intend to suggest that such prospective consumer protections are contrary to the public interest. To the contrary, by adopting the Settlement Agreement and modifying D.10-07-048 as proposed by Petitioners, the Commission would ensure that SDG&E and SoCalGas consumers are protected during the rollout of the utilities' advanced metering infrastructure ("AMI") programs. PG&E misrepresents the remote disconnection provision of the agreement, and fails to recognize its value.

With regard to future remote disconnections, the Sempra Utilities have made a public commitment to implement and maintain a number of safeguards where no previous obligation existed:

- Except for termination requests initiated by customers, Sempra Utilities are obligated to a 12 month transition process following the installation of each smart meter that will allow for customer education and outreach before any abrupt change to normal billing, collection, and disconnection practices.<sup>27</sup>
- Sempra Utilities are obligated to continue in-person delivery of the 48-hour notice prior disconnection, if and when remote disconnection commences.<sup>28</sup>
- Sempra Utilities will not remotely disconnect customers who self-identify themselves as seniors (age 62 or older) or disabled, customers who self-certify that they or a full-time resident of the household has a serious illness, Medical Baseline and Life Support customers.<sup>29</sup>

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<sup>26</sup> See CPUC Rule 12.1(d).

<sup>27</sup> Settlement Agreement at 12 (subsection G.1).

<sup>28</sup> Settlement Agreement at 12 (subsection G.2).

<sup>29</sup> Settlement Agreement at 13; Joint Motion at 14.

- Sempra Utilities will not charge for remote disconnection for nonpayment or subsequent reconnection before the next general rate case (“GRC”).

Moreover, beyond the issue of remote disconnections and contrary to PG&E’s assertion, the many terms of the Settlement Agreement establish newly enforceable commitments such as: (1) a second payment plan after defaulting on an initial payment plan; (2) enhanced customer communications through multiple language, large-print, and Braille bills; and (3) a formal policy to prohibit disconnections in extreme weather.

Additionally, before the sunset date of the Settlement Agreement, the Settling Parties will have opportunity to meet at least quarterly, during which the extension of these terms as well as other potential issues of concern can be discussed.<sup>30</sup> The remote disconnections provision is but one of many provisions that have added value by increasing or enhancing existing customer protections.

For these reasons, the Commission should dismiss PG&E’s statement that “[e]stablishing public policy concerning when and how SmartMeter disconnection should be utilized would more appropriately be developed in the context of those utilities that currently have such infrastructure and capacity place.” While the Consumer Groups support the adoption of consumer protections related to smart meter disconnection for all utilities, we urge the Commission to adopt the Settlement Agreement’s enhanced and additional protections for the Sempra Utilities customers where the Sempra Utilities have agreed to do more for their customers. It would be a loss for the Sempra Utilities’ customers if the Commission were to forego this opportunity to adopt these important consumer protections simply because PG&E and SCE are unwilling to do the same.

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<sup>30</sup> Settlement Agreement at 13 (subsection H).

**E. The Settlement Agreement’s Extreme Weather Policy Provides Stronger Protection than PG&E’s Extreme Weather Policy.**

PG&E misrepresents its extreme weather policy as “clearly consistent” with the Settlement Agreement’s extreme weather policy.<sup>31</sup> The Settlement Agreement’s extreme weather policy errs on the side of safety by providing that no customer will be disconnected on extreme weather days. PG&E’s extreme weather policy permits disconnection unless the PG&E field service employee visiting the premises identifies a hazard or unsafe circumstance exists due to extreme weather, or the customer establishes to the satisfaction of the utility that disconnection would be extremely hazardous to the customer’s health.<sup>32</sup> The Settlement Agreement’s policy is preferable because it eliminates the chance that SDG&E and SoCalGas will render a household’s furnace inoperable when the temperature is 32 degrees or below (for instance), while this still may occur under PG&E’s policy.

**F. PG&E’s Separate Efforts to Address Disability Issues in Other Contexts Are Not Relevant to the Settlement.**

In its comments, PG&E asserts that it has “worked at great length with DisabRA to develop new outreach efforts to assist its disabled customers,” using this as an example of the way in which it “stands ready to work with the Settling Parties.”<sup>33</sup> While DisabRA has worked with PG&E on accessible communications issues in multiple forums, this assertion, in the context of PG&E’s concerns about the proposed settlement, is inapposite at best.

DisabRA negotiated an agreement with PG&E in the context of its pending GRC (A.09-12-020) which, among other things, addressed certain improvements in accessible customer communication.<sup>34</sup> PG&E’s comments about its work with DisabRA appear to

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<sup>31</sup> PG&E, p. 4.

<sup>32</sup> PG&E Response of April 3, 2010 to TURN Data Request of March 28, 2010.

<sup>33</sup> PG&E Comments at 2.

<sup>34</sup> Specifically, the agreement between DisabRA and PG&E, which is incorporated in a Memorandum Of Understanding that has been submitted to the Commission but not yet approved, addresses improved use of TTY and relay service for customers who cannot use standard telecommunications, ongoing attention

reference this agreement. While DisabRA appreciates the effort that went into these negotiations, they were never intended to preclude additional work in other proceedings regarding effective customer communications with people with disabilities, particularly in sensitive situations such as households at risk of service disconnections. Indeed, the GRC parties specifically included in their negotiated Memorandum of Understanding a statement that “nothing in this MOU prevents DisabRA from intervening in additional proceedings before the CPUC, including responding to applications filed by PG&E, and raising issues regarding accessible communications as relevant to those proceedings.”<sup>35</sup> Thus, PG&E should not be arguing that its prior efforts with DisabRA should serve to address the communications issues currently pending.

**G. The Settlement Agreement Offers More Effective Pre-disconnection Call Practice.**

PG&E seeks to describe its pre-disconnection customer contact as equivalent to that required by the Settlement Agreement, and states that it already provides pre-disconnection outbound calls, similar to what Sempra Utilities have agreed to in the Settlement Agreement.<sup>36</sup> The Settlement Agreement requires that the pre-disconnection call, when picked up by a SoCalGas customer, will be handled by a live agent who will explain the urgency of the situation and offer payment arrangements and assistance.<sup>37</sup> In contrast, PG&E requires its customers to opt out of an automated call in order to talk to a customer service representative, by listening to a recorded message and then selecting the option when prompted.<sup>38</sup> Petitioners submit that under the Settlement Agreement, when

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to access in PG&E’s bill redesign, improved access to pge.com for individuals who use screen readers, efforts to include key information in large print in standard written notices to customers, enhanced communication efforts with Medical Baseline customers, and a reasonable commitment to use alternative formats for written notices. *See* Joint Testimony of PG&E Witness Steven Phillips, William Gibson and Thomas Varghese, and Disability Rights Advocates Witness Melissa W. Kasnitz, served on May 26, 2010 in A.09-12-020.

<sup>35</sup> A.09-12-020, MOU at II.A.

<sup>36</sup> *See* PG&E Comments, p. 5.

<sup>37</sup> *See* Settlement Agreement at 10 (subsection F.2).

<sup>38</sup> Pacific Gas and Electric Company’s Response to Questions Posed Scoping Memo and Related Issues (Mar. 12, 2010) at 11-12.

customers have to do nothing more than pick up the phone in order to talk to a live agent, the ability to reach a payment-troubled customer to offer a payment arrangement or other assistance before disconnection is enhanced.<sup>39</sup>

## II. CONCLUSION

Neither PG&E nor SCE opposes the Settlement Agreement, and none of the criticisms PG&E has stated in its Comments on the Settling Parties' Petition warrant denial of either the Petition or the motion to adopt the Settlement Agreement. There is ample evidence and sound rationale for the Commission to adopt the Settlement Agreement that will allow the Sempra Utilities to maintain consumer protections that already appear to be successful in reducing disconnections, and add new protections to reduce disconnections of Sempra Utilities customers even further. The Settlement largely incorporates the same directives of D.10-07-048, which will continue to apply to protect customers of SCE and PG&E. However, the Settlement Agreement achieves even more protections than the Interim Decision, where the Sempra Utilities have voluntarily agreed to

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<sup>39</sup> Petitioners submit that customers who are subjected to a recorded call or "robo-call" may disengage before learning of the option to talk to a live person and how to exercise that option. The Greenlining Institute and Disability Rights Advocates have explained this dynamic: "As with 'junk mail,' many individuals are subject to a frequent barrage of 'robo-calls' causing substantial consumer frustration. As a result, many telephone users, including customers delinquent in their bill payments, often avoid automated calls by disconnecting once they hear a recorded message ... the utilities will likely need to directly initiate live conversations or otherwise develop more individualized communications strategies." *See* Joint Opening Comments of The Greenlining Institute and Disability Rights Advocates, Mar. 12, 2010, p. 5. *See also* TURN Opening Comments, p. 4 (explaining, based on input from customers in PG&E's focus groups in Oakland and Sacramento, that recorded calls are not as effective at communicating with customers). Additionally, recorded calls may simply be undeliverable to certain customers with hearing impairments who use relay services for telecommunications.

meet a higher bar. The Settlement Agreement should be approved as reasonable in light of the whole record, consistent with law, and in the public interest, and the Petition to Modify D.10-07-048 should be granted to reflect the Settlement Agreement as it applies to the Sempra Utilities.

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

DIVISION OF RATEPAYER  
ADVOCATES

By: /s/ Melissa W. Kasnitz  
**MELISSA W. KASNITZ**

By: /s/ Harvey Y. Morris  
**HARVEY Y. MORRIS**

GREENLINING INSTITUTE

NATIONAL CONSUMER LAW  
CENTER

By: /s/ Samuel Kang  
**SAMUEL KANG**

By: /s/ John Howat  
**JOHN HOWAT**

By: /s/ Darlene R. Wong  
**DARLENE R. WONG**

THE UTILITY REFORM NETWORK

By: /s/ Hayley Goodson  
**HAYLEY GOODSON**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day a copy of **REPLY OF CONSUMER GROUPS TO RESPONSE TO PETITION TO MODIFY D.10-07-048** 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.

**U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **October 6, 2010** at San Francisco, California.

/s/        Joanne Lark  
\_\_\_\_\_ **JOANNE LARK**

## SERVICE LIST

### R.10-02-005

stephaniec@greenlining.org  
jhowat@nclc.org  
darlenewong@nclc.org  
valerie.ontiveroz@swgas.com  
Don.soderberg@swgas.com  
debra.gallo@swgas.com  
emello@sppc.com  
tdillard@sppc.com  
akbar.jazayeri@sce.com  
chris.dominski@sce.com  
james.yee@sce.com  
John.Montanye@sce.com  
Marybeth.quinlan@sce.com  
monica.ghattas@sce.com  
rkmoore@gswater.com  
KHassan@SempraUtilities.com  
TCahill@SempraUtilities.com  
KWickware@SempraUtilities.com  
austin.yang@sfgov.org  
jeanne.smith@sce.com  
hym@cpuc.ca.gov  
map@cpuc.ca.gov  
rhd@cpuc.ca.gov  
hayley@turn.org  
bxlc@pge.com  
dfc2@pge.com  
DxPU@pge.com  
SRRd@pge.com  
mday@goodinmacbride.com  
ralf1241a@cs.com  
pucservice@dralegal.org  
trdill@westernhubs.com  
mike@alpinenaturalgas.com  
wamer@kirkwood.com  
hodgesjl@surewest.net  
westgas@aol.com  
Ariel.Son@PacifiCorp.com  
californiadockets@pacificorp.com  
jason.dubchak@niskags.com  
cassandra.sweet@dowjones.com  
holly.lloyd@swgas.com  
kristien.tary@swgas.com  
catherine.mazzeo@swgas.com  
GHealy@SempraUtilities.com  
dadelloso@sgvwater.com  
tjryan@sgvwater.com  
case.admin@sce.com  
Jennifer.Shigekawa@sce.com

CentralFiles@SempraUtilities.com  
michaelebailey@cox.net  
jeanne.sole@sfgov.org  
tburke@sfgwater.org  
BWT4@pge.com  
kaf4@pge.com  
cem@newsdata.com  
cem@newsdata.com  
MLW3@pge.com  
regrelcpuccases@pge.com  
d1ct@pge.com  
ELL5@pge.com  
aliciam@greenlining.org  
samuelk@greenlining.org  
jackk@mid.org  
joyw@mid.org  
lindaf@mid.org  
louh@mid.org  
llsm@pge.com  
rla4@pge.com  
Barb.Coughlin@PacifiCorp.com  
Marisa.Decristoforo@PacifiCorp.com  
michelle.mishoe@pacificorp.com  
TNF@cpuc.ca.gov  
atr@cpuc.ca.gov  
bmd@cpuc.ca.gov  
dlf@cpuc.ca.gov  
kwz@cpuc.ca.gov  
lwt@cpuc.ca.gov  
mjd@cpuc.ca.gov  
zca@cpuc.ca.gov