

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

Order Instituting Rulemaking on the Commission's Own
Motion to Conduct a Comprehensive Examination of
Investor Owned Electric Utilities' Residential Rate
Structures, the Transition to Time Varying and Dynamic
Rates, and Other Statutory Obligations

Rulemaking 12-06-013

(Filed June 21, 2012)

**MOTION OF THE CENTER FOR ACCESSIBLE TECHNOLOGY AND THE
GREENLINING INSTITUTE TO ADJUST THE SCHEDULE TO ALLOW FOR
CONSIDERATION OF THE LOW INCOME NEEDS ASSESSMENT**

**CENTER FOR ACCESSIBLE
TECHNOLOGY**
MELISSA W. KASNITZ
3075 ADELINE STREET, SUITE 220
BERKELEY, CA 94703
510/841-3224
service@cforat.org

THE GREENLINING INSTITUTE
STEPHANIE CHEN
ENRIQUE GALLARDO
1918 UNIVERSITY AVE
BERKELEY, CA 94704
510/926-4001
enriqueg@greenlining.org

December 26, 2012

MOTION OF THE CENTER FOR ACCESSIBLE TECHNOLOGY AND THE GREENLINING INSTITUTE TO ADJUST THE SCHEDULE TO ALLOW FOR CONSIDERATION OF THE LOW INCOME NEEDS ASSESSMENT

I. Introduction

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("the Commission") Rules of Practice and Procedure, the Center for Accessible Technology (CforAT) and the Greenlining Institute (Greenlining) hereby submit this Motion to Adjust the Schedule to Allow for Consideration of the Low Income Needs Assessment (LINA).

This proceeding was to be a fundamental evaluation of residential rate design issues, including rates for low income customers. The proceeding may result in policies that will significantly change residential rate design for low income customers. Statutory law instructs the Commission to utilize the LINA when considering rates for low income customers. The last LINA was issued in 2007, using data that was collected even earlier than that. Since that time, the largest economic recession since the Great Depression has occurred, which has affected the economic status of all customers, but especially low income customers. A new LINA is to be issued on August 31, 2013.¹ However, the current schedule in this proceeding calls for rate design proposals to be served in May 2013, briefing to be completed in July 2013 and for a final decision to be issued in September 2013.

¹ There was discussion at the prehearing conference in this proceeding that the LINA could be issued prior to August 31, 2013. CforAT/Greenlining is supportive of an earlier LINA if its methodology were not compromised.

The schedule for this proceeding should be adjusted to allow parties to utilize the information in the LINA in their rate design proposals, and to allow the Commission to consider the LINA in its decision in this proceeding. A fundamental evaluation of residential rate design – which could result in the most significant changes in residential rate design since at least the passage of Assembly Bill 1X in 2001 – should not be accomplished without being informed by current data, as required by statute. The delay requested herein will allow the proceeding to be properly informed with respect to the needs of low income customers. There are no overriding reasons to prevent the Commission from continuing this proceeding in a fully informed manner.

CforAT/Greenlining respectfully requests that the Commission revisit the schedule in this proceeding, allowing parties to utilize the information in the new LINA in their rate proposals, currently due in May 2013. The Commission should set the date for rate proposals to October or November 2013, which would allow parties to review the LINA and utilize its findings in their rate proposals, and still allow for resolution of the proceeding within 18 months of the Scoping Memo.

II. Procedural Background

On June 28, 2012, the Commission issued Order Instituting Rulemaking 12-06-013 (OIR). This rulemaking is the most significant evaluation of residential rate design the Commission has ever conducted:

The Commission, in opening this Rulemaking, intends to ensure for the foreseeable future that rates are both equitable and affordable while meeting the Commission's rate and policy objectives for the residential sector. This is especially true in terms of ensuring that low income customers have access to enough electricity to meet their basic needs at an affordable cost.²

² OIR, pp. 1-2.

The Commission will consider whether the current inclined block rate structure or an alternative rate structure is best suited to meeting rate design and policy objectives.³ As demonstrated by the above quote, consideration of rate design and affordability for low income customers is a significant component of this proceeding.

A prehearing conference (PHC) in this proceeding was held on October 24, 2012. In this PHC, several parties representing a variety of concerns stated that the proposed schedule was too rushed.⁴ Moreover,

CforAT specifically expressed concern that the Low Income Needs Assessment Report ordered in Decision 12-08-04410 will not be available until August 2013, and thus would not be available for use in evaluating rate designs until then.⁵

On November 21, 2013, parties filed opening comments regarding the coordination of this proceeding with other Commission proceedings and non-Commission proceedings, as ordered by the Administrative Law Judges' Ruling Inviting Comments, issued on November 6, 2012. CforAT/Greenlining's comments urged a revision of the proceeding schedule and provided arguments that statute required that the LINA be utilized in considering rates for low income customers.⁶

On November 26, 2012, the Scoping Memo for this proceeding was issued. In the section regarding the "Schedule and Need for Hearings," the Scoping Memo noted concerns about a rushed schedule and about the availability of the LINA.⁷ The only concern the Scoping Memo noted supporting a quicker schedule was that "utilities generally wanted an earlier due date for proposals, in part so the results could influence legislation in the 2013 session."⁸ The

³ See OIR, p. 2.

⁴ See Scoping Memo and Ruling of Assigned Commissioner, issued on Nov. 26, 2012 ("Scoping Memo"), p. 10.

⁵ Scoping Memo, p. 10.

⁶ See CforAT/Greenlining Comments Responding to Questions Pertaining to Coordination of Electric Proceedings Affecting Rates, filed on Nov. 21, 2012, pp. 1-5.

⁷ See Scoping Memo, pp. 10.

⁸ See Scoping Memo, pp. 10.

Scoping Memo also noted that “[c]onsistent with Section 1701.5, the Commission anticipates that this proceeding will be completed within 18 months of the date of the issuance of this Scoping Memo.”⁹

The Scoping Memo ruled on a schedule with Rate Design Proposals served in May 2013, the Comment Cycle in June 2013, the Briefing Cycle in July 2013, and a Proposed Decision issued in September 2013.¹⁰

In order to bring this scheduling issue to the Commission’s attention in a timely manner, CforAT/Greenlining files this motion seeking adjustment of the schedule in this proceeding.

III. California Statute Requires that the LINA Be Utilized in Considering Changes to Rates for Low Income Customers.

In considering any significant changes to rates for low income customers, the Commission must rely on the findings of a *current* LINA. Cal. Public Util. Code 382(d) provides that:

Beginning in 2002, an assessment of the needs of low-income electricity and gas ratepayers shall be conducted periodically by the commission ... The assessment shall consider whether existing programs adequately address low-income electricity and gas customers' energy expenditures, hardship, language needs, and economic burdens.

Thus, the statute requires a periodic assessment be conducted. The Commission, in ordering the new LINA, noted that “both the economic conditions facing California and the energy market have changed substantially since 2007 when the last assessment was conducted.”¹¹ As the Commission stated, there have been substantial changes since 2007, including the largest economic recession since the Great Depression. The Commission should not now embark on any significant redesign of residential rates affecting low income customers without the benefit of a needs assessment of current conditions.

⁹ See Scoping Memo, pp. 11.

¹⁰ See Scoping Memo, pp. 12.

¹¹ D.12-08-044, p. 256 & Finding of Fact 152.

California law requires that the Commission rely on the LINA in designing electricity rates for low income customers. Cal. Public Util. Code § 382(b) requires that “the commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures,” and further provides that this task may be accomplished by “*the establishment of different rates for low-income ratepayers, different levels of rate assistance, and energy efficiency programs.*” (emphasis added) Thus, the legislature contemplated that rate design was a primary means of ensuring that low income customers were not overburdened. Rate design is now proposed undergoing a fundamental examination in this proceeding.

As demonstrated by Cal. Public Util. Code § 382(d), quoted above, the Commission is to rely on the Low Income Needs Assessment to ensure that rate design affecting low income customers results in affordable rates. The Low Income Needs Assessment “shall consider whether existing programs” adequately meets low income customers’ needs. “Existing programs” include the low income California Alternate Rates for Energy (CARE) discount program and the Energy Savings Assistance program.¹² Thus, whether the CARE discount, in conjunction with the applicable residential rates, results in affordable rates for low income customers is a primary purpose of the Low Income Needs Assessment.

Further authority is provided by Cal. Public Util. Code § 739.1(b)(1), which requires “[t]he Commission shall ensure that the level of [CARE] discount for low-income electric and gas customers correctly reflects the level of need.” Thus, if any changes are made to residential rate design, the Commission must ensure that the subsequent low income rates, after application of the CARE discount, are affordable. As provided by Cal. Public Util. Code § 382(d), this is a decision that the Commission must make in reliance on the LINA. Indeed, it would be

¹² See Cal. Public Util. Code § 382(a).

impossible to ensure that any rate design “correctly reflects the level of need” without first assessing the current level of need.

Mandated Commission reliance on the LINA is further revealed by Cal. Public Util. Code § 739.1(b)(3)(B) which states that after January 1, 2019 the Commission must set CARE rates subject to:

The requirement that the level of the discount for low-income electricity and gas ratepayers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (d) of Section 382.

Commission reliance on the LINA in setting CARE rates is also mandated for the period before January 1, 2019. However, the legislature contemplated that the design of CARE rates would be fairly limited by other statutes that sunset on that date.

IV. This Proceeding Will Consider – and Potentially Order -- Fundamental Changes to the Rates of Low Income Customers, Changes that Should Be Informed by the Low Income Needs Assessment.

An examination of the rate design applicable to low income customers is a significant part of this proceeding. Even if specific rate design for a specific utility will not result from this proceeding, this proceeding is open to making fundamental changes in rate design – changes which will necessarily impact the CARE rates. The fundamental changes being contemplated in this proceeding must be informed by a LINA. For example, if the Commission were to recommend significant changes to the inclined block rate structure currently governed by statute, this would force significant changes on the rates for low income customers. Consideration of such fundamental rate design issues should rely on as much current information as possible, including the valuable information contained in a LINA.

The OIR in this proceeding issued a number of preliminary questions, including: “Do existing CARE methodologies provide for an optimal rate protection or are there more efficient

and equitable means to protect low income customers?”¹³ The question of whether existing CARE methodologies protect low income customers cannot be answered accurately without reliance on current data on low income customers. For example, the most recent LINA provided information about the energy use of low income customers in different strata above the current baseline.¹⁴ The LINA also provided detailed data about the energy burden of various segments of the low income community.¹⁵ The LINA provided information about the health and comfort of customers with high energy burden.¹⁶ All of this information – most especially the detailed measures of energy burden – is necessary for a proper consideration of which rate design methodologies would best protect low income customers.

Furthermore, in reference to low income customers the OIR states:

Additionally, as affirmed in the Public Utilities Code (Pub. Util. Code § 382(b)), this Commission is fully committed to ensuring that low-income customers are not jeopardized or overburdened by monthly energy expenditures. The examination as a result of this rulemaking will not change course from Pub. Util. Code § 382(b) ...¹⁷

If the Commission in this proceeding is truly committed to ensuring that low income customers are not overburdened by electricity needs, then it must utilize the primary research tool that examines the issue of energy burden among low income customers.¹⁸ The OIR states that it will not change course from Pub. Util. Code § 382(b) in this proceeding. Another section of that same statute mandates the LINA as the mechanism to ensure that the low income customers are not overburdened. If the Commission is to stay true to § 382, then it must utilize the LINA in its consideration of rates for low income customers.

¹³ See OIR, p. 20.

¹⁴ See Final Report on Phase 2 Low Income Needs Assessment (“LINA”), pp. 4-54 to 4-56. Available at <<http://docs.cpuc.ca.gov/published//GRAPHICS/73106.PDF>>

¹⁵ See LINA, pp. 5-9 to 5-15.

¹⁶ See LINA, pp. 5-23 to 5-29.

¹⁷ See OIR, pp. 8-9.

¹⁸ See Cal. Pub. Util. Code § 382(d): “The assessment shall consider whether existing programs adequately address low-income electricity and gas customers’ energy expenditures, hardship, language needs, and economic burdens.”

V. Conclusion

This proceeding constitutes the most significant evaluation of residential rate design the Commission has ever conducted, and may result the most substantial changes in rate design since at least the passage of Assembly Bill 1X in 2001. The Commission in this rulemaking intends to ensure that the rates it orders are equitable, affordable and meet its policy objectives “for the foreseeable future.”¹⁹ Clearly, the Commission does not envision that a proceeding such as this one to be repeated periodically. The Commission wants the rate structure it recommends to last. The Commission should ensure that it relies on the best, up-to-date data to inform its decision-making. The data in the most recent LINA will be more than seven years old when parties present their rate design proposals. A delay of some months will allow for up to date information to be utilized.

Even if the changes that this proceeding orders are general policy recommendations – such as a recommended revision of the inclined block rate structure – these fundamental, once-in-a-decade changes should be informed by the best, most current information. The LINA provides the best data regarding such issues as energy burden among low income customers, information that is vital to ensuring that rate structures will not result in rates that overburden low income customers.

As it is directed by statute, the Commission must ensure that any changes affecting low income customers are properly informed by the LINA. The Commission can do so by simply revising the schedule in this proceeding as indicated herein. The Commission must revisit its proposed schedule to ensure that parties in this proceeding have the opportunity to utilize the assessments results, available on August 31, 2013, in providing input to the Commission through their rate design proposals.

¹⁹ See OIR, p. 1.

Moreover, many parties view the current schedule as unnecessarily rushed.²⁰ It has also become evident from the workshop regarding the Bill Impact Calculators²¹ and in subsequent discussions, that the Bill Impact Calculators will not be able to perform many of the functions and will be unable to model some of the rate designs that parties desire. This is due to the rushed schedule of the proceeding, where all changes to the Bill Impact Calculators will need to be performed by January 2013 or soon after, in order for it to be properly utilized for parties' rate design proposals. A revision of the schedule will allow for the Bill Impact Calculators to be improved, allowing parties to adequately model their rate design proposals.

There are no overriding reasons for rushing the schedule through. If utilities or other parties wish to be able to inform the legislature of recommended changes to residential rate design, they may do so at any time, they need not wait for this proceeding's schedule (although CforAT/Greenlining believes that any recommendations to the legislature would be best supported by a current LINA). Thus, the schedule for the legislative session should not be determinant of the schedule for this proceeding.

The Scoping Memo anticipates that this proceeding will be resolved within 18 months of November 26, 2012, which would be by May 26, 2014. The schedule should allow parties to review and utilize the LINA in designing their rate design proposals. As the LINA is to be issued on August 31, 2013 (unless it is possible to be issued earlier), the Commission should set the date for rate proposals to be served to October or November 2013, which would allow parties to review the LINA and utilize its findings in their rate proposals. A comment cycle, briefing

²⁰ See Scoping Memo, p. 10.

²¹ See Scoping Memo, pp. 9-10. As ordered by the Scoping Memo, a workshop regarding the design of the Bill Impact Calculators was held at the Commission on December 6, 2012. A subsequent webinar and conference call regarding the Bill Impact Calculators was held on December 18, 2012, but as all the parties' issues were not addressed, a subsequent webinar and conference call is scheduled for January 8, 2013.

cycle and a Proposed Decision would follow, still allowing for resolution of the proceeding within 18 months of the Scoping Memo.

CforAT/Greenlining respectfully requests that the Commission revisit the schedule in this proceeding to allow parties to utilize the LINA in their rate design proposals.

Respectfully submitted,

/s/ Melissa W. Kasnitz

MELISSA W. KASNITZ
Attorney for Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: 510-841-3224
Fax: 510-841-7936
Email: service@cforat.org

December 26, 2012

/s/ Enrique Gallardo

ENRIQUE GALLARDO
Attorney for the Greenlining Institute
1918 University Ave.
Berkeley, CA 94704
Phone: 510-926-4017
Fax: 510-926-4010
Email: enriqueg@greenlining.org