

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

**Order Instituting Rulemaking on the)
Commission's Own Motion to address the) R.10-02-005
Issue of customers' electric and natural gas) (Filed February 4, 2010)
service disconnection)**

**THE NATIONAL CONSUMER LAW CENTER'S COMMENTS
ON THE JOINT MOTION FOR SETTLEMENT**

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I. PROCEDURAL BACKGROUND

On February 5, 2010, the Commission opened this docket, R.10-02-005, to reduce the number of residential gas and electric utility service disconnections due to nonpayment, and also to develop more effective methods to reduce unnecessary disconnections without undue cost burden to other customers.¹ Along with the National Consumer Law Center (“NCLC”), other parties actively participating in this proceeding on behalf of consumer interests were the Division of Ratepayer Advocates (“DRA”),² Disability Rights Advocates (“DisabRA”),³ the Greenlining Institute (“Greenlining”), and The Utility Reform Network (“TURN”). Participating utilities were Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric Company (“SDG&E”), Southern California Gas Company (“SoCalGas”), and Southern California Edison Company (“SCE”).

On December 27, 2010, the Commission issued D.10-12-051, a decision approving a Settlement Agreement among consumer groups consisting of NCLC, DRA, DisabRA, Greenlining, TURN, and utilities consisting of SDG&E and SoCalGas. The Settlement Agreement resolved all issues in this proceeding as they related to SDG&E and SoCalGas. The terms of the approved Settlement Agreement provided, among other things, that SDG&E and SoCalGas would (1) adhere to certain payment arrangement practices and restrictions on collecting credit deposits if they failed to meet a performance benchmark for disconnections; (2) establish an extreme weather policy prohibiting disconnections at certain severe temperatures;

¹ See Order Instituting Rulemaking to Establish Ways to Improve Customer Notification and Education to Decrease the Number of Gas and Electric Utility Service Disconnections, Docket R. 10-02-005 (Feb. 5, 2010) at 1.

² On September 26, 2013, the governor of California signed a bill changing the name of DRA to the Office of Ratepayer Advocates (“ORA”).

³ The Center for Accessible Technology (“CforAT”) has since replaced DisabRA as an interested party in this case.

(3) implement a transition process for at least 12 months following smart meter installation before remote disconnections are allowed; (4) extend the practice of in-person field contact for manual disconnections to remote disconnections; and (5) not remotely disconnect customers who are particularly vulnerable to the health and safety risks of losing utility service.⁴ The terms of the Settlement expired after December 31, 2013.⁵

On March 29, 2012, after several rounds of comments and reply comments, the Commission issued D.12-03-054 and resolved all remaining issues in this docket related to the non-settling utilities, SCE and PG&E. The Commission ordered, among other things, that (1) the utilities shall offer the option of live CARE enrollment and this protection is permanent; (2) PG&E and SCE utility representatives shall perform on-site visits within 48 hours of, or at the time of remote disconnection, to protect vulnerable or sensitive customers as a permanent protection; (3) customers who have filed bankruptcy should not be categorized as customers involved in fraud or bad check writing who are excepted from applicable deposit waivers; (4) the in-field payment collection requirement of D.10-07-048, which does not require a cash deposit shall continue; (5) utilities should allow customer choice in billing date, to the extent billing systems allow; (6) benchmarks coupled with disconnection practice requirements be established to serve as incentives for lowering disconnections for each utility; and (7) utilities must continue to inform customers, who have arrearages that place them at risk of disconnection, of a right to a

⁴ See Decision Granting Petition to Modify Decision 10-07-048, and Approving Settlement Agreement, Docket R-10-02-005 (Dec. 12, 2010) (“D.10-12-051”).

⁵ See D.10-12-051 at 7 (noting term of settlement agreement ends Dec. 31, 2013). It appears, however, that in response to a letter request from the Commission’s Executive Director, the utilities maintained the status quo of the disconnection rules adopted in D.10-12-051 until March 3, 2014, and the utilities subsequently voluntarily agreed to maintain the status quo until March 17, 2014. See Joint Motion of the Office of Ratepayer Advocates; The Utility Reform Network; The Greenlining Institute; the Center for Accessible Technology; Pacific Gas and Electric Company (U39E); Southern California Edison Company (U338-E); San Diego Gas & Electric Company (U902M); and Southern California Gas Company (U904G) for the Adoption of the Settlement Agreement, Docket R. 10-02-005 (Apr. 1, 2014) (“Joint Motion for Settlement”) at 4.

bill payment plan of at least three months. Except for the two permanent protections listed above (i.e. live CARE enrollment and premise visits within 48 hours of disconnection to protect vulnerable or sensitive customers), the directives of D.12-03-054 also expired after December 31, 2013.⁶

In the last quarter of 2013, NCLC and all of the active parties to this docket commenced negotiations to determine whether any of the protections of the Settlement and Order could be extended. The Settlement expired on December 31, 2014 without the parties reaching agreement on new terms to govern post-settlement credit, collection and disconnection practices. On April 1, 2014, a joint motion for adoption of a new Settlement Agreement (“Joint Motion for Settlement”)⁷ was filed by ORA, TURN, Greenlining, CforAt, PG&E, SCE, SDG&E and SoCalGas (collectively, the “Settling Parties”). Simultaneously with their Joint Motion for Settlement, the Settling Parties filed a petition to modify the two prior Commission orders described above (“Petition to Modify”).⁸

In accordance with the Rules 11.1(e) and Rule 12.2 of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure regarding a response to Settling Parties’ Joint Motion for Settlement and the proposed Settlement, NCLC now respectfully submits the following Comments.

⁶ See Decision on Phase II Issues: Adoption of Practices to Reduce the Number of Gas and Electric Service Disconnections, Docket R.10-02-005 (Dec. 16, 2010) (“D.12-03-054”) at 57-58 (Ordering Paragraph 4). As was the case with the expiring disconnection rules established by D.10-12-051, it appears that the utilities maintained the status quo of the customer disconnection rules of D.12-03-054 until March 17, 2014. See Joint Motion for Settlement at 4.

⁷ A copy of the proposed Settlement was attached to the Settling Parties’ Joint Motion for Settlement. See Joint Motion for Settlement at Appendix A.

⁸ See Petition to Modify Decisions 10-12-051 and 12-03-054 (Apr. 1, 2014) (“Petition to Modify”). The Settling Parties also concurrently filed a Joint Motion to Shorten Time to Respond to the Petition for Modification of Decisions 10-12-051 and 12-03-054 in this docket.

II. COMMENT ON THE JOINT MOTION FOR SETTLEMENT

A. **Because Two Permanent Utility Obligations Can be Interpreted as Negotiable Terms Under the Proposed Settlement, a Commission Order that Approves the Proposed Settlement Should Require These Consumer Protections to Be Included in the Companies' Tariffs as Non-Expiring Provisions.**

While NCLC appreciates that the proposed Settlement maintains some of the utilities' current improved practices that were established through the parties' negotiations and Commission Orders in this docket, NCLC is concerned that the Settlement appears to weaken two important protections against unnecessary disconnection for the most vulnerable customers.

In D.12-03-054, the Commission stated:

After reviewing the consumer group comments on the proposed decision, we are persuaded to adopt two exceptions to the benchmark plan's sunset provision. First, we provide that the requirement for a pre-disconnection site visit by a field representative for vulnerable customers will remain permanent. Second, the requirement that utilities ensure that CSRs offer the option of live enrollment in the CARE program will remain in effect permanently.

D.12-03-054 at 40-41.

In establishing the pre-disconnection site visit to vulnerable and sensitive customers as a permanent protection, the Commission specifically directed PG&E and SCE to:

Provide that medical baseline customers, life support customers, and customers who certify that they have a serious illness or condition that could become life threatening if service is disconnected shall not be disconnected without an in-person visit from a utility representative. Such visits should take place within 48 hours, or at the time, of disconnection. The representative must be able to collect on a bill during an in-person visit prior to disconnection.

D.12-03-054 at 3.

In contrast, the proposed Settlement appears to inadvertently make this permanent protection for PG&E and SCE customers a negotiable issue, by including it as Provision 4.1.1, a

negotiated term of settlement under the header “Settlement of Issues,”⁹ with the added provision that Settlement terms expire on December 31, 2016.¹⁰ Additionally, the Petition to Modify that accompanied the filing of the proposed Settlement attempts to delete Ordering Paragraph 2.b from D.12-03-054, which provides the field visit protection.¹¹ Without clarification, one interpretation of the proposed Settlement is that it transforms these permanent protections into negotiable, temporary ones.

In response to discovery by NCLC, the Settling Parties have confirmed that they do not intend to revoke the permanent protections of a field visit and live CARE enrollment as provided in D.12-03-054.¹² Because the intent of the Settling Parties does not necessarily align with a reading of the proposed Settlement as filed, if the Commission approves the proposed Settlement, the Commission’s order should provide the explicit clarification that the permanent protections of D.12-03-054 are unaffected.

Additionally, the Commission should direct PG&E and SCE to file tariff language that explicitly incorporates the in-person field visit protection and the live CARE enrollment protection as non-expiring provisions.¹³ The Commission should also direct PG&E and SCE to give the parties to this proceeding official notice of any changes, including deletion, that may be proposed to these tariff provisions anytime in the future.

⁹ See Joint Motion for Settlement at Appendix (Page 6 of proposed Settlement).

¹⁰ See Joint Motion for Settlement at Appendix (Page 4 of proposed Settlement, Provision 3.4).

¹¹ See Petition to Modify at 9. The Petition to Modify proposes to strikeout Ordering Paragraph 2.b. from D.12-03-054 which states: “No customer who is on medical baseline or life support who certify that he or she has a serious illness or condition that could become life threatening if service is disconnected shall be disconnected without an in-person visit from a utility representative.” Id.

¹² See Response to Data Request Set A of the National Consumer Law Center (attached).

¹³ The Settling Parties have indicated agreement that the permanent protections should be included in the tariff, but have not clarified that PG&E and SCE will specify the non-expiring nature of the provisions. *See id.*

Additionally, Settlement Provision 4.1.1 creates an obligation for SoCalGas to continue the similar practice conducted under its expired Settlement obligation, of an on-site visit to vulnerable customers within 48 hours before disconnection. NCLC submits that if the Commission approves Provision 4.1.1 of the Settlement, that it likewise directs SoCalGas to include this protection in its tariff and direct SoCalGas to give the parties to this proceeding official notice of any changes, including deletion, that it may propose making to this tariff provision anytime in the future.

B. Flexibility Should Be Incorporated into the Parameters for Payment Arrangements and Extensions.

The proposed Settlement describes for each utility an initial pilot payment plan of 7 months duration.¹⁴ Each utility has agreed to implement a pilot plan that appears unique and individual to the utility.

NCLC believes that to be effective, payment plans should be more flexible than what is outlined in the pilot payment plans. NCLC has advocated throughout this docket for greater flexibility of payment plans, such as flexible payment periods, greater number of installments, and consideration of individual customer circumstances. Flexibility should help maximize each payment-troubled customer's ability to pay based on their special and financial circumstances. For example, the ability of different customers to meet payment obligations for an arrearage of the same amount will differ depending on each customer's individual and special circumstances. Payment plans that are reasonable for low-income customers are those that account for customer's special and financial circumstances including household income, ability to pay, size of the bill, the amount of time and reasons for the arrearage, and any special circumstances

¹⁴ See Joint Motion for Settlement at Appendix (Pages 9-14 of proposed Settlement, Provision 4.4).

creating extreme hardships in the home.¹⁵ Payments plans that are specifically tailored to best fit the individual customer are provided in states like Iowa and New York.¹⁶

Additionally, for payment plans to be successfully managed by low-income consumers, they may need to be longer than 3 months. For example, in Massachusetts, payment plans by definition “shall extend over a minimum of four months, or such other period approved by the Department’s Consumer Division.”¹⁷

Although all of the utilities have limited their pilot plans to customers who are not disconnected, SDG&E limits eligibility further to only CARE/FERA customers and limits the payment period to a maximum of 3 months. This program is too limited to assist non-CARE/non-FERA customers who nonetheless may be struggling to make payments.

PG&E’s pilot is potentially flawed because it places the High Risk customers – likely those with the largest arrearages and most payment troubled histories – in the payment plans with the most stringent requirement. Low Risk and Medium Risk customers pay a lower percent of their balance in the initial payment and receive more days to pay it than do High Risk customers.¹⁸ The Low Risk customers, who likely have the smallest arrearages with greater ability to pay, have the lowest percentage of balance to pay in the initial payment, and the greatest number of days to pay it.¹⁹

SCE’s pilot payment plan is more reasonable. It does the opposite and gives customers

¹⁵ See IA ADC 199-19.4(476) (Iowa rules for reasonable payment plans).

¹⁶ See *id.* See also 16 NY ADC 11.10(a)(1) (New York utilities should offer a payment agreement and negotiating terms tailored to a customer’s financial circumstances).

¹⁷ 220 MA ADC 25.01(2) (definition of “payment plan”).

¹⁸ See Joint Motion for Proposed Settlement at Appendix (Page 10 of proposed Settlement, Provision 4.4.3.1).

¹⁹ See *id.*

with the highest arrearages the longest amount of time to pay.²⁰ It also provides CSRs with flexibility to provide payment arrangements beyond these terms, based on a customer's specific circumstances.²¹

While NCLC believes that for the most part, the pilot plans in the proposed Settlement should be more flexible to be effective, NCLC supports the idea of implementing pilots to help obtain data for analyzing the effectiveness of payment plan programs. While the Settling Parties have agreed to work together to develop feasible data collection points, no data points are as yet agreed to in the proposed settlement.²² One important piece of information to capture is the size of arrearage before and after the payment plan, so that plans that are ineffective in reducing the customers' arrearages can be identified and redesigned to better assist payment-troubled customers. It is additionally important that measures be taken to ensure that data resulting from the data collection is sufficiently granular to be meaningful and that samples used are adequately representative to ensure the data collected is valid and reliable.

C. Nothing in the Settlement Agreement Divests the Commission of Its Ability in the Future to Open Similar Multi-Company Proceedings Regarding Disconnection or Credit and Collections Policies.

In Settlement Provision 3.2, the Settling Parties have agreed to the principle that:

Credit and collections policy matters should be addressed in a forum in which policy changes can be aligned with cost recovery, whether in a GRC, a Low Income Program application, or another proceeding that affords the CPUC an opportunity to address cost recovery, including an investigation or rulemaking proceeding in which ratesetting may occur. Consistent with this principle, the Settling Parties agree to address future credit, collection and disconnection practice issues in each of the Joint Utilities GRC proceedings or other appropriate CPUC proceedings in which the scope encompasses both credit and collection policy, and related cost recovery.

²⁰ SCE's pilot provides a 30 day repayment period for customers with arrearages less than \$100 and increases the payment period as arrearage size increase. For arrearages \$1500 and over, the customer has 120 days to pay the full balance. See Joint Motion for Settlement at Appendix (Pages 11-12 of proposed Settlement, Provision 4.4.4.1).

²¹ See Joint Motion for Settlement at Appendix (Page 11 of proposed Settlement, Provision 4.4.4.1).

²² See Joint Motion for Settlement at Appendix (Page 15 of proposed Settlement, Provision 4.4.8.1).

Joint Motion for Settlement at Appendix A, Page 4 of proposed Settlement.

The current docket was opened as an investigation to address the issue of customers' electric and natural gas service disconnections. All of the investor-owned energy utilities were required to participate so that the Commission could systematically address issues relating to disconnection on an industry-wide basis.

However, the Settling Parties have agreed among themselves that future "credit and collections policy matters should be addressed in a forum in which policy changes can be aligned with cost recovery," and have stated their intent that the forum should be proceedings which afford the CPUC an opportunity to address cost recovery such as "a GRC," "a Low Income Program application," or "an investigation or rulemaking proceeding in which ratesetting may occur."²³ These examples appear to NCLC to be limited to individual utility proceedings. While the Settling Parties arguably may agree among themselves to seek resolution of issues only in specific types of Commission proceedings, the Commission should clarify that nothing in Settlement Provision 3.2 can preclude other parties such as NCLC from seeking the opening of additional, industry-wide disconnection dockets in the future. More importantly, nothing in Settlement Provision 3.2 can limit the options of the Commission to open such future industry-wide proceedings or compel the participation of necessary parties.

The Commission unquestionably has broad jurisdiction to open disconnection-related rulemakings and other proceedings to carry out its oversight investigations over the investor-owned utilities, the very jurisdiction it exercised to open up the current docket. In its order on the Joint Motion for Settlement, the Commission may wish to clarify that nothing in the

²³ See Joint Motion for Settlement at Appendix (Page 3 of proposed Settlement, Provision 3.2).

Settlement can be read to limit the Commission's ability to open another across-industry docket that resolves broader policy issues in advance of individual company cost-recovery questions.²⁴

III. CONCLUSION

NCLC respectfully requests that the Commission consider its comments and recommendations above in resolving the Settling Parties' Joint Motion for Settlement.

Respectfully Submitted,

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²⁴ In R.10-02-005, the Commission stated that it would investigate practices to reduce utility disconnections, and that cost recovery associated with compliance would be tracked in the utilities' memorandum accounts. The costs would then be addressed in the next general rate case for each utility. *See* Interim Decision Implementing Methods to Decrease the Number of Gas and Electric Utility Disconnection, Docket R-10-02-005 (Jul. 29, 2010) ("D.10-07-048") at 3-4. Deferring recovery of new and unknown costs to a time after implementation of a Commission policy for incurring those costs is reasonable. *See* *Union Electric Co. v. Public Service Commission*, 136 S.W.3d 146, 154-155 (Mo. App. 2004) (Y2K costs in the \$10 to \$15 million range were premature to pass onto ratepayers because the first priority was to implement solutions to avoid interruption of utility service; a review for the reasonableness and prudence of Y2K costs was properly deferred).

ATTACHMENT

Settling Parties' Response to Data Request Set A
of the National Consumer Law Center