

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

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.

Rulemaking 09-11-014
(Filed November 20, 2009)

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER ON THE
ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
ENERGY EFFICIENCY FINANCING**

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I. INTRODUCTION

Pursuant to the January 10, 2012 *Administrative Law Judge's Ruling Regarding Energy Efficiency Financing* and the February 3, 2012 email from ALJ Fitch extending the deadline for the second-round comments to February 22, 2012, the National Consumer Law Center respectfully submits these comments. The ruling invites comments on the program design and operational questions and detailed program implementation questions.

NCLC is a nonprofit corporation founded in 1969 that assists low-income consumers, their attorneys and advocates and public policy makers nationwide in their efforts to achieve economic justice for low-income consumers. NCLC advocates for access to affordable, reliable utility service for low-income consumers and has a long history in the creation and implementation of low-income utility assistance programs.

We appreciate that the Commission has carved out a separate line of inquiry into the issues surrounding energy efficiency financing and on-bill financing/on-bill repayment

(OBF/OBR), in particular. Yet, what has become even more apparent after the 3-day workshop on February 8, 2012 through February 10, 2012, is that there is a great deal of uncertainty regarding structuring on-bill-repayment for the residential sector, especially for low-income customers and tenants. On-bill-repayment for residential utility customers is still in its infancy as a financial product. As the presenter from Oregon noted at the workshop, he believes he has the oldest running residential OBR program in the country – and his program is only around 24 months old. NYSERDA’s residential OBR program is merely weeks old. Despite EDF’s assurances to the contrary, it is not clear that OBR for residential consumers can be designed in a manner that can fairly and appropriately balance risk to the consumers and ratepayers in general, with the risks to the providers of private capital and the risks to utilities in a manner that can entice all three interests to embrace these efficiency loans on a large scale. We share DRA’s concern that “with less than a year remaining before the 2013-2014 transition period starts, it is unrealistic to expect to resolve the issues in time to implement OBR during the transition period.”¹ In order to mitigate unintended consequences from a hastily rolled out OBR program, deeper discussion and analysis are needed regarding the applicability of consumer lending and consumer protection laws as well as further discussion of appropriate contractor standards and consumer recourse when savings are not achieved due to installation errors or equipment failure and the impact on real estate transactions.

We continue to urge the Commission to proceed extremely carefully and first build the foundation that OBR products are working and are scalable for the different rate classes. The Harcourt, Brown & Carey report notes that 32% of homeowners now have mortgage debt that

¹ DRA Reply Comments at 1.

exceeds the value of their home.² Thus targeting the OBF and OBR will be critical so as not to add to the debt loads of those already struggling in this current economy. The report also notes that the network of contractors to install the energy efficiency measures is highly disaggregated and that there are “[f]ew whole-house contractors in this sector.”³ There will be some factors outside of the financing mechanism itself that will drive the pace of the “scaling up” of these loan products.

We also urge the Commission to look at the ratepayer’s ability to assume the risk that measures will not achieve expected savings. In addition, the ability of subsequent owners and tenants who are asked to assume the loan repayment attached to the meter should be looked at in this proceeding, especially where the savings for these subsequent OBF/OBR customers is not commensurate with the loan payments due to factors such as household size. We also urge the Commission to exclude ESAP-eligible households from the OBF/OBR products, at least until there is a proven track record that these programs are working well for residential consumers.

Finally, NCLC recommends that no residential customer experience a disconnection of service for non-payment of an energy efficiency loan. In the event that an OBF program where a utility customer makes a partial payment of a monthly bill that includes both energy and debt service charges, NCLC recommends that funds be applied to energy charges first, with any remainder then being applied to debt service.

II. Program Design and Operational Questions

A. Suggested Set of Overall Public Policy Objectives for a Ratepayer Supported Program

² Energy Efficiency Financing in California Needs and Gaps, Harcourt Brown & Cary, July 8 2011 (“HB&C”) at 17.

³ HB&C at 14.

NCLC proposes these additional objectives for a ratepayer supported energy efficiency finance program:

- Ensure that residential customers entering into these energy efficiency loans do not experience a significant increase in arrears and disconnections.
- Establish pro-consumer, clear, easy-to-use, quick dispute resolution processes for all aspects of the efficiency/OBF loan including loan marketing practices, disputes with the lender and disputes with the contractor. (For example, the dispute resolution processes would provide a clear point of contact to resolve consumer complaints of improper installation of measures, failing measures, inflated estimated efficiency savings, abusive solicitations of the loans to residential consumers, mistakes in the loan documents, billing errors, etc.)

B. Issues for Loans and Entities Servicing Loans

OBR financing has been promoted as an effective and desirable method for attracting private capital to fund energy efficiency retrofits in the residential housing sector. The OBR model permits lenders to collect payments on energy efficiency loans through consumers' monthly utility bills. However, while greater energy efficiency is a laudable goal it should not come at the expense of consumer protection. One need look no further than our current foreclosure crisis to see that the influence of unchecked capital markets in the housing sector can have disastrous effects on homeowners and tenants.

In order to limit the negative impact that any OBR program will have on residential customers, the CPUC must:

- 1. Re-examine the underlying assumptions regarding net bill neutrality.*

A key underlying assumption behind implementation of energy efficiency financing, including the OBF and OBR models is the concept of net bill neutrality—that is, the consumer’s energy bill, which includes a loan repayment component, will be equal to or less than the consumer’s bill prior to the installation of energy efficiency upgrades. In short, lenders and consumers enter into the loan agreement assuming that financed energy efficiency measures will generate savings that are greater than monthly principal and interest payments. However, even OBR proponents acknowledge that, in the case of residential energy efficiency improvements, it is unrealistic or impossible for a lender, utility company or contractor to guarantee that bill neutrality will actually be achieved.

Even if energy savings could be accurately predicted, it is, at best, uncertain whether net residential bill neutrality can be achieved. For example, in 2011, Harcourt, Brown & Carey (HBC) presented its report entitled “Energy Efficiency Financing in California: Needs and Gaps”⁴ to the CPUC. This report estimated that a 20 percent energy use reduction would cost approximately \$14,000-\$15,000 per household. HBC notes that this investment level is, in most cases, the minimum amount required to generate savings of 20 percent, and that to achieve greater levels of energy efficiency savings, investments of more than \$14,000 will be necessary. Assuming a cost of approximately \$14,000, and a 10-year loan term at 6% interest, the amount needed to service the debt (not including any fees) is \$155.43 per month. This amount, which, according to HBC, achieves only a 20% reduction in energy usage, exceeds the entire monthly utility bill for many residential customers.

⁴ Energy Efficiency Financing in California: Needs and Gaps: Preliminary Assessment and Recommendations (Harcourt, Brown & Carey, July 8, 2011)

The difficulty in achieving residential bill neutrality on a broad scale and for deep retrofits is due, in large measure to relatively low home electricity and natural gas expenditure levels in California. According to the U.S. Energy Information Administration, 2010 residential electricity expenditures averaged \$994 per customer in California.⁵ For households receiving natural gas service, 2010 expenditures in California averaged \$466.^{6, 7} Thus, the sum of average electricity and natural gas expenditures was \$1,460 in 2010, or about \$122 per month. A table reflecting 2010 residential electricity and natural gas expenditures in California is attached in Appendix A, Table 1. As indicated above, the monthly debt service on a \$14,000, 10-year loan at a 6 percent annual interest rate is about \$155 monthly, or about \$33 more than the entire combined bill before adding new efficiency improvements. Even extending loan repayment of a \$14,000 loan out over 20 years and reducing interest to zero results in a monthly principal and interest payment of over \$58, or nearly 48% of the combined average monthly bill before efficiency installations. Of course, it may be possible to achieve residential bill neutrality in those households with unusually high energy expenditures and with exceptional energy efficiency savings potential. Further, altering assumptions regarding amounts financed, interest rates and loan repayment terms will have bearing on the extent to which bill neutrality may be achieved.

It should be noted that achieving residential bill neutrality in renter households is particularly problematic. Results of the Energy Information Administration's 2005 Residential Energy Consumption Survey indicate that expenditures in tenant-occupied housing are considerably lower than those in owner-occupied dwelling units. In 2005,

⁵ Calculated from U.S. Energy Information Administration, Electric Power Annual, November 2011.

⁶ Calculated from U.S. Energy Information Administration, Natural Gas Monthly, December 2011.

⁷ Average residential natural gas expenditures in California ranked lowest in the United States in 2009. Home electricity expenditures were lower in only 12 other in 2009. Tables reflecting state expenditure rankings are attached in Appendix A as Tables 2 and 3.

renters spent an average of \$622 for home electricity. During that same year, consumers who owned or who were buying their homes spent an average of \$1,059 for home electric service.⁸ A table reflecting electricity expenditure by housing tenure is attached in Appendix A, Table 4. Achieving bill neutrality for deep retrofit loans in households with low existing bills will be highly problematic.

Because achieving bill neutrality in renter households is highly problematic, and because of implementation difficulties in transferring loan obligations as occupancy of rental units shifts, NCLC recommends that any new residential OBR/OBF offerings be limited to homeowners, and that loan obligations be retired by the original borrower at point of sale of the property. Further, in light of concerns regarding bill neutrality, NCLC urges that low-income household monthly cash flow be protected and that any new residential OBROBF offerings be restricted to homeowners whose income falls above the ESAP income-eligibility guidelines. A possible exception to this recommendation entails energy efficiency financing in affordable housing where tenants' rent and utility payments are capped. However, in no case should such tenants experience disconnection of service for non-payment of an energy efficiency loan.

2. *Standardize Loan Terms for Energy Efficiency Loans*

Volumes of research have shown that consumers lack access to tools and information needed to select the best loan product available to them. The market can, and will, design product attributes that manipulate consumer behavior or, worse, actively mislead consumers.

⁸ U.S. Energy Information Administration, 2005 Residential Energy Consumption Survey.

Behavioral economic research suggests that behavioral biases often unconsciously shape consumers' financial decisions.⁹ For example, borrowers focus on affordability of initial monthly payments, rather than terms that contribute to the loans actual cost and risk, such as the length of loan, fees, and dispute resolution mechanisms. This is because they underweight the future, relative to the present, thus making a miscalculation about the relative benefits of initial lower payments in exchange for more risk and higher costs later in the loan's life. In the case of EE loans, consumer may similarly overestimate the benefits of energy savings in relation to the cost of the loan and risk that the energy savings will not be realized. Consumers are particularly apt to make cognitive errors when products are complex. Therefore, simple, standardized loan terms are critical to any OBF/OBR program for residential homeowners and tenants.

The loans terms should include:

- *Fixed rates of interest.* Borrowers tend to be overly optimistic in believing payments will not increase because adjustable rates will not increase.
- *Standardized loan term lengths that do not exceed the anticipated life of the energy upgrades* (e.g., 5, 10, or 15-year loans).
- *Full amortization*

Additionally any EE loan documents should be written in plain English and at a level consistent with the average consumer's ability to read and understand. Consumers are disadvantaged when they confront complex credit contracts that are written in language far beyond what the average American reading comprehension level. For example, the Government Accountability Office retained a usability expert to review

⁹ Alan M. White, "Behavior and Contract," Law and Inequality (2009)(describing challenges that behavioral economics has made to rational choice theory in the area of consumer law); Patricia A. McCoy, "A Behavioral Analysis of Predatory Lending," Akron Law Review 38 (2005).

credit card agreements and disclosures.¹⁰ The expert retained by the GAO found that credit card agreements required reading at a 15th grade level—or three years of college. By comparison, nearly half of American consumers read at no more than an 8th grade level. Unsurprisingly, most credit card solicitations are written at an 8th grade level. Without standardization of EE loan documents, there is nothing to prevent lenders from using the same marketing strategies that are used in the credit card context.

3. *Prohibit Abusive Loan Terms*

Disclosure alone is insufficient to respond to abuses in lending transactions. In a country in which nearly 40% of the population is estimated to be functionally illiterate,¹¹ the concept of disclosure loses meaning. Nor does disclosure prevent overshadowing or manipulation by loan originators.¹²

4. *Restrict the ability of contractors to originate loans.*

Home improvement contractors have a long history of preying on unsophisticated homeowners. Using high-pressure sales tactics, and sometimes even fraudulent inducements, they have persuaded homeowners to sign contracts for overpriced repairs at

¹⁰ Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosure to Consumers* 38 (2006) (GAO-060929).

¹¹ U.S. Dep't of Educ., National Ctr. for Educ. Statistics, *Adult Literacy in America* (Sept. 1993) (available from the U.S. Gov't Printing Office, GPO stock number 065-000-00588-3), *discussed in, e.g.*, Alan M. White & Cathy Lesser Mansfield, *Literacy and Contract*, 13.2 *Stan. L. & Pol'y Rev.* 233, 235–242 (2002); Mary Jordan, *Literacy of 90 Million Is Deficient*, *Washington Post*, Sept. 9, 1993, at A1). *Cf.* Mark Kutner, Elizabeth Greenberg, Ying Jin, Bridget Boyle, Yung-Chen Hsu, Eric Dunleavy & Sheida White, *Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy* 13 (2007), *available at* <http://nces.ed.gov/Pubs2007/2007480.pdf> (22% of the U.S. population has less than basic proficiency in quantitative literacy).

¹² *See, e.g., In re First Alliance Mortgage Co.*, 298 B.R. 652 (C.D. Cal. 2003); Diana B. Henriques and Lowell Bergman, *Mortgaged Lives: A Special Report; Profiting from Fine Print with Wall Street's Help*, *N.Y. Times*, Mar. 15, 2000, at A1 (reporting on allegations against First Alliance Mortgage about its sales tactics)

exorbitant interest rates and without regard to the homeowners ability to pay back the loan. Besides payment on the contract, contractors also have received commissions for “arranging” financing which is rarely if ever disclosed to the borrower.¹³

5. *Continue to provide grant funds, rather than push to low-income homeowners into EE loans.*

With regard to achieving deep energy efficiency savings for low-income consumers, NCLC recommends that instead of first turning to yet-to-be-developed and tested California residential OBR products, the Commission should consider the coordination and enhancement of existing and potential programs and funding streams. For example, the federal low-income weatherization program¹⁴ along with any federal Low Income Home Energy Assistance Program (LIHEAP) weatherization funding¹⁵ combined with the low income Energy Savings Assistance Program.¹⁶ In addition, NCLC along with many parties in this proceeding have proposed funding complementary low-income energy efficiency investments through greenhouse gas emission allowances.¹⁷

6. *Make Clear that Assignees of the Original Creditor are Liable for the Misconduct of the Original Creditor/Seller.*

¹³ See, e.g., Pizzo v. Florida, 916 So. 2d 828 (Fla. Dist. Ct. App. 2005)

¹⁴ 42. U.S.C. § 6861 – 6873; For information on California’s Weatherization program visit <http://www.csd.ca.gov/Programs/Weatherization%20Assistance%20Program.aspx>.

¹⁵ 42 U.S.C. § 8624(k)(section of the LIHEAP statute authorizing up to 15% , or 25% with a waiver, of a state’s LIHEAP block grant to be used for low-cost residential weatherization).

¹⁶ Cal. Pub. Util. Code §2790; For a description of the program visit <http://www.cpuc.ca.gov/PUC/energy/Low+Income/liee.htm>.

¹⁷ See the Revised Proposal of the Natural Resources Defense Council (NRDC), Sierra Club California, the Greenlining Institute (Greenlining), Union of Concerned Scientists (UCS), Local Government Sustainability Energy Coalition (LGSEC), National Consumer Law Center (NCLC), Climate Protection Campaign (CPC), California Housing Partnership Corporation (CHPC), and Community Environmental Council to Allocate Greenhouse Gas Allowance Revenues, R. 11-03-012 (Jan. 6, 2012).

In consumer credit transactions, one of the most important issues is whether a creditor is subject to the claims and defenses that the consumer has against the seller or originator creditor. The liability of subsequent creditors for the acts of the original creditor/seller is important for two reasons. First, the seller or original creditor may be judgment proof, so that consumers would be left without a remedy if they had to pay the holder of the note and then try to recover all or some of this amount from the original seller or creditor. Second, even if the seller is solvent, it is usually impractical to expect a consumer to defend a collection action (or utility shutoff process) and simultaneously bring an affirmative suit against the seller or original creditor. “Consumers are not in a position to police the market, exert leverage over sellers, or vindicate their legal rights in cases of clear abuse....Redress via the legal system is seldom a viable alternative for consumers where problems occur.”¹⁸ On the other hand, “As a practical matter, the creditor is always in a better position than the buyer to return seller misconduct costs to sellers, the guilty party.”¹⁹

Making related creditors liable for the acts of the original seller serves the additional goal of establishing a market-based incentive for creditors to inquire into the sellers for whom they finance sales and to refuse to deal with those sellers whose conduct would subject the creditor to potential claims and defenses. This is particularly important when the consumer obligations are securitized. The scale of the EE loan program suggested by the workshop speakers point in the direction of securitizing the EE loans instead of having financial institutions hold these loans in portfolio.

¹⁸ Federal Trade Commission, State of Basis and Purpose, Trade Regulation Rule Concerning the Preservation of Consumers’ Claims and Defenses, 40 Fed. Reg. 53,523 (Nov. 18, 1975).

¹⁹ *Id.*

The FTC's Rule on Preservation of Consumers' Claims and Defenses will likely cover most EE loan transactions.²⁰ That rule, in general, requires a notice to be inserted into credit agreements whenever the seller finances a sale or a creditor has a relationship with the seller and that creditor finances the sale. The rule applies to the sales of services, such as home improvement contracting, and the sale of goods.

However, it is possible for EE loans transactions to be structured in a way that circumvents the FTC Preservation of Claims Rule. First, the rule does not apply if the seller and original creditor are unrelated. That is, the seller and creditor must be related either through a referral relationship or by common control before the FTC Preservation of Claims Rule applies. Second, some lenders have argued that the rule does not apply to loans with an amount financed exceeding \$25,000.

Regardless of the application of the FTC's rule, all EE loan documents should make clear that assignees are liable for the conduct of the original creditor/seller.

Additionally, as discussed below, several proponents of OBF/R have recommended that the repayment obligation attach to the meter and not the initial borrower. Assuming that the obligation remains with the meter, any claims or defenses should be available to subsequent obligors.

C. Options for Connecting Repayment Obligations with the Meter and not the Initial Borrower

- What is the legal basis, if any, for allowing payment obligations to extend to a successor owner or occupant that is also a utility customer assigned to the same meter?
- Who has the right to exercise extension of an obligation to a new occupant or owner? The lender, the initial borrower, or successor occupant/customer?

²⁰ 16 C.F.R. Part 433.

- What should the disclosure, notice, and acceptance requirements to the successor occupant/utility customer, the form of such notice/acceptance (whether explicit or implicit), and the process for administering these notice requirements?
- Does a loan become “due and payable” by the initial borrower if a successor declines to accept the repayment obligation?
- Should the meter transfer option be made available to all borrowers, or should there be any restrictions on what customer segments or kinds of projects that can utilize it?

As has been pointed out by DRA and PG&E, there are significant legal issues raised by attempting to require a subsequent owner or tenant to assume a loan obligation by trying to tie the loan to the meter.²¹ Even in cases where the subsequent owner or tenant is willing to assume the loan, there are a host of additional issues than need to be addressed. What if the subsequent owner or tenant has a different usage profile and the expected efficiency savings and bill neutrality assumptions work to the subsequent takers disadvantage? Would it be possible to reset the loan terms? What if the subsequent owner or tenant was a bigger credit risk? Would the lender be able to reset the loan terms? What happens to the loan obligation if the unit remains vacant for a long period of time? Who bears the risk of non-payment in that scenario?

D. Handling of Partial Payments, Arrears, and Defaults

Under the current utility tariffs for OBF for non-residential customers:

- A borrower voluntarily undertakes the EE project and loan and accepts the terms of the OBF loan tariff

²¹ See e.g., PG&E’s Opening Comments in Response to Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 17-19; SCE’s Opening Comments in Response to Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 6; San Diego Gas & Electric Co and So Cal Gas Co’s Opening Comments in Response to Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 17; DRA’s reply comments at p.2.

- Any partial payment is pro-rated across utility bill items (e.g., across gas, electric, and the OBF loan repayment)
- If the customer fails to pay a bill in full, standard utility collections procedures and due process apply;
- Once all other remedies are exhausted, the last resort is for the utility to terminate service for non-payment, an outcome that the customer accepts under the OBF tariff agreement.

As was highlighted in the workshop, there is a substantial difference between commercial and industrial customers and residential customers. On the first day of the workshop which focused on non-residential OBR, presenters noted that the disconnection of utility service was less of a concern because if a business was facing loss of utility service due to failure to pay the OBR loan, there were likely much bigger problems with the underlying business's viability. Commercial and industrial customers also have more predictable usage (e.g., hours of operation, hours when equipment will be in use) and the energy efficiency measures such as lighting and chillers can produce substantial savings. With residential consumers, electricity and natural gas are essential services that are tied to health and safety of the residents as well as the very habitability of the home. Thus risk of disconnection for residential consumers is far more risky and the liability issues for the utilities and lenders are also more serious (e.g., loss of electricity in the middle of a heat wave or where medicines need refrigeration or where there is medical equipment requiring electricity such as a nebulizer for an infant, or resorting to unsafe alternatives such as candles). Electricity and natural gas are not just another commodity to residential consumers, so the CPUC should proceed extremely cautiously in endorsing any threats to essential utility service for those who do not have the financial cushion to bear the risk of a problem with an energy efficiency loan.

As was raised in earlier comments and again at the workshop, current California law prohibits disconnection for non-payment of non-utility charges.²² NCLC urges parties to carefully consider the ramifications for seeking a legislative weakening of this important consumer protection.²³ As we noted earlier, essential utility service is tied to the health and safety of the occupants and the very habitability of their home. It is not reasonable, indeed it is dangerous, to rely on notice and disclosure about the threats of disconnection, to protect the health and well-being of residential consumers.

Should the Commission proceed with residential OBR, it must first ensure that access to essential utility service is not put at risk, at a minimum the CPUC should ensure this for the economically and medically vulnerable. Both the New York and Oregon residential OBR models discussed at the workshop prioritize partial payments to cover the utility charges first and then the loan. California should not be less protective.

Some other important related issues that must also be addressed before residential OBR can proceed include clarity on whether and how consumers can negotiate a payment plan when they have fallen behind on both their utility and loan payments. Consistent with our recommendation regarding partial payments, payment plans should ensure connection to utility service. Oregon's residential OBR approach is attractive: when a consumer falls behind on his/her efficiency loan, it is taken off the utility bill and treated separately as a

²² DRA's Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 11-12; PG&E's Opening Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 19; SCE's Opening Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at Section 2.A.3; DRA's Reply Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 30, 2012, at 3; NCLC's Reply Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 30, 2012, at 1-2.

²³ Many parties have voiced opposition to the use of disconnection for residential customers. See e.g., Opening Comments of the Greenlining Institute, Green for All, and the Ella Baker Center for Human Rights (Joint Parties) on Section 6a of Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 10-11; DRA's Comments in Response to Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 8; Opening Comments of The Utility Reform Network on the Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, at 7; NCLC's Opening Comments, January 25, 2012 at 3, 6-8.

debt. The rules regarding resumption of service after a disconnection for non-payment will also have to address whether the consumer must take steps regarding the efficiency loan arrearage. In alignment with the current prohibition on termination for non-payment of non-utility charges, the non-utility charge arrears should not become a barrier to resumption of utility service. In addition the Commission should protect consumers from the piling up of efficiency loan late fees, which on top of utility service late fees, can push the bill beyond the point of affordability for cash-strapped households. **E. Determining Ratepayer Support of Financing Transactions: Should any support be targeted to customers who otherwise cannot meet traditional market lending criteria?**

The use of utility payment history as an alternative to traditional credit scores has been raised as a way to extend the reach of the OBR deeper into the residential market. While NCLC understands Greenlining's concern about the redlining of low-income households and communities which was raised in their workshop presentation, we make the distinction where we are dealing with untested new loan products. Should residential OBR prove itself as a safe and useful product and utility payment history is used to reach into the traditionally underserved populations, we urge the commission not to weaken existing utility consumer privacy laws, regulations and tariff protections for sensitive consumer information.²⁴ Those consumers who would like to apply for an OBR or other forms of energy efficiency finance loans, can provide their express consent for use of confidential consumer information for OBR application and EMV process.

III. Detailed Program Implementation Questions

A. Options for Connecting Repayment Obligations with the Meter and Not the Initial Borrower

²⁴ See D.11-07-056, Decision Adopting Rules to Protect the Privacy and Security of Electricity Usage Data of the Customers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (July 29, 2011), Attachment B (a list of statutes, regulations, decisions, and protocols regarding utility consumer privacy protections).

Even in this brief comment and workshop period regarding consideration of OBF it is very apparent that there are critical unanswered questions regarding how to obligate a subsequent owner or renter to a loan taken out by another party. As discussed above the very legality of this mechanism must be clarified before proceeding with the design of the OBR program. The answer to this question will shape how notice could be handled and the actual administrative process designed to transfer of the loan obligation from one party to the next. See the discussion above.

B. Handling Partial Payments, Arrears and Defaults

The New York and Oregon residential OBR programs apply partial payment to the utility charges first. As discussed above, the preservation of essential services for residential customers should be protected. See the discussion above.

IV. CONCLUSION

NCLC looks forward to working with the Commission to ensure that residential consumers, and low-income homeowners and renters are not harmed in the design and implementation of energy efficiency financing products such as OBR.

Respectfully submitted,

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APPENDIX A

TABLE 1

**2010 Average Residential Electricity and Natural Gas Expenditures:
State of California**

Year	State	Fuel	Residential Number of Customers	Residential Sales (Megawatt-hours)	Residential Price (Cents per kilowatthour)	Average Residential Expenditure (Dollars)
2010	CA	Electricity	12,947,917	12,873,431	\$14.75	\$994

Year	State	Fuel	Residential Number of Customers	Residential Consumption (MMcf)	Residential Price (Dollars per Thousand Cubic Feet)	Average Residential Expenditure (Dollars)
2010	CA	Natural Gas	10,542,584	494,890	\$9.92	\$466

Total Average Electricity and Natural Gas Expenditure **\$1,460**

Source: Calculated from U.S. Energy Information Administration, Electric Power Annual and Natural Gas Annual

TABLE 2

2009 Residential Electricity Expenditure Rankings:

STATE	Residential Number of Customers	Residential Sales (Megawatt-hours)	Residential Price (Cents per kilowatthour)	Average Residential Expenditure (Dollars)	Natioinal Residential Expenditure Rank
NM	844,865	6,503,772	10.02	771.34	1
UT	932,016	8,725,274	8.48	793.87	2
CO	2,111,623	17,412,630	10.00	824.61	3
MI	4,253,786	32,854,122	11.60	895.93	4
WY	255,383	2,719,524	8.58	913.67	5
MT	464,517	4,774,281	8.93	917.82	6
MN	2,290,881	22,033,959	10.04	965.66	7
ME	696,822	4,360,002	15.65	979.22	8
IL	5,074,861	44,324,492	11.27	984.34	9
WI	2,589,296	21,421,045	11.94	987.79	10
WA	2,808,333	36,752,501	7.68	1,005.08	11
ID	659,776	8,553,610	7.80	1,011.22	12
CA	12,910,856	89,798,736	14.74	1,025.21	13
NE	799,623	9,626,939	8.52	1,025.75	14
VT	306,919	2,121,828	14.90	1,030.08	15
IA	1,324,182	13,723,413	9.99	1,035.33	16
KS	1,209,522	13,149,100	9.53	1,036.04	17
SD	367,206	4,511,308	8.49	1,043.04	18
ND	322,466	4,449,220	7.58	1,045.85	19
WV	865,647	11,587,693	7.90	1,057.51	20
OR	1,623,388	19,804,315	8.68	1,058.91	21
RI	432,102	2,936,699	15.60	1,060.22	22
MO	2,687,756	34,220,694	8.54	1,087.32	23
OK	1,643,674	21,640,955	8.49	1,117.81	24
OH	4,880,393	51,405,162	10.67	1,123.87	25
IN	2,733,611	32,548,113	9.50	1,131.13	26
KY	1,922,294	26,525,423	8.37	1,154.96	27
DC	217,635	1,858,848	13.76	1,175.26	28
PA	5,235,331	52,905,995	11.65	1,177.30	29
AR	1,315,041	16,985,526	9.14	1,180.55	30
NH	591,160	4,421,522	16.26	1,216.15	31
NY	6,916,413	48,245,841	17.50	1,220.72	32
MA	2,661,985	19,474,647	16.87	1,234.18	33
LA	1,946,996	29,746,798	8.10	1,237.54	34
NJ	3,430,837	27,832,944	16.31	1,323.16	35
AK	269,669	2,117,274	17.14	1,345.73	36
NC	4,175,829	56,311,126	9.99	1,347.15	37
GA	4,061,862	55,157,559	10.13	1,375.59	38
AZ	2,544,383	32,846,843	10.73	1,385.19	39
TN	2,678,768	40,116,949	9.32	1,395.75	40
NV	1,054,927	11,880,150	12.86	1,448.24	41
SC	2,083,432	29,556,323	10.44	1,481.06	42
MS	1,243,260	18,095,194	10.22	1,487.48	43
VA	3,189,118	44,763,019	10.61	1,489.24	44
DE	393,836	4,334,912	14.07	1,548.67	45
AL	2,128,009	31,489,411	10.66	1,577.42	46
FL	8,493,591	115,473,511	12.39	1,684.47	47
TX	9,484,812	129,797,151	12.38	1,694.17	48
CT	1,447,250	12,578,225	20.33	1,766.90	49
HI	412,843	3,055,273	24.20	1,790.94	50
MD	2,188,390	26,944,566	14.98	1,844.41	51
US-TOTAL	125,177,175	1,364,474,417	11.51	1,254.63	

Source: Calculated from U.S. Energy Information Administration, Electric Power Annual

TABLE 3

2009 Residential Natural Gas Expenditure Rankings:

STATE	Residential Number of Customers	Residential Consumption (MMcf)	Residential Price (Dollars per Thousand Cubic Feet)	Average Residential Expenditure (Dollars)	National Residential Expenditure Rank
CA	10,510,885	480,622	\$9.43	\$431	1
FL	674,090	15,214	\$20.18	\$455	2
TX	4,245,055	192,225	\$11.19	\$507	3
LA	889,153	36,513	\$13.15	\$540	4
AZ	1,130,047	34,732	\$17.65	\$542	5
NM	559,619	32,353	\$9.53	\$551	6
MS	436,649	23,392	\$11.22	\$601	7
CO	1,622,434	128,993	\$8.80	\$700	8
MO	1,348,781	106,301	\$8.99	\$709	9
SC	565,774	27,160	\$14.91	\$716	10
UT	810,442	65,184	\$8.95	\$720	11
HI	25,466	510	\$36.37	\$728	12
NE	512,551	40,143	\$9.34	\$732	13
SD	168,096	13,595	\$9.14	\$739	14
TN	1,082,283	66,047	\$12.16	\$742	15
NV	760,391	38,742	\$15.05	\$767	16
OK	924,510	62,282	\$11.39	\$767	17
WY	153,062	12,656	\$9.39	\$776	18
ID	342,277	25,531	\$10.54	\$786	19
IA	875,781	70,111	\$9.83	\$787	20
ND	122,065	11,518	\$8.46	\$798	21
AR	557,355	33,252	\$13.39	\$799	22
MT	255,472	21,765	\$9.50	\$809	23
KY	751,449	51,615	\$11.96	\$822	24
AL	782,814	35,999	\$18.12	\$833	25
NC	1,102,001	65,642	\$14.25	\$849	26
WI	1,656,614	133,176	\$10.76	\$865	27
IN	1,662,663	139,743	\$10.81	\$909	28
KS	855,541	71,071	\$11.10	\$922	29
OR	675,582	44,819	\$14.52	\$963	30
ME	20,806	1,286	\$16.43	\$1,016	31
IL	3,839,438	440,065	\$8.98	\$1,029	32
VA	1,124,717	84,445	\$13.83	\$1,038	33
MD	1,067,807	82,699	\$13.73	\$1,063	34
GA	1,744,934	118,589	\$16.30	\$1,108	35
WA	1,059,239	84,143	\$13.95	\$1,108	36
WV	343,837	26,172	\$14.75	\$1,123	37
OH	3,253,184	292,439	\$12.68	\$1,140	38
NH	96,924	7,213	\$15.33	\$1,141	39
MI	3,169,026	327,113	\$11.27	\$1,163	40
MN	1,423,743	133,354	\$12.61	\$1,181	41
DE	149,006	10,049	\$17.79	\$1,200	42
NY	4,308,576	404,858	\$13.18	\$1,238	43
NJ	2,635,324	226,016	\$14.54	\$1,247	44
PA	2,635,869	227,709	\$14.74	\$1,273	45
DC	143,436	13,466	\$13.92	\$1,307	46
CT	489,349	43,995	\$14.81	\$1,331	47
RI	224,846	17,914	\$17.06	\$1,359	48
MA	1,370,353	132,883	\$14.85	\$1,440	49
VT	37,242	3,183	\$17.29	\$1,478	50
AK	120,124	19,978	\$10.23	\$1,701	51
US-TOTAL	65,316,682	4,778,478	\$12.14	\$888	

Source: Calculated from U.S. Energy Information Administration, Natural Gas Annual

TABLE 4

**2005 Average Electricity Expenditure by
Housing Tenure:
State of California**

Tenure	Number of Households	Average Electricity Expenditure
Own or Buying	7,445,000	\$1,059
Paying Rent	4,474,000	\$622
Weighted Average		\$895

Source: U.S. Energy Information Administration, 2005 Residential Energy Consumption Survey