

**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)

**REPLY 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 reply comments to February 29, 2012, the National Consumer Law Center respectfully submits these reply 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. NCLC promotes access to quality financial services and protect family assets from unfair and exploitive transactions that wipe out resources and undermine self-sufficiency and publishes an 18-volume series of consumer law treatises for lawyers practicing consumer law.

We appreciate the Commission's exploration into whether and how private sector funding can expand the reach of much-needed energy efficiency investment in California. As has been noted by many of the parties, the three-day workshop was extremely helpful in bringing parties up to speed on the current energy efficiency OBR landscape. What is clear is that this is a brave new world and there are no long-running success stories to draw from. For California and this Commission, the key question is if you build it (on-bill-repayment) will consumers and lenders come? Because access to affordable electricity and natural gas service affects the health, safety and well-being of residential consumers, the Commission should proceed with extreme caution. For low-income and cash-strapped households, the monthly cash flow is everything. For these households there is very little margin for error with bill neutrality, thus, in no event should ESAP-eligible households be disconnected due to non-payment of an OBR loan.

While the earlier rounds of comments and the 3-day workshop have helped to raise understanding about OBR in general, there are key underlying issues that must still be addressed before the Commission can design and implement an OBR program for the residential sector. Fundamental issues that go to the core of an OBR product include, addressing the legal prohibition on disconnection for non-payment of non-utility charges, how to handle partial payments, the lack of clear legal authority to obligate a subsequent owner or tenant to a loan taken out by another consumer, contractor training and certification quality assurance standards, dispute resolution processes for the different combinations of entities involved in an OBR loan, the application of consumer protection laws, etc.

There are two scenarios where the low-income consumers could benefit from innovative energy efficiency financing: (1) energy efficiency financing in affordable housing where tenants' rent and utility payments are capped and consumer protections from shut-off are provided; and (2) in the case of emergency replacements of large appliances such as furnaces – where low to no-cost financing (off bill) could induce a consumer to purchase and have installed, a more efficient appliance.¹

II. THERE NEEDS TO BE FURTHER ANALYSIS ON CRITICAL ISSUES BEFORE THE COMMISSION CAN MOVE FORWARD WITH AN OBR PROGRAM

A. Numerous Parties Find That The Record Lacks Enough Detail and Analysis to Proceed With an OBR Program in the Short Term

NCLC shares DRA's, NRDC's and the utilities' assessment of the record on OBR thus far, there are key issues that still must be addressed satisfactorily before the Commission can reasonably proceed with OBR.² The answers to these issues will shape the very viability of OBR. The issues include the legal barriers to disconnection of residential service for non-payment of non-utility charges; the lack of any clear legal authority to require subsequent owners or tenants to assume a loan taken out by the prior owner or tenant; how to treat partial payments while not jeopardizing access to essential utility service or housing; how to ensure quality

¹ See DRA's Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 13, 18 (recommends that ratepayer funded credit enhancements fund only the incremental value of efficiency and extension of financing for emergency furnace and AC replacement). See also Opening Comments of TURN on the Questions Presented in Sections 6B and 6C of the ALJ's Ruling Regarding Energy Efficiency Financing at 4, 6-7 (initially limit financing to HVAC).

² Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 2, 17; DRA's Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 2; Second Set Opening Comments of the NRDC on ALJ's Ruling Regarding Energy Efficiency Financing at 2. See also Comments of SDG&E and SCG on ALJ's Ruling Regarding Energy Efficiency Financing at 3 and SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 3 (unresolved underlying issues including application of lending laws, disconnections and transferability of the loan obligation to follow the meter).

measures and energy saving predictability; how to address dispute resolutions; who can originate and service these loans and the roles, responsibilities and liabilities of all the parties involved and, depending on how the OBR is structured, which consumer protection laws would apply, and how to ensure that the OBR design does not open the door to abusive practices. NCLC supports DRA's recommendation that the Commission should "use the transition period to gather information on OBR's potential costs and benefits, and in the meantime, provide support for existing energy efficiency programs that are 'off-bill.'"³ More information is critical for developing concrete details, as opposed to theoretical aspirations, regarding the costs and benefits of implementing an OBR program for residential consumers, and low-income homeowners and tenants in particular.

The creation of a new financial service product requires expertise outside of the traditional work of the Commission and those parties whose core work is centered on the electricity and natural gas matters. The Local Governments propose that the Commission partner with groups that have greater reach into the lending and borrowing communities.⁴ DRA proposes that the Commission gather more information on how consumers value OBR compared to off-bill energy efficiency loan products.⁵ Similarly, NRDC and PG&E propose that the Commission learn more about customer preferences for a suite of energy efficiency financing mechanism.⁶ Several groups have proposed working groups and additional workshops to explore the issues such as energy savings methodology, the mortgage industry and consumer protection rules; implementation issues concerning legal issues such as transferability of the loan

³ DRA's Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 4.

⁴ Additional Comments of the Local Government Sustainable Energy Coalition on Energy Efficiency Financing at 7.

⁵ DRA's Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 4. Cf. SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 2 (no consensus that OBR is superior to off-bill financing).

⁶ Second Set Opening Comments of the NRDC on ALJ's Ruling Regarding Energy Efficiency Financing at 3-4; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 2-3,6.

obligation with the meter, roles of parties, outreach and education.⁷ All of these proposals illuminate the parties' concerns about the current gaps in the record.

NRDC proposes reasonable next steps to help generate more detailed feedback to build the OBR record:

We believe all stakeholders would benefit from the CPUC providing a high-level plan that outlines the sequence of steps it expects to follow before any implementation work would be undertaken, including (i) further defining the parameters of the envisioned on-bill program, (ii) cultivating lender interest in participating in on-bill programs, and (iii) identifying and documenting the process flow and other requirements expected for any new loan program and the key parties involved and functions each would be expected to perform.⁸

We urge the Commission to heed the cries to delve further to address these important, unanswered questions before attempting to create an OBR product for the residential sector. NCLC agrees that this further guidance is necessary as the roles of the parties and the particulars of the OBR products will have bearing on the consumer protection laws that apply.⁹ It is important that the Commission get it right with OBR. CAR points out the current fragility of the residential property markets: "Because one in every five transactions in California involves a 'short sale' or negative equity, it is imperative that we protect property owners from further diminished values."¹⁰

⁷ See e.g., Second Set Opening Comments of the NRDC on ALJ's Ruling Regarding Energy Efficiency Financing at 5-7; Post-Workshop Comments of SolarCity Corporation at 10-11 (recommends a workshop on energy savings estimation software and methodology); Comments of NRG Answers, LLC Regarding ALJ Decision on Energy Efficiency Financing, and Issues Raised During CPUC Workshop Conducted February 8-10, 2012 at 10 (proposed working groups to explore the issues such as of financing, implementation issues concerning impacts on IOUs and legal issues, roles of parties, outreach and education); Cf DRA's Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 4 (collect data during the transition period to determine whether bill-neutrality is achievable for deep retrofits).

⁸ Second Set Opening Comments of the NRDC on ALJ's Ruling Regarding Energy Efficiency Financing at 4.

⁹ SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 3.

¹⁰ Comments of the CAR on ALJ's Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 6.

B. Numerous Parties Agree That Current Law Prohibits Disconnection of Residential Service for Non-Payment of Non-utility Charges

Numerous parties agree with NCLC's concern that OBR not jeopardize residential access to essential utility service.¹¹ This is a particularly critical concern for low-income households, whose utility bills take up a larger percentage of income and cash-flow is extremely tight. For these households, commonplace occurrences such as a serious illness, a loss of a job, or the failure of the measures achieving their predicted savings could lead to loss of essential utility service.¹² CARE customers experience disconnection at approximately twice the rates of non-CARE customers – before incurring additional debt for energy efficiency.¹³ NCLC agrees with parties who raise concerns about how residential OBR could undermine the policy objectives set forth in the concurrent disconnections docket.¹⁴

Parties have pointed out that PUC sections 779.1 and 779.2 prohibit residential disconnection of utility service for non-payment of non-utility charges.¹⁵ Discussion in the workshops reveals that there is no consensus that disconnection is even necessary for OBR.¹⁶

¹¹ Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 3-4,7,14-15; DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 8-9; Opening Comments of TURN on the Questions Presented in Sections 6B and 6C of the ALJ's Ruling Regarding Energy Efficiency Financing at 8, 10-11 (special considerations for CARE customers may be warranted); Opening Comments of the Greenlining Institute, Green for All, and the Ella Baker Center for Human Rights On Sections 6B and 6C of ALJ's Ruling Regarding Energy Efficiency Financing at 8.

¹² DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 17.

¹³ Opening Comments of TURN on the Questions Presented in Sections 6B and 6C of the ALJ's Ruling Regarding Energy Efficiency Financing at 10-11.

¹⁴ DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 17; Comments of SDG&E and SCG on ALJ's Ruling Regarding Energy Efficiency Financing at 10-11; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 23.

¹⁵ SDG&E and SCGC on ALJ's Ruling Regarding Energy Efficiency Financing at 10; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 9;

Parties have also raised serious doubts as to whether bill neutrality, which is proposed as protection from disconnection due to unaffordable loan terms, is even possible¹⁷ or question whether it should even be an element of OBR.¹⁸

C. Diverse Parties Express Serious Concerns With the Treatment of Partial Payments

There is no consensus on the treatment of partial payments. NCLC, DRA and the utilities strongly support payment applying partial payments to first cover the utility bill in order to protect access to essential utility service.¹⁹ While TURN supports pro-rating partial payment, they caution that CARE customers have a higher disconnection rate than non-CARE customers and that it is unknown how significant the bill savings from financed energy efficiency would need to be to protect CARE customers from falling further behind on their utility bills.²⁰

DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 8-9; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 14.

¹⁶ PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 23; DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 9, 17.

¹⁷ Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 5-7; Post-Workshop Comments of SolarCity at 2 (energy savings models are still too unreliable to predict savings with sufficient accuracy); Additional Comments of California Center for Sustainable Energy in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 5 (energy saving depend on a myriad of variables, including consumer behavior, and contractors will be reluctant to guarantee savings); DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 3 (the ability to achieve bill neutrality and to accurately predict savings are unverified and questionable).

¹⁸ See e.g., Additional Comments of California Center for Sustainable Energy in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 7-8 (cannot get deep retrofits if require bill neutrality).

¹⁹ Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 3, 15; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 5-6, 23-24; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 19; SDG&E and SCG on ALJ's Ruling Regarding Energy Efficiency Financing at 15 ; DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 22. *But see*, Post-Workshop Comments of SolarCity at 10 (prorate partial payments).

²⁰ Opening Comments of TURN on the Questions Presented in Sections 6B and 6C of the ALJ's Ruling Regarding Energy Efficiency Financing at 15.

Where consumers have fallen behind and can only make partial payments, are loan modifications possible, who would negotiate this, and what would be the process for ensuring the new terms are reflected on the utility bill?²¹

D. Diverse Parties Express Serious Concerns With Transferring the Debt Obligation With the Meter

Numerous parties have raised serious concerns about the lack of statutory authority to require a subsequent owner or tenant to assume a loan made by the prior owner or tenant.²² Parties indicate that a potential work-around is to allow for subsequent owners or tenants, by contract, to be allowed to provide express consent to assume the loan, but even in that event, current law prohibits termination for non-payment of the non-utility charge.²³ The California Association of Realtors raises the example of Mello-Roos fees which are transferable to the subsequent property owner and are not due upon sale. As CAR points out, the Mello-Roos fees finance public improvements, infrastructure and services such as street, schools, parks and police.²⁴ However, these are public benefits as opposed to an OBR loan which is tailored to a particular unit and consumer's usage. Whereas the next owner of a home would likely benefit from the streets, schools, parks and police protection, that cannot be assured for the subsequent taker of an efficiency loan that reflects more personalized terms such as a prior applicant's

²¹ See DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 21 (citing to additional issues raised by Tim McVarland of Viewtech at the workshop).

²² Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 13; DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 14; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 18; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 12-13; SDG&E and SCG on ALJ's Ruling Regarding Energy Efficiency Financing at 9,14.

²³ See e.g., DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 14-15

²⁴ Comments of the CAR on ALJ's Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 2-3.

creditworthiness and energy usage. CAR mistakenly assumes there will always be a benefit with the OBR, but what if the problem is bill neutrality isn't achieved?

There are still open questions about who is liable for the loan repayment if the unit remains vacant and whether the lender could modify the loan terms based on the credit profile of the subsequent owner or tenant²⁵ or whether that residential consumer could seek to have the loan terms modified because the efficiency savings were no longer accurate.²⁶ Many parties support having the loan due on sale if the future occupant refuses to assume the loan or if the lender refuses to extend the loan.²⁷

Several parties also cite to the difficulties of ensuring notice to future owners of the loan caused by using a mortgage instrument.²⁸ CAR notes that other contemplated instruments for the purpose of providing notice would not get recorded, such as a declaration or the recordation of a “real servitude” for MIST.²⁹ CAR recommends that the utility serve as the repository of the loan information and be responsible for providing the notice.³⁰ While CAR’s reservations about the use of the declaration or the “real servitude” instrument are cause for serious concern, their proposed solution, “Providing purchasers with a current utility bill would provide proper notice of obligations tied to the meter”³¹ also comes up short. The home purchase process is already

²⁵ Post-Workshop Comments of SolarCity at 6-7 (also proposes that lenders can charge a higher interest rate which would seem to increase the risk of the subsequent taker to decline to assume the loan); PG&E’s Post Workshop Comments and Responses to Additional Questions in the ALJ’s Ruling Regarding Energy Efficiency Financing at 20-21; SCE Comments on ALJ’s Ruling Regarding Energy Efficiency at 13 .

²⁶Comments of NCLC on the ALJ’s Ruling Regarding Energy Efficiency Financing at 13.

²⁷ See e.g., Post-Workshop Comments of SolarCity at 6-7; DRA Comments in Response to ALJ’s Ruling Regarding Energy Efficiency Financing at 15-16.

²⁸ DRA Comments in Response to ALJ’s Ruling Regarding Energy Efficiency Financing at 21; SCE Comments on ALJ’s Ruling Regarding Energy Efficiency at 3.

²⁹ Comments of the CAR on ALJ’s Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 4.

³⁰ Comments of the CAR on ALJ’s Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 4.

³¹ Comments of the CAR on ALJ’s Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 4.

overloaded with disclosures to the point that the disclosures become less effective. Adding another realtor disclosure does not ensure that purchasers are provided proper notice of the obligation. Also, as PG&E points out, notice does not overcome the legal prohibition on disconnection for non-payment of non-utility charges.³²

There are still many unresolved questions related to the how the assumption of a loan would work in practice and the legal ramifications of any required assumption. If the loan is tied to the meter does it look more like a secured transaction or a mortgage loan?³³ If so, a slew of consumer protection laws will apply covering a wide range of areas from initial disclosure and servicing requirements to default management and enforcement of the obligation. How do brokers, lenders, and sellers ensure notice to future owners of the loan? Does one use something akin to a mortgage instrument or deed of trust,³⁴ in which case it is likely the consumer protection laws apply, or does one use unrecorded instruments such as a declaration or the MIST?³⁵ What is the value of unrecorded notice to prospective property purchasers or lenders? And, what happens if a declaration is not made when it should have been or documents are not recorded as they should have been? How does the lack of notice affect a subsequent owner? Any OBR program that involves the transfer of obligations between owners must address these contingencies.

As discussed above, parties have suggested that a potential strategy is to allow subsequent owners and tenants to voluntarily assume the loan, essentially creating a new contract

³² PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 21.

³³ PG&E also points out the consumer law ramifications of different legal instruments to attach a debt obligation to the meter. NCLC agrees with PG&E's assessment that what you label the instrument matters less than how it operates, acts and, in essence functions like (e.g., a mortgage or a lien). PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 18-20.

³⁴ DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 21.

³⁵ Comments of the CAR on ALJ's Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 4.

obligation between the new owner and lender. It remains unclear what the terms of that new contract would be. Could, as one party suggested, the lender change the terms of the loan based on the credit profile of the subsequent owner or tenant? If so, why would a new owner agree to voluntarily assume a more onerous obligation?³⁶ On the other hand forcing a consumer to pay a loan on less favorable terms would easily be classified as abusive. Conversely, could a new owner or tenant demand more favorable terms based on a better credit profile or inaccurate energy savings estimates? Could a more creditworthy borrower agree to assume the loan, but insist on a better interest rate?

Many parties support having the loan due on sale if the future occupant refuses to assume the loan or if the lender refuses to extend the loan.³⁷ A due on sale provision may seem like an attractive option, but what happens if the sale proceeds are insufficient to pay off the energy loan? What, if any, priority would an energy loan have in relation to mortgages and other liens? Can the loan become a personal liability of the original borrower if the loan is not paid in full upon sale?

At this point, there are far more questions than answers on many of these critical issues. Much more thought and legal analysis need to be done on these issues before the Commission can proceed with any OBR program.

E. Key Issues Such as the Appropriate Dispute Resolution Mechanism, Contractor Training and Certification and the Application of Consumer

³⁶ See, e.g., Post-Workshop Comments of SolarCity at 6-7 (also proposes that lenders can charge a higher interest rate which would seem to increase the risk of the subsequent taker to decline to assume the loan); PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 20-21; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 13.

³⁷ See e.g., Post-Workshop Comments of SolarCity at 6-7; DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 15-16.

Protection Laws Need Further Discussion and Analysis Before the Commission Can Proceed With an OBR Proposal

In addition to issues surrounding the transfer of an OBR obligation to a subsequent owner, further discussion and analysis is also needed on key issues such as appropriate dispute resolution mechanisms, contractor certification and training, and the application of consumer protections laws. Disputes among or between parties—borrowers, contractors, lenders, servicers, and utilities—are inevitable. There is no concrete detail on what the mechanism for resolving these disputes looks like and there was no consensus on where parties should go to for resolution of the myriad of predictable disputes that could arise with OBR (e.g., consumer-contractor; contractor-lender; consumer-lender; utility-lender; utility-contractor) as well as the types of disputes (e.g., billing errors, problems with processing of loan payments, unsatisfactory workmanship, failure to achieve predicted energy savings, etc.).³⁸

As noted in NCLC's previous comments, it is critical that liability for abusive conduct of the contractor, original lender or servicer be also borne by the current holder of the loan.³⁹ Beyond the question of liability are questions of procedure. Will disputes be resolved in the first instance by a court or will there be some alternative process that will serve as the first step in resolving disputes? If the later, what will that process be and how will parties be assured of due process? As with other loan products, consumer will have little bargaining power with respect to the terms of the loan contract other than principal, interest and term. As a result, mandatory

³⁸ Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 4; Post-Workshop Comments of SolarCity at 9 (CPUC should not have a role in dispute resolution); DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 10-12, 20; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 27; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 18 (dispute resolution and lending laws); SDG&E and SCG on ALJ's Ruling Regarding Energy Efficiency Financing at 13; Additional Comments of the Local Government Sustainable Energy Coalition on Energy Efficiency Financing at 13.

³⁹ Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 10-12.

arbitration, which deprives consumers of access to courts and leaves them at a severe disadvantage, must be prohibited in any residential OBR program.

Several parties raised the consumer privacy issues surrounding the release and use of confidential customer information.⁴⁰

NCLC agrees with the concerns raised about the establishing appropriate, robust worker/contractor training and quality assurance standards.⁴¹ Without strong quality assurance standards, ensuring energy efficiency savings that are a basis of a loan would be illusory and open the program up to consumer disputes, confusion and mistrust as well as open the door for abusive contractor practices.

SCE also raises concerns about the lack of discussion of the potential legal issues at the workshop.⁴² Yet, as discussed above, these legal issues go to the very viability of OBR for residential consumers. Several parties have also raised the importance of the creation of fair loans that minimize risk of harming struggling families and are not predatory.⁴³ The Local Governments propose that the Commission seek out partner with consumer protection agencies that have been helping homeowners navigate the foreclosure crisis to assess how to address the

⁴⁰ DRA Comments in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 25-26; Comments of NCLC on the ALJ's Ruling Regarding Energy Efficiency Financing at 16; PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 14; SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 21.

⁴¹ See e.g., Opening Comments of the California Construction Industry Labor Management Trust on Program Design, Operation and Implementation in Response to ALJ's Ruling Regarding Energy Efficiency Financing at 2, 4-5; Opening Comments of the Greenlining Institute, Green for All, and the Ella Baker Center for Human Rights On Sections 6B and 6C of ALJ's Ruling Regarding Energy Efficiency Financing at 4, 6.

⁴² SCE Comments on ALJ's Ruling Regarding Energy Efficiency Financing at 3 (serious concerns and legal issues not discussed).

⁴³ See e.g., Comments of the CAR on ALJ's Ruling Regarding Energy Efficiency Financing and Issues Pertaining to Financing and the CPUC Energy Efficiency Financing Workshop at 6 (avoiding over-leveraging properties); Opening Comments of the Greenlining Institute, Green for All, and the Ella Baker Center for Human Rights On Sections 6B and 6C of ALJ's Ruling Regarding Energy Efficiency Financing at 6, 9.

needs of low-income consumers.⁴⁴ PG&E raises a host of consumer protection laws that could come into play depending on how OBR for residential consumers is constructed.⁴⁵ It is clear that more attention and a better record must be established on the legal issues raised by the parties. Without a clearer idea of the components of a residential OBR program, it is difficult to comment on the particular legal issues raised by various designs.

III. TWO POTENTIAL ENERGY EFFICIENCY FINANCING PROGRAMS THAT COULD HELP LOW-INCOME CONSUMERS

A. CHPC's Proposed Pilot Addresses An Unmet Need And Envisions Protection of Access To Essential Utility Service

California Housing Partnership Corporation ("CHPC") notes that there is tremendous untapped potential for energy efficiency savings in California's multifamily rental sector. CHPC endorses OBR as a means of addressing the split incentive impediment to energy efficiency investment in multi-family rental housing, but notes that "the design of such tools require careful consideration to ensure that low income households are not harmed or made worse off than they would be without the use of these financing tools."⁴⁶

NCLC agrees that there is a need to increase efficiency investment in rental housing, particularly that occupied by tenants with low incomes. We further agree that any residential sector energy efficiency financing mechanisms should be designed to enhance low income short- and long-term cash flow and access to vital utility service.

⁴⁴ Additional Comments of the Local Government Sustainable Energy Coalition on Energy Efficiency Financing at 9.

⁴⁵ PG&E analysis on consumer protection laws PG&E's Post Workshop Comments and Responses to Additional Questions in the ALJ's Ruling Regarding Energy Efficiency Financing at 10-13.

⁴⁶ Second-Round Comments of the California Housing Partnership Corporation on Administrative Law Judge's Ruling Regarding Energy Efficiency Financing And February 8-10, 2012 Workshops at 2.

While NCLC remains deeply concerned about the feasibility of the application of OBR to multi-family units and does not endorse the concept of placing energy efficiency loan obligations on low-income tenants' utility bills, overall, we address here a specific provision outlined in the CHPC proposal that is movement in the right direction. CHPC recommends that "(n)o low income renter household should be denied utility services if the tenant fails to make OBR payments attached to the tenant's meter or account due to actual savings being less than expected to the point where the OBR payment exceeds the actual savings."⁴⁷ NCLC agrees with the general concept that no residential customer should experience disconnection of utility service for nonpayment of principal and interest on an energy efficiency loan, and notes that this practice is prohibited under current law. Further, in light of complications with projecting and verifying energy savings over time, even as loan obligations transfer from one household to the next, NCLC would amend the qualification that protection from disconnection should be contingent upon realization of savings estimates to instead prohibit disconnection for non-payment of the OBR for ESAP-eligible households. In the case where utilities costs for low-income are capped, the issues of bill neutrality are mitigated. Questions raised by NCLC and numerous parties in this proceeding with respect to resolution of savings disputes and transferring a loan obligation to a household that may have very different consumption patterns and needs than the previous utility customer of record apply here.

B. Emergency Large Appliance Replacement Programs to Encourage the Purchase and Installation of Efficiency Appliances

⁴⁷ *Id.* at 6.

Consistent with the recommendation of DRA in its Comment of February 29, 2012 in the instant proceeding,⁴⁸ NCLC endorses the concept of the extension of favorable financing terms to owners of residential rental properties for the purchase of high-efficiency HVAC equipment. Effective and ongoing education and outreach campaigns geared toward property owners and operators facing replacement of inoperable or poorly-functioning equipment would also be advantageous. NCLC notes that the extension of appropriate financing to such building owners, coupled with the requirement that loan proceeds be used for the purchase of highly efficient, state-of-the-art energy-consuming equipment, could generate broad societal benefits as well as economic benefits to tenants responsible for direct payment of home energy and utility costs. NCLC further notes that financing mechanisms targeted specifically to residential rental property owners facing emergency equipment replacement is more appropriately of the “off-bill,” variety, particularly in cases where tenants directly pay utility bills. Finally, while beyond the scope of the current proceeding, NCLC supports the adoption and enforcement of aggressive codes and standards pertaining to the energy efficiency of major energy-consuming appliances and equipment in rental properties. Ideally, enhancement of energy codes and standards should be coupled with advantageous financing for property owners. In fact, NCLC has worked at the state and federal levels with a broad range of stake-holders and policy-makers over many years in support of enhancement of appliance and equipment standards. We welcome the opportunity to continue this work in California as a means of addressing the “split incentive” barrier to investment in energy efficiency improvements in tenant-occupied buildings.

⁴⁸ See DRA’s Comments in Response to ALJ’s Ruling Regarding Energy Efficiency Financing at 13, 18 (recommends that ratepayer funded credit enhancements fund only the incremental value of efficiency and extension of financing for emergency furnace and AC replacement). See also Opening Comments of TURN on the Questions Presented in Sections 6B and 6C of the ALJ’s Ruling Regarding Energy Efficiency Financing at 4, 6-7 (initially limit financing to HVAC).

IV. CONCLUSION

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

Respectfully submitted,

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