

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Investigate
and Design Clean Energy Financing
Options for Electricity and Natural Gas
Customers

Rulemaking 20-08-022
(Filed August 27, 2020)

**COMMENTS OF CENTER FOR ACCESSIBLE TECHNOLOGY, THE UTILITY
REFORM NETWORK, NATIONAL CONSUMER LAW CENTER, AND NATIONAL
HOUSING LAW PROJECT ON THE ADMINISTRATIVE LAW JUDGE'S RULING
SEEKING COMMENTS ON TARIFF ON-BILL PROPOSALS**

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I. INTRODUCTION

In accordance with the instructions provided in the Administrative Law Judge’s Ruling Directing Parties to File Comments on Tariff On-Bill Proposals (the Ruling), issued on April 16, 2025, Center for Accessible Technology (CforAT), The Utility Reform Network (TURN), National Consumer Law Center (NCLC), and National Housing Law Project (NHLP),¹ collectively the Consumer Advocates, submit these joint responses to the questions presented in the Ruling, as well as an overall discussion of the pending proposals,² the proposal assessment provided with the Ruling, and the history of the proceeding which led to the submission of the proposals. While the Consumer Advocates appreciate the intent of the proceeding to pursue options for non-ratepayer funding to support programs that advance equity, affordability and decarbonization, we do not believe that any of the pilot proposals are likely to meet the stated goals at this time, with or without modification. Consumer Advocates did not address all the questions posed by the Ruling in these opening comments, but we may respond to remaining questions in reply.

II. DISCUSSION

A. Background

The Tariff On-Bill Proposals currently under review were submitted by the major IOUs and Silicon Valley Clean Energy Authority (SVCE) on May 14, 2024, as directed by the Commission in D.23-08-026.³ While submitted to the Commission as a single joint filing, the submission contains joint general information as well as separate pilot proposals from each of the

¹ NHLP is filing a Motion for Party Status concurrently with these comments.

² The Consumer Advocates note that the Ruling directs parties that they should not provide comment on SVCE’s proposal, as SVCE did not notify the service list that it wanted further consideration. *See* Ruling at p. 5.

³ D.23-08-026 at p. 121, Ordering Paragraphs. 9-10.

major IOUs and a proposal from SVCE.⁴ D.23-08-026 did not establish a process for reviewing the proposals. On May 29, 2024, CforAT, TURN, and NCLC filed a motion⁵ seeking procedural guidance on the Commission's review of the joint proposal, which Cal Advocates supported and the IOUs, together with SVCE, jointly opposed. The Commission has never acted on the pending motion; however, the Ruling provides the requested path forward, including this opportunity for party input.

In D.23-08-026, the Commission directed the IOUs and SVCE to submit the joint proposal based on its review of prior proposals that were described and analyzed in detail in that decision; the new joint proposal was to be based on the initial SVCE proposal and developed through a working group process that was intended to address various concerns noted by the Commission regarding the initial proposals. The concerns included questions about included technologies, financing solutions, and potential benefits for different populations and customer groups.⁶ The Commission also noted the need for further development of consumer protections and consideration of potential bill impacts, including impacts on customers who cannot directly benefit but would incur costs with ratepayer funding for the proposals, as well as impacts on customers who take over a property where a financial obligation is in place.⁷ Finally, it noted that yet additional questions remain about the availability of third-party funding (rather than ratepayer funding) and ratepayer risk.⁸

The Commission continued in D.23-08-026 by adopting a set of core principles and providing a list of questions for consideration in developing a Joint TOB Proposal.⁹ The

⁴ The Ruling instructs parties that they should not provide comment on SVCE's proposal. Ruling at p. 5.

⁵ These parties were collectively referred to as the Equity Advocates in the motion.

⁶ D.23-08-026 at pp. 66-67.

⁷ D.23-08-026 at pp. 67-68.

⁸ D.23-08-026 at p. 69.

⁹ D.23-08-026 at pp. 76-79.

Commission also directed that an equity committee be formed “within the TOB Working Group” with the charge “to focus on customer protection and equity concerns.”¹⁰

In the motion for guidance,¹¹ the Equity Advocates noted that an equity committee was in fact formed, but that it was not constituted to be “within the TOB Working Group.” Contrary to the instructions provided by the Commission, it was created as a separate group, and members were not given direct access to the discussions and proposal development of the Working Group. Instead, the Equity Committee was provided with summaries and presentations, and then told that their input was reported back to the Working Group members. Notwithstanding early commitments and substantial discussion, Equity Committee members did not see an early draft of the Proposal and only obtained access to the details when it was made broadly public. At each of the two public workshops,¹² Equity Committee members expressed concerns regarding the information they had been provided about the Joint TOB Proposal at that time.

The Equity Advocates further noted that “substantial questions remain on whether the Joint TOB Proposal fulfills the requirements of D.23-08-026 and whether it comports with the core principles previously adopted by the Commission.”¹³ The Joint Tariff On-Bill Proposal Assessment attached to the Ruling (also referenced as the Dunskey Report) addresses some of the questions and provides a useful addition to the record being developed for consideration of the proposals submitted by the IOUs. However, as discussed below, there are additional issues that the Dunskey Report does not fully address or that it fails to address appropriately.

The Consumer Advocates appreciate the Dunskey Report’s overall recommendations that the Commission should not move forward with any of the proposed pilots except for a modified

¹⁰ D.23-08-026 at p. 80.

¹¹ Motion Seeking Guidance at p. 3.

¹² Tariff On-Bill Workshops were held on March 13, 2024 and April 17, 2024.

¹³ Motion Seeking Guidance at pp. 3-4.

version of SoCalGas' proposal. Our analysis, which supplements that provided in the Dunskey Report, is provided in detail below. The Consumer Advocates do not recommend adoption of any of the pilots at this time, and do not believe that there are potential modifications to the pilot proposals that would be sufficient to support adoption.

B. Responses to Questions in the Ruling

1. Should the Commission Approve Any of the IOU-Proposed TOB Pilots?

- a. If yes, which one(s) and why?*
- b. If not, why not?*
- c. If yes with modification, what modifications to existing pilots do you recommend? Would any of the proposed pilots be more beneficial to test than others?*

The Consumer Advocates recommend that the Commission decline to approve any of the pilot proposals as presented or with modification. The Consumer Advocates agree with the Dunskey Report that the proposals from SCE, SDG&E and PG&E should not be approved.¹⁴ Our objections to these pilot proposals are incorporated in our responses to other questions below. The Dunskey Report recommends that the proposed SoCalGas Pilot be approved with modification, but Consumer Advocates disagree. To the extent that the proposed pilot would include gas fixtures, it would be an inappropriate incentive to retain customers on the fossil gas system rather than encourage electrification. To the extent that it does not include fixtures (and becomes an efficiency-only proposal), it would not provide useful learnings as a pilot, as efficiency and weatherization programs have been in existence for many years and are well understood. Additionally, as discussed in detail below, it incorporates unreasonable cost proposals that would impact the utility's rate base and result in unreasonable risks and costs to customers.

¹⁴ Dunskey Report at pp. 45-48.

2. The TOB Pilot proposal emerged from a Working Group in which participants discussed consumer protections at length. Do the TOB Pilot Proposals adequately implement recommendations from the working group concerning customer protection and equity? What improvements, if any, should be made?

Consumer Advocates strongly agree with the pilot's stated goal for equitable adoption: "first, do no harm."¹⁵ If the Commission is going to authorize TOB programs, it is crucial that it ensure that consumers who enter into TOB agreements can still afford their utility bills with the inclusion of a TOB charge on top of the costs of energy usage. This, as well as other vital consumer protections, are not adequately ensured, and the recommendations of the Dunskey Report would reduce the protections that have been incorporated. Below, the Consumer Advocates briefly discuss the various consumer protection issues raised by the pilot proposals and the Dunskey Report.

Ability to pay: The most important issue before allowing a customer to enter into a TOB arrangement is an evaluation of the customer's ability to pay their bill, including ability to pay a bill that includes TOB charges as well as energy charges. The concept of TOB is that it does not require standard credit review, but instead looks at the customer's utility bill payment history.

The use of bill payment history as the ability to pay determinant is not as protective of at-risk households as the more traditional methods.¹⁶ This is because households under serious financial strain may still have a strong history of utility bill payment. Many households will go to great lengths to their utility bill, enduring hardship that is not visible in bill payment data. This is because loss of utility service may put members of the household at direct risk or create spiraling consequences of hardship. In California, 34% of adults have reported forgoing other

¹⁵ Joint TOB Proposal at p. 23.

¹⁶ See e.g., Dunskey Report at p. 24 (e.g., verifying debt to income ratios). This is presented as a positive attribute, in that it allows participation by households that may not be able to qualify for credit under standard processes, but it also potentially exposes households that are already under financial stress to a new obligation, requiring caution.

necessary expenses, such as medicine or food, to pay an energy bill.¹⁷ It is possible that some of these households will look like good candidates for TOB based on eligibility criteria focused solely on bill payment history. But this does not mean that they have the ability to pay without additional hardship.

Since the pilot proposals were developed, the new federal Administration's actions have added a substantial layer of uncertainty to many household budgets, not only for low-income households but for large swaths of the population. Programs and policies that have supplemented and protected household budgets have been or are at risk of being rolled back or rescinded and that could push even more households into a precarious economic situation (e.g., housing for veterans, SNAP cuts, student loan debt collection, Medicaid cuts).¹⁸ Additionally, overall inflationary pressures are high, and the cost of basic items from food, clothing to other goods and services are expected to rise. The Administration has signaled that households should be prepared for increased costs and scarcity.¹⁹ More households will be struggling to keep their

¹⁷ U.S. Census Bureau. "Household Pulse Survey, Cycle 09. See e.g., California LIHEAP FY 2023 Profile at <https://neuac.org/wp-content/uploads/2025/03/California-State-Sheet-2025.pdf>.

¹⁸ See e.g., NCLC Press Release, "Abrupt End of VASP Program Leaves Veterans, Families at Risk of Home Loss" (May 1, 2025) available at <https://www.nclc.org/abrupt-end-of-vasp-program-leaves-veterans-families-at-risk-of-home-loss/>; Politico, "House Republicans' proposal to cut SNAP spending would save roughly \$300b" (May 13, 2025) available at <https://www.politico.com/live-updates/2025/05/13/congress/house-republicans-reconciliation-proposal-snap-save-300-billion-00344403>; NCLC Press Release, "House Republicans Propose Major Cuts to Student Loan and Pell Grant Program" (April 30, 2025) available at <https://www.nclc.org/house-republicans-propose-major-cuts-to-student-loan-and-pell-grant-programs/>; New York Times, "Student Loan Debt Collections Just Restarted. Here's What You Need to Know" (April 29, 2025, available at <https://www.nytimes.com/2025/04/29/business/student-loans-collections.html>); Politico, "House Republicans' proposal to cut SNAP spending would save roughly \$300B" (May 13, 2025) available at <https://www.politico.com/live-updates/2025/05/13/congress/house-republicans-reconciliation-proposal-snap-save-300-billion-00344403>; Politico, "CBO: 7.6 million would go uninsured under GOP Medicaid bill" (May 13, 2025), available at <https://www.politico.com/live-updates/2025/05/13/congress/cbo-megabill-medicaid-00345235>.

¹⁹ NBC News, "Trump, who promised Day 1 relief and lower prices, talks of a 'transition period'" (April 29, 2025) available at <https://www.nbcnews.com/politics/donald-trump/trump-promised-day-1-relief-talks-transition-period-rcna203632>.

heads above water. This is in addition to anticipated and ongoing increases in energy bills already facing California households served by regulated IOUs.

Equity: While the current federal Administration is actively pressing policies to reverse DEI and Justice40,²⁰ Consumer Advocates urge this Commission to hold firm to its commitment to equity and its ESJ goals.²¹ However, Consumer Advocates do not agree with the Dunskey Report's recommendation that low and moderate income customers be included in any pilots that may be authorized, notwithstanding the fact that this recommendation is couched as a way to advance equity. The risks to LMI customers, particularly in light of concerns about ability to pay and the inadequate assurances of bill neutrality (discussed below) mean that they should not be included. To do so without greater clarity would not, in fact, support equity, and would put form over substance on the concept of testing equity goals.²²

Bill neutrality: Bill neutrality as described in D.23-08-026 is where “the projected average monthly bill savings [for a customer] are equal to or exceed the monthly loan payments such that the customer’s utility bill is the same or less after completion of the project.”²³ One of the questions that is proposed to be tested in the pilots is the accuracy of the savings estimates from the measures. LMI households are least able to buffer an overly optimistic savings

²⁰ Harvard Law School Environment & Energy Law Program, “Rollback: Trump Rescinded Biden’s Executive Order 14008 Establishing Justice40 Initiative” (Jan. 20, 2025) available at <https://eelp.law.harvard.edu/tracker/rollback-trump-rescinded-bidens-executive-order-14008-that-established-justice40-initiative/>.

²¹ CPUC Environmental & Social Justice Action Plan 2.0, available at <https://eelp.law.harvard.edu/tracker/rollback-trump-rescinded-bidens-executive-order-14008-that-established-justice40-initiative/> at p. 3.

²² Dunskey Report at pp. 21-22.

²³ D.23-08-026 at p. 14.

estimate.²⁴ If the pilot demonstrates that savings results are overstated, participating households may be at risk.

This is not adequately addressed in the Dunskey Report, which presumes that the pilot proposals fully ensure bill neutrality.²⁵ Consumer Advocates believe that this is a misreading of the proposals. The proposals do not guarantee bill neutrality for each month, but rather on average for the year. The assumes that consumers can bear some months with higher bills if there are other months where they experience savings. Furthermore, the calculations for the size of the surcharge are based on estimated measure savings that are not proven accurate. Indeed, the SVCE field test will be testing the accuracy of various estimates. If a customer's bill does not, in fact, go down, this increases the customer's overall risk of retaining service and avoiding hazardous trade-offs. In a time of affordability challenges, this is a substantial concern. While the Dunskey Report asserts that customer risk of disconnection would not be *increased* by participation in a TOB pilot, it does not examine the existing risks of disconnection (which would not be alleviated), nor does it address other pressures on households generally, and LMI households in particular, that make any increased risk inappropriate.

Households that might be approached to participate in a pilot would not only face risks regarding actual TOB bill neutrality challenge and their ability to pay the extra TOB charge on top of the regular energy bill, but they would also do so in an economic and political climate that

²⁴ See, e.g., Lawrence Berkeley National Laboratory, Energy Markets & Policy, Berkeley Lab reviews participant outcomes in Pay-As-You-Save® (PAYS®) programs (Apr. 18, 2024), at <https://emp.lbl.gov/news/berkeley-labreviews-participant-outcomes-pay-you-saver-paysr-programs> (“About half of Midwest Energy PAYS® participants have reduced energy bills.” In other words, the forecasted energy screen didn’t work for half the participants of the largest PAYS® program in the country.).

²⁵ See e.g., Dunskey Report at p. 5 (“The proposed program design includes extensive consumer protections, and how the decarbonization payments can be tailored so they are less than, or equal to, the projected energy bill savings (e.g. bill neutrality).”).

is incredibly uncertain. Congress and the federal Administration have put existing clean energy incentives on the chopping block, even attempting to claw back funds that Congress has already appropriated.²⁶ The tariff strategy of this Administration could lead to dramatic increases in the costs of equipment and supplies for energy efficiency and clean energy projects. These increased costs further strain the ability of the pilot proposals to achieve bill neutrality and will put more pressure to increase the upfront co-pay amount. Yet, the Dunskey Report and recommendations were written before this new Administration's aggressive attacks on actions to address climate change and on equity in various programs.

In addition, the Dunskey Report cites to bill neutrality as both a consumer protection²⁷ and as a barrier to widespread use of TOB to facilitate the purchase and installation of clean energy technologies. Subsequently, the Dunskey Report expressly recommends moving away from the protections of bill neutrality for the sake of testing use of TOB for clean energy technology adoption. The Joint TOB Proposal, in discussing key challenges with use of TOB for clean energy technologies pointedly notes:

“Based on the Decision’s direction to add non-EE clean energy upgrades [cite omitted] to the TOB Program, the complexity of the project economics increases and makes it more difficult to achieve overall bill neutrality or cash positivity without high upfront subsidies, incentives, or owner-occupied co-payments [cite omitted]. In the Joint Filers’ view, if the TOB project economics cannot be shown to work at scale, then the TOB Program should not be expanded.”²⁸

²⁶ See e.g., Reuters “US House targets big climate, clean energy rollbacks in budget proposal” (May 13, 2025) available at <https://www.reuters.com/sustainability/climate-energy/us-house-targets-big-climate-clean-energy-rollbacks-budget-proposal-2025-05-12/>; AP “Trump administration cancels clean energy grants as it prioritizes fossil fuels” (March 28, 2025) available at <https://apnews.com/article/trump-energy-department-clean-energy-wind-solar-batteries-hydrogen-fossil-fuels-cf1ddf9ee771c566765e9ca3e3599d91>.

²⁷ See e.g., Dunskey Report at p. 11.

²⁸ Joint TOB Proposal at p. 19.

In response, the Dunsky Report specifically recommends moving *away* from bill neutrality for single family homeowners with a demonstrated ability to pay higher energy bills as a proposal to test in the next Pilot phase.²⁹ However, the Dunsky Report does not elaborate on how one can determine an ability to pay higher energy bills (particularly in an environment where energy bills are also rising for other reasons, as are many other household bills), because looking at bill payment history alone will not show this.

In Section 4.2 of the Dunsky Report, titled “Consumer Protection,” the assessment also recommends moving away from bill neutrality for non-LMI customers³⁰ while stating that “because electrification improvements do not always result in net bill savings, in some cases the co-pays and incentives will need to cover as much as 80% of the total project cost [cite omitted], thus the amount that customers can actually apply TOB financing to may not be sufficient to significantly overcome the first-cost barrier. . .”.³¹

Movement away from bill neutrality to a stronger reliance on ability to pay higher energy bills would make TOB look and act more like On-Bill Financing (OBF), which this Commission has not approved for residential customers. The Dunsky Report notes that while bill neutrality is important for LMI customers and is common in the PAYS® model that TOB programs are modeled after, bill neutrality may be “less relevant for more affluent participants, who may see the benefit of using the TOB program to finance the full cost of electrification upgrades . . .”³² This effectively describes OBF programs.

Co-payments: In order to achieve bill neutrality, TOB programs may include up-front co-payments as a design feature. However, as noted in both the Joint TOB Proposal and the Dunsky

²⁹ Dunsky Report at pp. 25 and 49 (ability to pay); *Id.* at pp. 35 and 51 (demonstrated ability to pay).

³⁰ The report does not provide any analysis of how to determine if a household is moderate-income.

³¹ Dunsky Report at p. 25.

³² Dunsky Report at p. 25.

Report, an up-front co-payment may be quite substantial in order to obtain bill neutrality for ongoing customer bills in conjunction with clean energy investments, especially if there are no third-party funds available to lower the total project cost.³³ Consumer Advocates believe that extensive reliance on up-front co-payments for a program based on bill neutrality would be unfair and deceptive, as it would ignore questions of how households (and particularly households that may not qualify for standard loans) could be expected to finance the upfront co-payment amount. For those without discretionary savings to direct to the co-payment, this could be a financial landmine. This is particularly true for the unbanked or marginally banked.³⁴ This is a short-coming of the consumer protections that the Dunskey Report does not address at all.

Partial payments: The EE and clean energy financing items proposed for the pilots are long-term and could run for 10 years or more depending on the nature of the project. It is foreseeable that within this timeframe the original participant who signed up for a TOB arrangement or a successor occupant, could fall upon hard times and make only partial payments on their energy bills. Yet, as Dunskey notes, the treatment of partial payments is not adequately addressed in the pilots.³⁵ It is unclear how partial payments would be allocated, and it is also unclear whether emergency bill assistance that a customer might obtain could be used to make payments on a TOB obligation.

Transferability: Consumer Advocates disagree with the Dunskey Report's treatment of the transferability of TOB from the original occupant of a property to a successor occupant. The

³³ See e.g., Dunskey Report at p. iii ("The bill neutrality aspect of the program can also be challenging to ensure the inclusion of costlier technologies without relatively high upfront co-payments") and Appendix p. 11 (To design a program that meaningfully includes beneficial electrification measures outside of energy conservation, can be challenged to achieve bill neutrality.)

³⁴ "Economic Well-Being of U.S. Households in 2023" (May 2024) at pp. 35-43. Available at <https://www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf>.

³⁵ Dunskey Report at p. 36.

Dunsky Report scores the issue as “fully addressed” in the pilot proposal, yet key questions are left unanswered. Such questions that should not be left to an ad hoc determination when they arise for actual participating households.

In other jurisdictions with projects attached to property rather than to an individual customer, research supported by the Department of Energy found little empirical evidence showing benefits of transferability.³⁶ In New York, only a few of new home buyers were willing to take on a prior owner’s repayment obligation.³⁷ Midwest Energy’s How\$mart Kansas has the highest proportion of renters and frequent transfers in which only half of the new occupants chose to take over the loan, while the other half required the previous occupant pay off the obligation.³⁸

Another issue that is not yet addressed, but which should require uniform treatment, is the question of when a unit vacancy (which pauses payments) turns into a program loss. Another issue which the Equity Committee also raised in discussion of the initial proposals is the enforceability of any tenant protections, as the Commission does not have jurisdiction over landlords. What happens in the foreseeable situation where a landlord fails to provide adequate and timely disclosure of the TOB charge? Notice at lease signing is too late for adequate customer protection. As The Dunsky Report notes, the pilots failed to address how they would treat such disputes.³⁹ This could add cost to program administration and implicate program reputation amongst landlords and tenants.

TOB products as loans: Consumer Advocates disagree with the Joint TOB proposal and

³⁶ Lawrence Berkeley National Laboratory, Current Practices in Efficiency Financing: An Overview for State and Local Governments (November 2016), at <https://www.energy.gov/sites/prod/files/2017/05/f34/current-practices-efficiency-financing.pdf>

³⁷ *Id.* at p.38.

³⁸ *Id.*

³⁹ Dunsky Report at p. 40.

with the Dunskey Report's mischaracterization of the TOB product as a "cost recovery fee" that "is not a loan" and does not constitute debt.⁴⁰ These parties attempt to differentiate the proposed TOB program from other on-bill lending programs, such as on-bill financing (OBF) and on-bill repayment (OBR), by focusing on characteristics such as source of capital, ownership of improvements, transferability of the loan, and criteria for eligibility and underwriting.⁴¹ Regardless of these factors, the customer experiences the program as a loan, and needs appropriate protections comparable to those required for loans.

While debt assumed through a TOB program is tied to a utility meter and is marketed as a utility expense rather than a loan, it operates similarly to other non-recourse loans that defer payment to future installments. Yet the proposals would not provide for standard credit disclosures and remedies because of the assertion that the TOB products are not loans.⁴²

While these protections would be needed in any circumstance, Consumer Advocates note that the Dunskey Report is recommending a relaxation of the very requirements that the pilot proponents rely upon in attempting to distinguish TOB products from loans. For example, the Dunskey Report recommends moving away from bill neutrality and/or authorizing (or even requiring) a large upfront co-payment from participating customers. Such recommendations would require more reliance on an "ability to pay" determination and result in a TOB program that would look and act more like OBF.

⁴⁰ Joint TOB Proposal at p. 15, citing to Cal. Public Utilities Code §§ 8377(a) and (b); Dunskey Report at p. 3.

⁴¹ Dunskey Report at p. 3

⁴² See, e.g., Holmes Hummel and Harlan Lachman, "What is inclusive financing for energy efficiency, and why are some of the largest states in the country calling for it now?" ACEEE Summer Study on Energy Efficiency in Buildings 13-3 (2018) ("A PAYS program participant does not take on a new debt obligation and, therefore, does not face the liability or the risk of disqualification due to underwriting criteria required in the banking sector. Like a loan, PAYS allows for payment over time, but unlike a loan, the PAYS obligation ends with the customer's occupancy, at which point cost recovery continues with a successor customer.").

Yet, in the TOB marketing, consumers purchasing TOB products would be told that they are not taking on a loan. Moreover, they would be told that their savings will exceed financing payments.⁴³ Yet the TOB model does not guarantee energy savings or bill savings, and estimates of projected energy savings may be inaccurate. The modeling software used to estimate savings can vary in accuracy, leaving consumers to bear the risk of overestimated savings.⁴⁴ Available data on an existing TOB program shows that monthly payments exceed savings in about half of the cases.⁴⁵

Projected savings may not materialize for a range of reasons. Energy bills vary with weather, household energy usage, and other factors including energy costs. There is no readjustment or loan modification mechanism for changes in energy prices, household composition, or other factors. Energy bills also vary throughout the year, even though the TOB surcharge is uniform across the months. When the projected monthly savings fall short of the actual savings, a customer faces higher utility bills for that month.

⁴³ Ashley Muspratt and Jon Blair, Center for EcoTechnology, Ipswich Electric Light Department, Utility Led Acceleration of Residential Efficiency & Electrification Retrofits a Feasibility Study of Tariffed On-Bill Financing in Ipswich, Massachusetts 1 (Aug. 2022) (“Imagine your utility told you they wanted to invest in state-of-the-art technology for your home. No taking on debt, no credit checks, no matter if you're a renter, and no matter if you plan to move soon. . . . This is TOB. Unlike traditional on-bill financing, where a utility makes a loan to a property owner, thus requiring adequate credit history, willingness to take on debt, etc., TOB decouples capital improvements from the individual resident or business.”).

⁴⁴ The Energy Efficiency Institute, which originated the PAYS® model makes clear that forecasted energy savings are not guaranteed even while assuring participants will save annually. See Energy Efficiency Institute, Inc., PAYS® and Participant Savings (June 2020) (“What happens to the PAYS® charge if a participant does not realize savings through no fault of their own? The simple answer to this question is that the PAYS system assures program participants that the estimated annual savings from their upgrades significantly exceed the utility’s cost recovery charges. PAYS does not guarantee savings.”).

⁴⁵ See, e.g., Lawrence Berkeley National Laboratory, Energy Markets & Policy, Berkeley Lab reviews participant outcomes in Pay-As-You-Save® (PAYS®) programs (Apr. 18, 2024), at <https://emp.lbl.gov/news/berkeley-labreviews-participant-outcomes-pay-you-saver-paysr-programs> (“About half of Midwest Energy PAYS® participants have reduced energy bills.” In other words, the forecasted energy screen didn’t work for half the participants of the largest PAYS® program in the country.).

Moreover, consumers with lower credit scores face a higher risk of delinquency and therefore of utility disconnection, even if projected savings are accounted for in the underwriting process. For example, NYSERDA's Green Jobs Green New York program has a public database of over 12,000 on-bill loans, which require that projected savings meet or exceed loan payments, on top of a traditional credit check. Even with this additional project screening in place, the cumulative 120-day delinquency rate for customers with a credit score below 680 (16.53%) is about three times higher than that of customers with scores above 680 (5.52%).⁴⁶ Unlike the NYSERDA program, however, TOB programs have no way of knowing which customers are at higher risk of nonpayment and disconnection of their essential utility service because nonpayment is not tracked separately.

The Dunskey Report also relies on the transferability of the TOB charge to the next occupant to distinguish the TOB program from other on-bill program types.⁴⁷ As previously discussed, the Joint TOB proponents and the Dunskey Report have failed to fully address the transferability of these products.

Consumer Advocates recommend that the TOB program proposals should be assessed under the definition of credit in the Truth in Lending Action (TILA). TILA applies to a transaction when four conditions are met: the credit is offered or extended to consumers; the creditor extends credit regularly; the credit is subject to a finance charge or is payable by written agreement in more than four installments; and the credit is primarily for personal, family, or

⁴⁶ N.Y. State, Green Jobs, Green New York (GJGNY) Residential Loan Portfolio: Beginning November 2010, at https://data.ny.gov/Energy-Environment/Green-Jobs-Green-New-York-GJGNY-Residential-Loan-P/9evndrxk/data_preview.

⁴⁷ Dunskey Report at p. 3.

household purposes.⁴⁸ TOB contracts meet all of these requirements and should be regulated as credit.

The applicability of some of these conditions are obvious. Contracts are offered to residential customers, who are consumers. The purpose of the contract is to make the consumer's home more efficient, so they are for household purposes. Others require more explanation. As explained below, the company offering the payment arrangement—usually the utility—will be a “creditor” and the transaction will meet the definition of “credit” and also constitutes installment credit. While TILA has an exemption for public utilities, it does not apply to transactions for durable goods or home improvements.⁴⁹ For TILA purposes, a “creditor” is one who regularly extends consumer credit that is subject to a finance charge or payable by written agreement in more than four installments; and to whom the obligation is initially payable. A “person” can be a natural person or an organization.⁵⁰ TOB contracts are always written for and always require more than four installment payments. The creditor will be said to “regularly” enter into these contracts as long as it does so more than 25 times in one year.⁵¹

This method of financing qualifies as “credit” for TILA purposes even though it may operate differently from the typical purchase-money financing. TILA defines “credit” as the right granted by a creditor to defer payment of debt or to incur debt and defer its payment.⁵² The whole point of TOB financing is to defer payment of the full price of the improvement. All TOB

⁴⁸ Reg. Z, 12 C.F.R. § 1026.1(c)(1).

⁴⁹ Reg. Z, 12 C.F.R. § 1026.3(c); Off'l Interp. of Reg. Z, 12 C.F.R. pt. 1026, supp. I, § 1026.3(c) cmt. 1-ii.

⁵⁰ National Consumer Law Center, Truth in Lending § 2.6.2.1 (11th ed. 2023), updated at www.nclc.org/library.

⁵¹ Reg. Z, 12 C.F.R. § 1026.2(a)(17)(v). See National Consumer Law Center, Truth in Lending § 2.6.3 (11th ed. 2023), updated at www.nclc.org/library.

⁵² National Consumer Law Center, Truth in Lending § 2.2.1 (11th ed. 2023), updated at www.nclc.org/library.

programs create a “debt” because consumers are expected to pay for the installed measures and will suffer negative consequences for failing to do so. They will lose their current utility service or access to future service will be affected.

TILA does not provide a definition of “debt” and, instead, defers to state law. However, courts have also looked to federal law or other sources. For example, the Bankruptcy Code defines “debt” as a “liability on a claim.”⁵³ The Code further defines a “claim” to mean a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”⁵⁴ The Fair Debt Collection Practices Act similarly has a broad definition of the word “debt”: “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”⁵⁵ It does not matter if the debt is described as non-recourse, i.e., one in which the lender renounces recourse against the consumer personally for repayment. TILA indisputably applies to various types of non-recourse debt, such as reverse mortgages and pawn transactions.⁵⁶ Similarly, the U.S. Supreme Court has held that creditors in bankruptcy still have a “claim” on a “debt” as defined under the Bankruptcy Code even for non-recourse debts.⁵⁷ And a non-recourse debt is still a “debt” for purposes of the FDCPA.⁵⁸

⁵³ 11 U.S.C. § 101(12).

⁵⁴ 11 U.S.C. § 101(5)(A).

⁵⁵ 5 U.S.C. § 1692a(5).

⁵⁶ National Consumer Law Center, Truth in Lending § 2.2.2.5 (11th ed. 2023), updated at www.nclc.org/library.

⁵⁷ See, e.g., *Midland Funding, L.L.C. v. Johnson*, 581 U.S. 224, 137 S. Ct. 1407, 1412, 197 L. Ed. 2d 790 (2017); *Johnson v. Home State Bank*, 501 U.S. 78, 83–84, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991).

⁵⁸ *Obduskey v. McCarthy & Holthus L.L.P.*, 586 U.S. 466, 139 S. Ct. 1029, 203 L. Ed. 2d 390 (2019).

Tenant Protections: Because the monthly repayment obligation for TOB program participants stays with the meter rather than the initial customer, any successor occupant to a participating meter (including any renter) has no assurance that the modeling that went into the TOB loan for the first occupant will provide savings for the successor, as energy usage profiles for the next occupants will likely differ. In addition, there is no assurance that timely, clear notice of this obligation will be provided to a successor occupant, renter or homeowner. For tenants in subsidized housing (who may be eligible for free weatherization and other programs in any event), maintenance of utility service is often a condition of the lease; disconnection of utility service could lead to eviction and the loss of affordable housing.⁵⁹ An additional issue is how the tariff would affect the tenant's utility allowance, which is part of a subsidized housing package. There is a concern that tariffs will not be included in utility allowance calculations and may increase tenant-paid expenses in subsidized housing.⁶⁰

Contractor marketing: The Dunskey Report recommends removing some of the proposed protections against aggressive marketing tactics based on a belief that “removing potential

⁵⁹ Tenants whose rent is subsidized by the Housing Choice Voucher (HCV) program are often responsible for ensuring continuous utility service in their residences. *See, e.g.*, Seattle Housing Authority, Housing Choice Voucher Program, Administrative Plan § 5-I C (Family Obligations) (“The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].”). Failure to do so may result in termination of assistance. *Id.* *See also* Chicago Housing Authority, Housing Choice Voucher Program, Admin. Plan § 12-I.D, ¶ 16 (Family Obligations) (eff. Feb. 1, 2020). This provision provides: “Maintain the assisted unit in accordance with Housing Quality Standards (HQS). The participant is responsible for keeping the unit in compliance with HQS, including maintaining appliances, paying utility bills and ensuring continuous utility service for any appliances and utilities that the owner is not required to provide under the lease and HAP contract.” *Id.* Tenants in the HCV Program whose leases require tenant-paid utilities who are unable to maintain service are considered in violation of the program rules and can face termination of their housing assistance. *See* 24 C.F.R. § 982.404(b)(1)(i), (b)(3).

⁶⁰ Where utilities are tenant-paid, a tenant is entitled to a “utility allowance” to cover reasonable utility costs. The utility allowance is generally credited against the share of rent otherwise payable by the tenant. The treatment of tariffs in determining utility allowances is unclear given the discretion afforded to public housing authorities and in other multifamily housing programs. 24 C.F.R. §§ 965.501–965.505 (2023) (public housing). Utility allowances are usually calculated by first determining a “consumption allowance” in terms of units of utility consumption.

aggressive sales tactics from contractors via a coordination role from the program administrator (contracting and service delivery model), which will work with a pre-approved contractor network only” would result in a meaningful consumer protection against predatory marketing practices is well-dispelled by the lessons learned in the PACE program.⁶¹ This does not accurately reflect experience with aggressive marketing tactics.

PACE Administrators had codes of conduct and agreements signed and executed by their approved contractors. Notwithstanding these agreements, the contractor codes of conduct were, at best, unenforceable guidelines of behavior and the PACE program experienced repeated problems with upselling and aggressive marketing. There is no basis to assume that a TOB program will have a different result that adequately protects consumers if the contractor sales model employed in the PACE program⁶² is authorized here. The lessons learned from PACE financing demonstrate the flaws in such a plan, with the net result being that consumers suffered and homes were lost due to predatory nature of this model.

First, pre-approved contractor lists do nothing to control fraud. Under the proposed TOB program, the contractors would not be employees of the Program Administrator. The contractors also would not be agents of the Program Administrator. By design, the private firms acting as Program Administrators would maintain their distance so as to avoid liability for any actions by the contractors. PACE Program Administrators and the PACE lenders all claimed that they had no control or liability over the bad contractors. Having a list of pre-approved contractors is not an adequate protection for customers.

⁶¹ Dunskey Report at p. 23.

⁶² White House’s “Policy Framework for PACE Financing Programs,” October 18, 2009; 2011 PACE Pilot Program Guidelines; Department of Energy released Best Practice Guidelines for Residential PACE Financing Programs, November 2016, updated from the one previously issued in 2010. *See* Western Riverside Council of Governments’ Consumer Protection Policies, <http://www.wrcog.cog.ca.us/230/PACE-Programs>, dated July 3, 2017.

Second, there is a dearth of regulatory and enforcement authority over fraudulent and predatory sales practices of contractors who would work with a TOB program. Traditional consumer financing is regulated by several organizations—the Consumer Financial Protection Bureau, the Federal Trade Commission, the Department of Energy, and the California Department of Business Oversight. Contractors are not regulated by these organizations.⁶³ The organizations tasked with overseeing and regulating contractors, like the Commission and the California Contractors State Licensing Board (CSLB), do not regulate contractors in their roles as marketers and sales agents of lending products. The only entity identified in the Dunskey Report that would have any role in supervising contractors is the Program Administrator. Essentially, the TOB Program Administrators and their contractors are left to regulate themselves, effectively allowing the fox to watch over the hen house.

Third, while the Joint TOB Proposal notes that the various incorporated consumer protections come at a cost to the TOB’s projected economic profit, it is important to recognize that every other lending industry is required to have these consumer protections in place. It is inherently unfair to allow TOB projects to move forward with fewer regulations and protections than those required of other finance companies.

Finally, and importantly, the contractor sales model financially incentivizes both the Program Administrator and the contractor to upsell products and maximize profits, while simultaneously disincentivizing the Program Administrator from strictly supervising contractors who are bringing in the most sales. The Program Administrators are financially incentivized to look away from fraud and predatory lending tactics of its contractors.

⁶³ Additionally, the overall enforcement capacity of the various federal agencies at this time is uncertain.

The Joint TOB proponents noted that the Working Group and Equity Committee stakeholders had strong concerns about TOB harming consumers if not implemented correctly and they “do not recommend implementing a TOB Program that does not contain sufficient consumer protections, or that functions as a loan rather than a tariff service charge.”⁶⁴ For the reasons stated above, Consumer Advocates believe that the pilots as proposed do not meet these standards, and revisions to the proposals as recommended in the Dunskey Report would worsen, rather than improve, the consumer protections provided. For these reasons and as stated above, the Consumer Advocates urge the Commission to reject the pilot proposals and to reject modifications to the proposals based on the recommendations of the Dunskey Report.

Finally, the Consumer Advocates note that the question on consumer protections put forward for party input does not accurately characterize the working group process that preceded the emergence of the Joint Proposal. As noted in the Equity Advocates’ motion⁶⁵ and above, the Equity Committee required by D.23-08-026 was not constituted to be within the TOB Working Group, even though that was the Commission’s direction.⁶⁶ Instead, it was created as a separate group, and members of the Equity Committee were not able to engage directly with the Working Group membership. The Equity Committee members were not given direct access to the proposal development process, and all exchanges between the Equity Committee and the Working group were highly mediated and indirect. While the Equity Committee was told that its input was given consideration, the process had limited transparency and no open exchange or discussion. Moreover, as noted in the Equity Advocates’ motion and above, Equity Committee

⁶⁴ Joint TOB Proposal at pp. 15-16 and p. 20.

⁶⁵ Equity Advocates Motion at p. 3.

⁶⁶ D.23-08-026 states “an equity committee within the TOB Working Group shall be established to focus on customer protection and equity concerns...” *Id.* at p. 80.

members were not provided with any advance draft of the pilot proposals and had limited opportunity to provide feedback.

While the question presented to parties is predicated on the expectation that TOB Pilot proposal emerged from a Working Group process in which participants discussed consumer protections at length, the Equity Advocates have no insight into the extent to which the recommendations made by the Equity Committee were actually considered. The Equity Advocates and NHLP do not believe that the TOB Pilot Proposals adequately implement recommendations from the Equity Committee concerning customer protection and equity, but cannot speak to how the Equity Committee's recommendations were received by the Working Group that actually developed the pilot proposals.

The Working Group's failure to actually include the Equity Committee as equal participants in developing the proposals is a further basis for the Commission to decline to adopt any of the recommended pilot proposals.

3. **The Commission initiated this financing proceeding with an intention for the IOUs to leverage non-ratepayer funding (i.e. private capital) in subsequent and larger financing program efforts. As designed, would they effectively result in the learnings needed to develop future proposals that would leverage private capital or other non-ratepayer funds?**

Both the Dunskey Report and the various IOU proposals themselves indicate that the proposed pilots are not formulated to create a pathway toward private capital investments that would benefit ratepayers. In particular, any potential private capital directed toward residential customers, if it were to materialize at all, would create substantial risk due to the expected returns that would likely be demanded.

- 4. What would the state learn from the results of these pilots in ways that might lead to future clean energy financing opportunities? What could be learned from these pilots on areas such as using finance through utility billing systems, utility tariffs, customer protections, equity, or other subject areas? What additional metrics should be tracked to maximize knowledge gained?**

The Consumer Advocates have no response to this question but may address the issue in reply comments.

5. An independent evaluation of the TOB Pilots is attached – does the evaluation present evidence that the proposed TOB Pilots would help the state reach its goals for equity, affordability, and decarbonization? If so, what evidence?

As described above, the Consumer Advocates agree with the Dunskey Report that the proposals submitted by utilities other than SoCalGas should not be adopted.⁶⁷ The Consumer Advocates also have concerns about the SoCalGas proposal to the extent that it takes steps that would lock customers into the natural gas system even as the Commission and state policy are working to promote electrification. As has been discussed extensively in the Commission's Long-Term Gas Planning proceeding and its predecessor,⁶⁸ any investment in natural gas systems and appliances must be given careful consideration to avoid creation of stranded assets and to minimize the risk that individual customers, especially vulnerable customers, will be the last ones remaining on a system that has high costs.

To the extent that the SoCalGas pilot proposal purely addresses efficiency gains such as weatherization (rather than clean energy investments), the participating customers may benefit, but learnings are likely to be few. This is because weatherization and other efficiency programs have been in place for a long time and the economics of such programs are well understood. Additionally, these programs are likely to be modest both in size and in cost (per household, though many remaining households in California could benefit from weatherization efforts). Equity Advocates continue to believe that customers should first be provided all opportunities to participate in weatherization and efficiency programs that do not include direct costs, such as ESA and WAP (the federal weatherization program).

More broadly, the various recommendations for future development proposed in the

⁶⁷ Dunskey Report at p. v.

⁶⁸ R.24-09-012 and R.20-01-007.

Dunsky Report for consideration do not appear likely to improve the ability of any potential pilots to advance equity, affordability, and decarbonization among California’s residential energy customers. For example, the Dunsky Report simultaneously recommends allowing low-income customers to be eligible for any TOB pilots⁶⁹ and also reducing the commitment to bill neutrality.⁷⁰ Both of these recommendations would increase the risk of unaffordable investments that increase customer bills, and thus increase the risk of disconnection for participating customers. Additionally, the Dunsky Report suggests that restrictions on allowing contractors to market to customers (which reduces the risk of “upselling” customers into investments they don’t need or can’t afford) should be removed, asserting that contractor training can provide acceptable consumer protection.⁷¹ Consumer Advocates strongly oppose removing this safeguard.

The Dunsky Report also asserts that the pilots do not create an increased risk of disconnection for consumers,⁷² but it does not address the fact that numerous California households are currently at risk and more are likely to become at risk as the state’s energy affordability crisis continues and overall economic trends give cause for concern. There is currently insufficient clarity on what happens to customers who participate in TOB and face disconnection.

Finally, the Dunsky Report’s consideration of non-ratepayer funds is highly focused on potential eligibility for funding from the federal IRA.⁷³ Since the submission of the Joint Proposal, however, the current administration in Washington has sought to reduce or claw back

⁶⁹ Dunsky Report at p. ii; pp. 21-22.

⁷⁰ Dunsky Report at p. 25.

⁷¹ Dunsky Report at pp. 9, 23.

⁷² Dunsky Report at pp. 27-28.

⁷³ See e.g. Dunsky Report at pp. 22, 28, 29, 30.

funding for direct customer assistance and for clean energy projects, it is unlikely that meaningful federal funding will become available in the near future. At the same time, the level of return demanded by private capital⁷⁴ means that private funding for residential activity is not likely to receive support while offering the level of consumer protections that the Consumer Advocates believe are necessary.

⁷⁴ See Dunskey Report at p. 29, indicating that potential conditions that may be needed to secure private capital could include high rates of interest, whether or not there is sufficient participation in the program, and/or ratepayer funding as the backstop to repayment of loans at the interest rate demanded. *Id.* at pp. 29-30.

6. Do you believe that the cost of these pilots is reasonable? Consider the administrative cost, implementation costs and other cost components. If not, what modifications could make the cost of the pilots reasonable?

Consumer Advocates believe that the proposed cost of these pilots articulated by the IOUs is not reasonable. As noted by the Dunskey Report, over 84% of the funds requested by SCE are for program administration and delivery.⁷⁵ The Dunskey Report further notes that there is a “lack of clarity on how some of the requested funds would be used to support a longer term TOB program.”⁷⁶ SDG&E’s proposal suffers from similar issues – 72% of the funds requested are for program administration and delivery, and there is also a lack of clarity on how some of the requested funds would be used to support a longer term TOB program.⁷⁷ The Dunskey Report accurately gives the IOUs’ proposals a score of *zero* for cost-effectiveness,⁷⁸ as it “does not make an effort to demonstrate how it would address key questions and concerns related to the topic.”⁷⁹ Given the extreme nature of the proposed costs for both SCE and SDG&E, Consumer Advocates do not believe that modifications are possible to make the cost of the pilots reasonable. This is consistent with the assessment of the Dunskey Report – it recommends rejecting the proposals for SCE and SDG&E outright and only approving the SoCalGas proposal with modifications.

However, in recommending that the SoCalGas proposal be approved with modifications, the Dunskey Report seems to have misunderstood SoCalGas’ proposal as it addresses costs. SoCalGas’ proposal in terms of funding is actually the worst out of the IOUs and results in the highest cost as well as the greatest amount of cost-shift to non-participants. This is due to the fact that SoCalGas is proposing to treat the project capital as a regulatory asset (part of the

⁷⁵ Dunskey Report at p. 46.

⁷⁶ Dunskey Report at p. 46.

⁷⁷ Dunskey Report at p. 46.

⁷⁸ Dunskey Report at pp. 31-35.

⁷⁹ Dunskey Report at p. 15.

utility's ratebase) that earns an authorized rate of return, resulting in profits for its shareholders.⁸⁰ If the Commission were to agree to include the project capital in ratebase, it would significantly increase the cost of the project due to the need to collect additional revenue from ratepayers over time to satisfy the return on common equity demanded by its shareholders – currently at 10.08% with a pending proposal to be increased to 11%.⁸¹ It appears that the Dunskey Report did not fully understand this aspect of SoCalGas' proposal, which is shown by the following statement as part of its recommendation:

Clarify the statement under item j. on page 10 of the SoCalGas "SoCalGas' funding approach utilizes the utility investment model for project costs and ratepayer funding for non-project costs." As written, this statement implies that SoCalGas will use internal funds to provide the Decarbonization Investment Capital.⁸²

While this element of SoCalGas' proposal is particularly problematic, all of the IOUs' funding proposal are unreasonable, as evidenced by their intentional program design that assigns all risks of the program to ratepayers and zero risks to their shareholders. The Dunskey Report describes this proposed structure by noting that "the IOUs would require ratepayer funding as the backstop to the repayment of the loans and would also require an explicit finding that the loan is a passthrough, so as not to affect the utilities' capital structures."⁸³ Not only are the IOUs demanding that ratepayers serve as the backstop for the repayment of the loans, the IOUs are also requesting the establishment of two-way balancing accounts, further guaranteeing that shareholders will not bear any risks of additional costs – if the actual costs exceed the budget, ratepayers are again responsible. As noted above, SoCalGas further adds insult to injury by proposing to earn additional profits for its shareholders through the pilot's treatment of

⁸⁰ Joint TOB Proposal at p. 45.

⁸¹ SoCalGas AL 6404-G at p. 4; A.25-03-011 (SoCalGas Application to Establish Its 2026 Cost of Capital).

⁸² Dunskey Report at p. 47.

⁸³ Dunskey Report at p. 29.

regulatory assets. Under the pending proposal, SoCalGas' ratepayers would backstop all loans and bear all risks for additional costs, while shareholders would earn guaranteed profits! It is hard to imagine an outcome that would be more unjust and unreasonable.

Because the overall cost structure of the proposals is not reasonable from the start, it would not be possible to make modifications to the IOUs' proposals to make them acceptable. The proposed framework is fundamentally inequitable and designed to benefit shareholders while burdening ratepayers with all the risk, and it should not be approved.

7. Would the TOB pilots or possible future TOB programs result in cost-shifting to non-participants? If so, would such a shift be limited to the amount of the pilot or program budget, or could such a shift become larger?

Yes, the TOB pilots or possible future TOB programs as proposed by the IOUs would shift costs to non-participants, including shifting costs to low-income customers. The IOUs propose that “ratepayer funding, from *all customers*, will pay for the TOB Pilot program management, M&V, and administration costs.”⁸⁴ Since these costs will be collected from *all customers*, the TOB pilots would result in cost-shifting to non-participating customers, including low-income customers, potentially worsening the already acute affordability crisis facing California utility customers. Furthermore, such a shift would not be limited to the amount of the pilot or program budget, and the shift could become larger if the TOB programs were rolled out on a wider basis. All of the costs noted above (program management, M&V, and administration costs) could potentially increase proportionally as the number of program participants increases, resulting in a greater cost shift to non-participants. Using SDG&E as an example, it estimates cost of over \$5 million for implementation, administration, IT, and EM&V for just 100 projects.⁸⁵ This means that a rollout of 100,000 projects could potentially cost \$5 billion without accounting for the project costs! Even if one were to assume that most of these costs would enjoy economies of scale (such as implementation and IT labor), IOU administration and EM&V costs alone could still be more than \$1 billion. Thus, the potential cost shift to non-participants, including low-income customers, is a real and serious concern under the IOUs’ proposal.

The problem is further compounded by the IOUs’ proposed funding source for the project costs. SCE and SDG&E are proposing ratepayer funding for the entire TOB Pilot, funded by

⁸⁴ Joint TOB Proposal at p. 44. (Emphasis added)

⁸⁵ Dunskey Report at pp. 33-34.

either Public Purpose Program funds or Energy Efficiency EM&V funds.⁸⁶ SoCalGas, on the other hand, is proposing to treat project costs as a regulatory asset, which would earn a rate of return for its shareholders, currently at 10.08%,⁸⁷ with a pending proposal to be increased to 11%.⁸⁸ By treating project costs as a regulatory asset that earns profits for its shareholders, SoCalGas' proposal would significantly increase the project costs over the life of the asset, likely 50-100% *more*,⁸⁹ resulting in further cost-shift to non-participants. This cost-shift would become proportionally larger if the program were to expand beyond the pilot, which would result in a greater burden to non-participants, including other low-income customers.

It is worth noting that the Dunskey Report compared the IOUs' proposal to existing TOB programs in other states, identifying an important difference – “the existing TOB programs identified source capital from various State and Federal funding sources, rather than ratepayer funds.”⁹⁰ The Commission should not overlook this critical difference as it evaluates the IOUs' proposals. In addition to the inequity of the IOUs' proposals as discussed in the previous question, this difference from the existing TOB programs in other states may be the most problematic funding issue. It may be appropriate for the Commission to conclude that TOB programs are only reasonable if the source capital does not come from ratepayer funds.⁹¹ As discussed here, using ratepayer funds for the proposed TOB programs may negatively affect numerous issues including affordability, equity, and cost-shifting to non-participants.

⁸⁶ Joint TOB Proposal at p. 45.

⁸⁷ SoCalGas AL 6404-G at p. 4.

⁸⁸ A.25-03-011 (SoCalGas Application to Establish Its 2026 Cost of Capital).

⁸⁹ As a general rule of thumb, including costs in ratebase results in 50-100% more revenue requirement over the life of the asset.

⁹⁰ Dunskey Report at p. 30.

⁹¹ Of course, proposals to use third party funding options would also need to be evaluated for reasonableness, particularly if they were to rely on private capital with an expectation of high returns for investors.

III. CONCLUSION

For the reasons set forth above, the Consumer Advocates respectfully request that the Commission decline to adopt the various IOU proposals, with or without modification.

Respectfully submitted,
May 14, 2025

/s/ Melissa W. Kasnitz
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Authorized to sign on behalf of the Consumer Advocates

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