BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION OF COMMISSIONER GRUENEICH

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I. INTRODUCTION

In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") the Division of Ratepayer Advocates ("DRA") submits its opening comments on the proposed, interim decision ("PD") of Commissioner Grueneich in the above-captioned proceeding, the rulemaking to address the issue of California customers' electric and natural gas service disconnection ("Rulemaking").

The PD continues the Rulemaking's direction to offer all customers minimum three month payment plans. The PD also continues the Rulemaking's direction to waive, for all residential customers, credit deposits due to slow payment of bills, and to waive for California Alternative Rates for Energy ("CARE") customers, credit deposits required for reconnection. DRA continues to support continuation of these rules as an interim solution appropriate to the current economic crisis.

However, by declining to set a disconnection benchmark, the PD misses the opportunity to set standards for reducing utility disconnections in California. In the last few years, disconnection rates have exceeded the acceptable standard, and low-income disconnection rates currently still are unacceptable. Without a disconnection benchmark, goal, or performance metric, the Commission loses a tool for long-term oversight that would provide flexibility to the utilities to minimize disconnections in the most effective and least costly way possible. The PD can be rectified by adopting benchmarks designed to reduce disconnections; the benchmarks should take into consideration each utility's three-year historical average disconnection rates and set goals to reduce disconnection rates beneath this average over time for utilities with the highest disconnection rates.

Furthermore, while the PD defers cost recovery to Phase II of this proceeding, it leaves ratepayers open to shouldering significant costs. Not only does the PD instruct utilities to track costs resulting from compliance with the Rulemaking's interim measures, but it allows utilities to continue to track costs associated with compliance with the PD. The PD should explicitly define its expectations of costs and limit the risk to ratepayers of paying for additional costs beyond what has been allowed in rate cases. The PD earmarks some critical and yet unresolved issues for Phase II. Because these issues, including cost recovery, are part of a utility's ongoing operations, the PD should instead direct these issues to be decided in each utility's next general rate case ("GRC"). This would allow for a comprehensive investigation of service expectations and the associated costs and benefits of each change within the overall context of each utility's customer service operations.

II. COMMENTS

A. The Commission Should Set A Disconnection Benchmark To Keep Disconnections Minimal

When DRA issued its disconnection report, *Status of Energy Utility Service Disconnections in California*, in November 2009, we noted that low income customers were facing an increasing number of disconnections and the disparity between non-low-income and low-income disconnection rates had also increased.[1] Shortly after DRA issued the report, the Commission opened this Rulemaking in order to assist customers to avoid service disconnection. The Commission appropriately considers service disconnection a serious issue and has indicated that increasing disconnections is not acceptable. This implies that a certain service level (or a benchmark of disconnection) associated with energy utility service is expected. Otherwise, the Commission would not have taken such urgent action to attempt to mitigate the increasing trend in disconnections.

The Rulemaking asked Parties to respond to the question, "Whether the Commission should set a benchmark for the number of disconnections experienced and what such a benchmark should be."[2] But the PD does not discuss the disconnection benchmark at all.

By omitting discussion of a disconnection benchmark, the PD misses the opportunity to address the Commission's primary stated interest in opening the Rulemaking: reducing disconnections in California, especially for the most vulnerable customers.

1. A disconnection benchmark is a modest oversight tool.

A disconnection benchmark shows the Legislature, the Commission, and the public that California will only tolerate a minimum level of disconnection. Setting a ceiling on disconnections is consistent with the notion that energy is an essential service required to maintain health and safety. It does not limit or restrict the utilities from conducting business as usual and from disconnecting customers who continually fail to pay for the energy they use, despite the assistance offered. A benchmark could, and should, drive the utility to develop more alternatives to

[1] Division of Ratepayer Advocates, *Status of Energy Service Disconnection in California* ("DRA Report"), Nov. 2009, p.5.

[2] Rulemaking to Address the Issue of Customers' Electric and Natural Gas Service Disconnection, R.10-02-005, p.9.

disconnection for more customers. As a benchmark still allows for a reasonable level of disconnects, utilities will need to even more precisely prioritize those customers whose payment failures must result in disconnection in order to collect the payments owed. A benchmark will prevent the utilities from using disconnections as a way of responding to worsening economic conditions or spikes in bills. Instead, the utilities will have an incentive to develop other responses more appropriate to these types of situations. Furthermore, as Smart Meter technology replaces the labor-intensive part of disconnection, it is especially important to have a measurement tool in place such as a disconnection benchmark. With manual disconnection, the utilities disconnect roughly one-third of those customers on the disconnection list. With the remote disconnection capabilities of Smart Meters, there is no time lag in accomplishing all disconnects on the list each day.

The benchmark should also serve as an indicator of the effectiveness of California's low-income assistance programs. Californians spend approximately one billion dollars per year for the CARE, Family Electric Rate Assistance, and Low Income Energy Efficiency programs, with the intent of making energy affordable to all Californians. Yet, some utilities disconnect low-income customers at twice the rate that they disconnect their non-low-income customers.[3] This calls into question whether the significant investment that ratepayers make in these programs is maximized. For example, a study of the impact of low-income utility affordability programs in Indiana compared low-income disconnection rates to overall residential disconnection rates to show how low-income programs allow the utilities to redirect their collection activities away from low-income accounts where disconnections have little useful impact and toward non-low-income accounts that are more likely to have an ability to pay.[4]

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[3] *See* DRA Report at 7-8 citing PG&E as an example.

[4] *See* Roger D. Colton, *The Impact of Indiana's Low-Income Utility Affordability Programs on*

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A benchmark--or goal--can be highly effective. For example, the Commission in Decision 08-11-031 set a goal of enrolling 90% of all eligible low-income customers in the CARE program. As of May 2010, three of the four utilities have reached or surpassed this goal.[5]

2. The Commission can utilize the PD's reporting requirements to track disconnection rates and develop utility-specific benchmarks.

The PD should be revised to include utility-specific disconnection benchmarks for overall disconnection rates as well as low-income customer disconnection rates. This kind of metric is a natural extension of the PD's data collection requirement. The second table in Appendix A of the PD already requires the utilities to divide the number of disconnects for that month by the total accounts for that month, which is the monthly disconnection rate. This rate allows the Commission to compare different utilities and also to track changes in each utility's disconnection rates over time. By adding twelve months of this figure, the Commission can assess the annual disconnection rate.

Tracking this rate is not enough, as PG&E and SCE have significantly higher disconnection rates than SoCalGas and SDG&E. The benchmark for PG&E and SCE should be set based on the historical rate for that company, in order to take into account the differences in demographics, climate, and fuel. Then, the Commission should set an amount by which that rate should decrease over time. This can be done reasonably over a several year period in order to give each utility adequate time to evolve its credit and collections practices to meet the new level of service expectation.

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Nonpayment Disconnections, Sept. 3, 2007.
http://www.fsconline.com/downloads/Papers/2007%2009%20EAImpact_SONPs.pdf

[5] *See* PG&E, SCE, SDG&E, and SoCalGas monthly CARE and LIEE reports as of May 2010.

The Commission should set a second benchmark for low-income disconnections. Again, the components for utility-specific low-income benchmarks are already in the PD's required data reports. All four utilities disconnect their low-income customers at higher rates, sometimes twice as high, than the non-low-income customers. The Commission should direct the utilities to over time bring low-income disconnection rates in line with non-low-income disconnection rates.

B. The PD puts ratepayers at risk with an open-ended invitation to the utilities for cost-recovery.

The Commission opens the door for ratepayers to shoulder more costs beyond the period of the Rulemaking, regardless of the impact on disconnections. The PD twice indicates that the practices ordered in the PD should have minimal or insignificant costs.[6] This is consistent with DRA and other consumer parties' assessments of the cost impacts of the Rulemaking's interim measures. As DRA stated in its opening comments on the Rulemaking, these interim measures are part of the utilities' normal business operation; hence, there should be no incremental cost recovery allowed.[7] Yet the PD contradicts itself both times by authorizing the utilities to record significant costs in the memorandum accounts established by the Rulemaking. "This decision … [a]uthorizes PG&E, SDG&E, SCE and SoCalGas to charge significant costs associated with complying with the new practices in this decision to their memorandum accounts. The adopted measures do not appear to have significant cost implications which would otherwise be borne by other ratepayers."[8] And again:

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[6] *See* Proposed Decision of Commissioner Grueneich ("PD"), pp. 3, 9.

[7] *See* Opening Comments of the Division of Ratepayer Advocates on Rulemaking to Address Electric and Natural Gas Service Disconnections ("DRA Rulemaking OC"), R.10-02-005, pp. 22-25.

[8] PD, p.3.

> Second, in keeping with our stated intent that any solutions that avoid unnecessary disconnections not place an undue cost burden on other customers, the modifications discussed below consider the estimated costs of implementation and seek to adopt customer service, billing, and communication practices which have minimal cost implications. The utilities may include any significant additional costs of the adopted changes in their memorandum accounts.[9]

Based on the PD's directives that its adopted measures have minimal cost implications, the PD should clearly define "significant costs" and not leave such discretion to the utilities.

C. The PD's directives must be clear and implemented consistently, fairly and without exception.

The PD requires all utilities to inform any customer with an arrearage that puts the customer at risk for disconnection that the customer has a right to a three month payment plan.[10] The plain language of this rule indicates no exceptions for customers who have previously broken payment plans, who have written bad checks, or any other reason. Yet, as DRA explained in its Opening Comments on the Rulemaking, this type of rule has been implemented inconsistently among the utilities, with some utilities making exceptions for certain customers with bad payment histories.[11] DRA recommends that the PD require its rules to be followed without exception unless the Commission explicitly grants permission for an exception.

The PD requires all utilities to visit in-person a disabled customer or any customer for whom disconnection presents a health and safety risk.[12] This

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[9] PD, p.9.

[10] *See* PD at.1.

[11] *See* DRA Rulemaking OC p.10.

[12] *See* PD at 2.

direction should be more explicit. DRA recommends that the Commission define an in-person visit as a visit in which the utility representative attempts to make contact with the customer by means of knocking or ringing the doorbell, and then leaves material behind with specific instructions regarding the means by which the power can be reestablished. The PD should also specify that additional attempts at contact via phone and email (if available) are required. Furthermore, DRA recommends the Commission define the category of "any customer for whom disconnection presents a health and safety risk" to include low-income customers and customers age 62 and older.

D. The Commission should include Phase II issues, including cost recovery, in each utility's next general rate case.

The PD states that the Commission plans to continue to analyze the costs and benefits of additional measures that may help reduce utility service disconnections in the second phase of this proceeding.[13] The PD identifies various issues for discussion in Phase II, such as the role of utility customer service representatives in educating customers about assistance programs and assisting in completing CARE applications, customers' language preferences for utility communications, and a uniform protocol for remote disconnections. The PD also states the Commission's intent to determine in this second phase the process for addressing both cost reasonableness and recovery of the categories and significant costs associated with compliance with the practices.[14]

Since these measures involve potentially changing or modifying the utilities' operations and have related costs or savings, it is appropriate to address them in the utilities' next GRCs. By doing so, the active parties can comprehensively review the overall utility operations, build in acceptable service

[13] *See* PD at 24-25.

[14] *See* PD at 25-26.

expectations, explore cost-effective measures and determine the cost impact globally rather than piece-meal.

III. CONCLUSION

The PD continues valuable consumer protections to ease payment-troubled customers. However, the PD should include a disconnection benchmark by which to minimize disconnections, and should not grant cost recovery since the PD's directives are not intended to cause significant costs.

DRA respectfully requests the Commission incorporate these recommendations into the PD.

Respectfully submitted,

/s/ MARION PELEO

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APPENDIX A

Proposed Changes to Findings of Fact

Findings of Fact:

18. GRCs are appropriate proceedings for considering customer service disconnection practices and costs.

19. A disconnection benchmark does not prohibit all disconnections, but provides an incentive for utilities to develop alternatives to disconnection.

20. A utility-specific disconnection benchmark can be developed from historical disconnection rates for that particular utility.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION OF COMMISSIONER GRUENEICH"** to the official service list in **R.10-02-005** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **July 7, 2010** at San Francisco, California.

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