Decision **PROPOSED DECISION OF ALJ O'DONNELL (Mailed 9/25/2009)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of The Utility Reform Network to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5 Related to Arrearage Management and Shutoff Prevention for Residential Customers of the Major Jurisdictional Electric and Gas Utilities.	Petition 09-06-022 (Filed June 19, 2009)

DECISION DENYING PETITION OF THE UTILITY REFORM NETWORK FOR A RULEMAKING REGARDING ARREARAGE MANAGEMENT AND SHUTOFF PREVENTION

1. Summary

This decision denies the petition of The Utility Reform Network asking the Commission to initiate a rulemaking or investigation to address arrearage management and shutoff prevention for residential customers of the major jurisdictional electric and natural gas utilities because existing programs are sufficient, and a rulemaking or investigation is not needed at this time.

Petition 09-06-022 is closed.

2. Background

In its petition, The Utility Reform Network (TURN) asks the Commission to initiate a rulemaking or investigation to consider adopting regulations related to arrearage management and shutoff prevention for residential customers of the major jurisdictional electric and natural gas utilities: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (SCG).

TURN states that the need for the petition is brought about by the economic crisis in California and impending utility rate increases.

TURN identifies the proposed issues as follows.

- Should the utilities be required to create arrearage management programs and offer forgiveness plans to low income customers in arrears?[1] If so, how should the plans be structured in terms of participant eligibility, program administration, program parameters and cost recovery?
- Should bill payment plans be modified to increase the likelihood customers in arrears will be able to afford the payments and avoid shutoff through consideration of the customer's ability to pay, extending the term of amortization of arrearage amounts, and requiring utilities to offer other assistance programs to customers seeking payment arrangements?
- Should the utilities be prohibited from requiring residential customers to pay reestablishment of credit deposits under certain circumstances, such as when customers agree to participate in certain assistance programs or receive budget counseling?
- Should the ratemaking treatment of utility uncollectibles associated with residential customer accounts be temporarily modified to subject some or all of these costs and revenues to two-way balancing account treatment?

The specific proposals TURN makes are as follows:

- Arrearage forgiveness plans for customers eligible for the California Alternative Rates for Energy (CARE) program to be paid for by all ratepayers.
- Consideration of the customer's ability to pay in setting the monthly payment under bill payment plans.

[1] A forgiveness plan would allow the customer to not pay all or part of the amount owed on past bills if specified conditions are met.

- Offering extended payment plans to CARE and non-CARE residential customers over a 24-month period.
- When customers fail to comply with an amortization agreement, the customer should be given notice and an opportunity to cure the problem or revise the payment plan to better meet the customer's ability to pay.
- Require the utilities, when a customer seeks to establish a payment plan, to tell the customer about low income programs.
- When a customer has been shutoff for nonpayment and subsequently seeks to restore service, require the utilities to provide information on budget counseling services and offer services through the Low Income Energy Efficiency (LIEE) program or energy efficiency audits, and waive reestablishment of credit deposits if the customer agrees to receive budget counseling and participate in LIEE or, if not eligible for LIEE, receive an energy audit.
- When a customer's payment history triggers a request by the utility for a late payment deposit, require the utilities to provide information on budget counseling services and offer services through LIEE or energy efficiency audits, and waive reestablishment of credit deposits if the customer agrees to participate in LIEE or, if not eligible for LIEE, receive an energy audit.
- Require the utilities to waive reestablishment of credit deposits for customers participating in an arrearage management program.

3. Procedural Background

TURN filed this petition on June 19, 2009. Comments were filed on July 20, 2009 and reply comments were filed on August 3, 2009.

The parties who filed comments on the petition are as follows.

- The Division of Ratepayer Advocates (DRA);
- Disability Rights Advocates (DisRA);
- National Consumer Law Center (NCLC);

- The Greenlining Institute (Greenlining);
- PG&E;
- SCE; and
- SDG&E and SCG (collectively Sempra)

DRA, DisRA, NCLC and Greenlining support TURN's proposal. PG&E, SCE and Sempra oppose it.

4. Analytical Approach

In order to determine whether to grant TURN's petition, the following will be examined. First, the existing low-income programs will be looked at to determine what is available to low-income customers. Second, D.08-11-031 will be examined to determine what the Commission has done to encourage outreach and authorize funding of existing low-income programs for 2009 through 2011. The need for additional programs will then be examined and TURN's proposals will be reviewed.

5. Current Programs Available to Low-Income Customers

A number of programs are currently offered that address the needs of low-income customers. They include the following.

5.1. CARE

CARE provides a monthly 20% discount on energy bills for qualified customers with incomes up to 200% of the federal poverty guidelines. Qualifications are based on the number of people living in the home and household income. In addition, CARE customers are exempted from paying the Department of Water Resources Bond Charge, the cost of the CARE program

(CARE surcharge) and the cost of the California Solar Initiative. As a result, the actual CARE discount is more than 20%.[2]

5.2. Family Electric Rate Assistance (FERA)

FERA provides a monthly discount on electric bills for qualified households of three or more persons with incomes between 200% and 250% of the federal poverty guidelines.

5.3. LIEE

LIEE provides free weatherization and related energy services aimed at reducing energy usage. The program is available to customers who meet the CARE income guidelines.

5.4. Low Income Home Energy Assistance Program (LIHEAP)

LIHEAP is a federally-funded program that provides free weatherization services and payment assistance to residential income-qualified customers. It is distributed by the Federal Department of Health and Human Services, administered by the State Community Services and Development Department, and distributed by contracted community energy service providers.

5.5. Utility-Specific Programs

In addition to the above programs, each of the utilities offers their own programs.

PG&E offers the Relief for Energy Assistance through Community Help (REACH) program. The REACH program is an energy assistance program sponsored by PG&E and paid for by PG&E's shareholders, customers, employees and retirees that is administered through the Salvation Army. It provides

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[2] For example, SCE represents that the actual CARE discount for its customers is 27.3%.

one-time grants to qualified low income customers who experience unplanned or uncontrollable changes in their ability to sustain their energy service.[3]

SCE offers the Energy Assistance Fund (EAF) program. The EAF program is a non-profit fund administered by the United Way of Los Angeles. It is funded by donations from SCE employees, customers and shareholders. It provides $100 in payment assistance once every 12 months to income-qualified customers.

SDG&E offers the Neighbor-to-Neighbor (NTN) program. The NTN program is funded by SDG&E's shareholders, employees and customers. It offers grants of up to $200 per year to customers experiencing extreme financial hardship.

SCG offers the Gas Assistance Fund (GAF) program. The GAF program is funded by SDG&E's shareholders, employees and customers. It offers grants of up to $100 per year to income qualified customers.

5.6. Medical Baseline

A large proportion of customers with disabilities are low-income customers. Medical baseline provides additional quantities of energy at the baseline rate for residential customers on life-support equipment or who have special heating and cooling needs due to certain medical conditions. In addition, all usage in excess of 130% of baseline is billed at Tier 3 rates, thus avoiding higher Tier 4 and 5 rates.

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[3] Qualified customers may not receive REACH assistance more often than once every 18 months, with some limited exceptions.

6. Decision 08-11-031

In D.08-11-031, the Commission approved LIEE budgets for PG&E, SDG&E, SCE and SCG totaling $1 billion for 2009-2011 and CARE budgets totaling $2.6 billion for 2009-2011. Among other things, the Commission:

- Directed Investor-owned Utilities (IOU)s to target increased outreach to LIEE customers who are high energy users, have high energy burden (the ratio of their energy bills to income) and have high energy insecurity (late payments, threatened service shut-off).
- Directed IOUs, in emphasizing the customers with high energy use, burden or insecurity, not to neglect low income customers with lower energy use.
- Directed the IOUs to enhance outreach and service to the disabled community because a large segment of the LIEE-eligible community is disabled.
- Set a 90% CARE penetration goal for 2009-2011.
- Require the utilities to provide weatherization and related energy services to 1,052,651 households under the LIEE program over the 2009-2011 period.

7. Indicators of the Need for Additional Low-Income Programs

TURN states in its petition that large numbers of CARE customers fall behind or are late in paying their bills and that payment programs that allow customers to pay their arrearages over as much as 12 months are inadequate because customers that are in arrears often can not afford to pay the amortization on top of their regular bills.

In the petition, TURN provides a table showing the percentages of customers whose bills were not paid in full by the due date for PG&E and SCE for October 2008 through April 2009. The table indicates variability in the percentages of customers whose bills were not paid in full by the due date, but does not indicate an overall upward trend in the percent of customers who have not paid their bills by the due date. In addition, the fact that a customer has not paid the bill in full by the due date does not necessarily mean the customer will not ultimately pay the bill or have service terminated.

TURN also provided a table of shutoffs for nonpayment for October 2008 through April 2009 for the four utilities. The table indicates variability in the number of shutoffs, but does not indicate an overall upward trend in shutoffs.

8. Analysis

8.1. Arrearage Forgiveness

With all of the programs available to low income customers and the funding provided by D.08-11-031, there are ample opportunities for customers to avoid arrearages and shutoffs. As a result, it is not evident that an arrearage forgiveness program needs to be considered at this time. In addition, administration of such a program would present substantial challenges.

Existing programs reduce the customer's bills, but the customer must still pay the reduced bill. An arrearage forgiveness program would eliminate all or part of a customer's arrearages if certain conditions are met. Such a program could create an incentive for customers to not pay all or part of their bills. Therefore, the program would have to be structured to minimize this incentive.

Existing low-income programs determine the customer's eligibility based on income. However, an arrearage forgiveness program would have to look beyond this because being a low-income customer would not be enough. Since the customer's ability to pay is the issue, each customer's income and expenses would have to be examined to determine if the customer is truly unable to pay the arrearages. Such an examination would likely be invasive of the customer's privacy and costly to implement.[4] On the other hand, if the examination is less thorough, the likelihood of the arrearage forgiveness being given to customers who should not receive it would increase. In either case, program costs would have to be recovered from ratepayers likely resulting in higher rates.

8.2. Amortization Period

Existing payment plans provide for amortization of the outstanding balance over up to 12 months. TURN proposes an increase to 24 months.

In its response to the petition, PG&E stated the average balances for customers with arrearages under 365 days are approximately $100. In its response to the petition, SCE stated the average monthly bill for a CARE customer was $50 in 2008 and the average past due amount at the time of shutoff was $174. While Sempra did not provide similar information, there is no reason to believe arrearages for SDG&E and SCG would be substantially different. A six month amortization of $174 would be $29 per month. An amortization over a longer number of months or of a lesser amount would be less. Therefore, it does not appear that, on average, an amortization of an arrearage would be excessively burdensome. Thus, an increase of the maximum amortization period to more than 12 months does not appear necessary.

8.3. Informing Customers about Low-Income Programs When They Inquire About Payment Plans

In response to a ruling by the assigned Administrative Law Judge (ALJ), the utilities represented that customers who contact them about payment

[4] The same would be true regarding TURN's recommendation to consider the customer's ability to pay in making bill payment arrangements.

plans are offered information about low-income plans such as CARE and LIEE. Therefore, TURN's proposal that they do so is moot.

8.4. Outreach

In their responses to the petition, the utilities indicated that they have increased their low-income outreach to customers to increase participation in the available low-income programs as required by D.08-11-031. As a result, the utilities have succeeded in increasing the number of CARE-eligible customers participating in CARE.

8.5. Deposits

TURN proposes that customers who would be required to provide deposits due to the customer's late payment history or to reestablish service would have the deposit waived if the customer agrees to participate in the LIEE program or have an energy efficiency audit, if the customer is not eligible for LIEE. In the case of a customer who was shutoff for nonpayment, credit counseling would also be required. TURN also proposes that customers participating in an arrearage management program not be required to pay reestablishment of credit deposits.

In response to an ALJ ruling requiring further information, PG&E indicated that while it can require up to two times the customer's highest monthly bill as a deposit, it currently requires two times the customer's average monthly bill. PG&E also indicated that the deposit need not be paid all at once, but may be paid over time as part of a payment arrangement.

In response to the ALJ ruling, SCE indicated that the deposit may be reduced or waived based on the customer's account history. Additionally, the deposit need not be paid all at once, but may be paid over time as part of a payment arrangement.

In response to the ALJ ruling, SDG&E indicated that it requires a deposit of two times the customer's highest bill. SGC indicated that it requires a deposit of two times the customer's average bill.

Deposits are intended to provide some assurance that customers will pay for energy subsequently used. TURN's proposal to waive deposits could force the utilities to serve customers who may be unable to pay their bills.

9. Conclusion

Low-income customers can benefit from a number of programs that can reduce their bills. There are programs that offer substantial rate discounts and opportunities to receive free energy efficiency services, such as weatherization. In addition, they may qualify for grants that could cover much or all of the average arrearages.

The Commission has authorized significant funding of low income programs and the utilities are actively conducting outreach for these programs. The existing programs are sufficient at this time and further investigation is not needed. Based on the record in this proceeding, the petition should be denied.

By denying TURN's petition, the Commission does not intend to trivialize the concerns and issues that the petition attempts to address. The Commission recognizes that these are very challenging economic times and that many Californians are having difficulty paying their bills. However, the proposals in the petition do not address the problems California ratepayers are currently facing, but could shift the economic burden to other customers. The Commission encourages the utilities to continue to find new and better ways to reach those customers who may benefit from the myriad of programs that are currently available to reduce their energy bills.

Additionally, the Commission directs Consumer Services and Information Division (CSID) staff to meet with the four utilities on a regular basis (at least bi-monthly) to review the number of customers experiencing termination of service and to review the programs and procedures the utilities are employing to help customers with their monthly bills. CSID may include in these meetings collaborators relevant to the issue. Through these meetings, the Commission will be alerted to any changes in the trends we are currently experiencing. Likewise, the utilities can learn from one another about new approaches they may be taking to tackle these issues.

10. Comments on Proposed Decision

The proposed decision of ALJ Jeffrey P. O'Donnell in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening and/or reply comments were filed by TURN, DRA, DisRA, Greenlining, SCE, PG&E and Sempra on October 15, 2009 and October 20, 2009, respectively. All comments were considered and changes have been made to the decision as appropriate.

In its opening comments, DRA provides a table showing that CARE service disconnections for January through August 2009 are 25% greater for the four major jurisdictional electric and natural gas utilities than for the same period in 2008.[5] DRA concludes, based on this table, there has been a substantial increase in CARE customer shutoffs.

DRA's attempt to put additional information into the record in its comments on the PD is inappropriate. In addition, the unverified statistics address only selected eight-month periods and not 12-month periods. They also do not address the degree to which the statistics are influenced by increased participation in the CARE program due to substantially increased customer outreach by the utilities in compliance with D.08-11-031 or other causes. Therefore, these statistics do not necessarily indicate whether CARE disconnections have increased and, if so, by how much.

In its opening comments, DRA states that 65%-80% of customers who were disconnected were reconnected within two to three days.[6] If true, this would seem to indicate that most of those customers arrearages were addressed by the customers themselves or existing programs.

In TURN's opening comments, it noted that the Commission authorized the transfer of $3 million in ratepayer funds to SCG's GAF program and $1.3 million to SDG&E's NTN program (Resolution E-4251, issued September 10, 2009). TURN also noted that PG&E has requested authority to transfer $7 million in ratepayer funds to its REACH program. As noted above, these programs provide grants to customers experiencing extreme financial hardship to be used to pay energy bills. Thus, the Commission has taken more recent action to assist customers experiencing difficulty in paying their energy bills during these tough economic times.

As indicated above, the Commission recognizes that these are very challenging economic times and many ratepayers are having difficulty paying their bills. The proposals in the petition do not appropriately address the problems ratepayers are currently facing and could shift the economic burden to

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[5] DRA comments, p. 4.

other customers. The existing programs are sufficient at this time and further investigation is not needed.

On December 16, 2009, the Commission held an en banc hearing in order to obtain further public comment on the issue of arrearages raised in the petition. On January 5, 2010, the Commission held workshops on the same subject. As a result, the Commission extended the six-month deadline for the purpose of public review and comment pursuant to Pub. Util. Code Section 1708.5.

11. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. A number of programs are currently offered that address the needs of low-income customers by providing bill discounts, weatherization and energy efficiency services, including CARE, FERA, LIEE and LIHEAP.

2. The utilities offer the REACH program (PG&E), the EAF program (SCE), the NTN program (SDG&E) and the GAF program (SCG) which offer grants to pay utility bills.

3. A large proportion of customers with disabilities are low-income customers.

4. Medical baseline provides additional quantities of energy at the baseline rate for residential customers on life-support equipment or who have special heating and cooling needs due to certain medical conditions. In addition, all usage in excess of 130% of baseline is billed at Tier 3 rates, thus avoiding higher Tier 4 and 5 rates.

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[6] DRA comments, p. 7.

5. The table in TURN's petition showing the percentages of customers whose bills were not paid in full by the due date for PG&E and SCE for October 2008 through April 2009 indicates variability in the percentages of customers whose bills were not paid in full by the due date, but does not indicate an overall upward trend in the percent of customers who have not paid their bills by the due date.

6. The fact that a customer has not paid the bill in full by the due date does not necessarily mean the customer will not ultimately pay the bill or have service terminated.

7. The table in TURN's petition showing shutoffs for nonpayment for October 2008 through April 2009 for the four utilities indicates variability in the number of shutoffs, but does not indicate an overall upward trend in shutoffs.

8. With all of the programs available to low income customers and the funding provided by D.08-11-031, there are ample opportunities for customers to avoid arrearages and shutoffs.

9. An arrearage forgiveness program does not need to be considered at this time.

10. Since an arrearage forgiveness program could create an incentive for customers to not pay all or part of their bills, the program would have to be structured to minimize this incentive.

11. Existing low-income programs determine the customer's eligibility based on income.

12. An arrearage forgiveness program, as proposed by TURN, would have to look at the customer's ability to pay, which would involve looking at each customer's income and expenses to determine if the customer is truly unable to pay the arrearages.

13. An examination of the customer's ability to pay would likely be invasive of the customer's privacy and costly to implement.

14. If the examination of the customer's ability to pay is less thorough, the likelihood of the arrearage forgiveness being given to customers who should not receive it would increase.

15. Arrearage forgiveness program costs would have to be recovered from ratepayers likely resulting in higher rates.

16. Existing payment plans provide for amortization of the outstanding balance over up to 12 months.

17. For PG&E, the average balances for customers with arrearages under 365 days are approximately $100.

18. For SCE the average monthly bill for a CARE customer was $50 in 2008 and the average past due amount at the time of shutoff was $174.

19. There is no reason to believe arrearages for SDG&E and SCG would be substantially different from PG&E and SCE.

20. On average, an amortization of an arrearage over up to 12 months would not be excessively burdensome to customers.

21. An increase of the maximum amortization period to more than 12 months is not necessary at this time.

22. Since the utilities offer information about low-income plans such as CARE and LIEE to customers who contact them about payment plans, TURN's proposal that they do so is moot.

23. The utilities have increased their low-income outreach to customers to increase participation in the available low-income programs, as required D.08-11-031, and have increased the number of CARE-eligible customers participating in CARE.

24. The tables provided in TURN's petition do not demonstrate an overall upward trend in arrearages or shutoffs of CARE customers since D.08-11-031 was issued despite the decline in the economy.

25. PG&E can require up to two times the customer's highest monthly bill as a deposit, but currently requires two times the customer's average monthly bill, and the deposit may be paid over time as part of a payment arrangement.

26. SCE may reduce or waive deposits based on the customer's account history, and the deposit may be paid over time as part of a payment arrangement.

27. SDG&E requires a deposit of two times the customer's highest bill.

28. SGC requires a deposit of two times the customer's average bill.

29. Deposits are intended to recover past due amounts and provide some assurance that customers will pay for energy subsequently used.

30. TURN's proposal to waive deposits could force the utilities to serve customers who may be unable to pay their bills.

31. TURN's proposal to temporarily subject utility uncollectibles associated with residential customer accounts to two-way balancing account treatment as a means of funding its other proposals, and reducing the incentive for utilities to shut off service to minimize uncollectible amounts, would put off cost recovery to future rates.

32. In Resolution E-4251, issued September 10, 2009, the Commission authorized the transfer of $3 million in ratepayer funds to SCG's GAF program and $1.3 million to SDG&E's NTN program.

Conclusions of Law

1. In D.08-11-031, the Commission approved LIEE program budgets for PG&E, SDG&E, SCE and SCG totaling $1 billion for 2009-2011 and CARE

budgets totaling $2.6 billion for 2009-2011. The Commission also: (1) directed IOUs to increase outreach to LIEE customers who are high energy users, have high energy burden, have high energy insecurity, or are disabled; (2) set a 90% CARE penetration goal for the 2009-2011 period; and required the utilities to provide weatherization and related energy services to 1,052,651 households under the LIEE program over the 2009-2011 period.

2. Based on the record in this proceeding, existing low-income programs are sufficient at this time and further investigation is not needed.

3. Petition 09-06-022 should be denied.

ORDER

IT IS ORDERED that:

1. Petition 09-06-022 is denied.
2. Petition 09-06-022 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.