

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission’s Own Motion to Consider Revising Energy Utility Tariff Rules Related to Deposits and Adjusting Bills as They Affect Small Business Customers.

Rulemaking _____

**ORDER INSTITUTING RULEMAKING
TO CONSIDER REVISING ENERGY UTILITY TARIFF RULES
RELATED TO DEPOSITS AND ADJUSTING BILLS
AS THEY AFFECT SMALL BUSINESS CUSTOMERS**

1. Summary

This Order Instituting Rulemaking (OIR or rulemaking) is opened to determine whether any revisions and/or updates are necessary to utility tariff rules governing adjustments of customer bills due to meter and/or billing errors and whether utility deposit rules need to be revised. The revisions are strictly limited to considering whether to treat small business customers, as defined in Government Code Section 14837 under the definition of “micro-business,”¹ the same as residential customers for specific billing and deposit purposes. The economic crisis in California and recent increases in utility required deposits has

¹ A “micro-business” is a small business that, together with affiliates, has average annual gross receipts of two million seven hundred and fifty thousand dollars (\$2,750,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

led us to reexamine utility tariff rules and practices as it pertains to billing and deposits.

Our objectives in issuing this OIR are to ensure that the policies set forth in existing utility tariff rules are adequate, to consider whether adjustments to the tariff rules are needed to ensure fairness, and whether the existing tariff rules give utilities the right signals to reduce billing and metering errors. As stated above, however, these objectives are narrowly focused to consider treating specified small businesses the same as residential customers for purposes of billing adjustments and deposits. Any rules adopted in this rulemaking will apply to all investor-owned energy utilities operating under the jurisdiction of the Commission.

2. Background

Each of the investor-owned energy utilities have Commission approved tariff rules on how to deal with errors on customer bills as it relates to both electric and natural gas service. There are essentially two types of errors, a billing error and a meter error. A billing error is an error by the utility which results in incorrect billing charges to the customer. Billing errors may include incorrect meter reads or clerical errors by a utility representative such as applying the wrong rate, wrong billing factor, or an incorrect calculation. Billing errors also include failure to deliver a bill, actual or estimated, in a timely manner. A meter error is incorrect kilowatt hour, kilovar hour, or demand

registration resulting from a malfunctioning or defective meter. In both cases the error is at the utility side and not the consumer's side.²

Currently, the energy utilities each have Commission approved tariff rules that specify how to charge or provide a refund to a customer once an error is discovered. These tariff rules are essentially the same for each of the California energy utilities.³ The time period that bills can be adjusted differs for residential and non-residential customers under the rules. We summarize how the rules apply for the different types of errors below.

2.1. Meter Errors

Where a meter test finds that a customer's meter is not registering correctly or is not registering at all, the utility may adjust the customer's bill. If the error caused the customer to be undercharged, an adjusted bill is issued. A refund or credit to the customer is issued if the error results in an overcharge. The credit is computed back to the date that the utility determines the meter error commenced, except that the period of adjustment may not exceed three years. Adjusted bills are computed as follows, depending on the type of meter error:

² There are separate rules for unauthorized use, or an error in registration caused by meter tampering by an unauthorized person.

³ See PG&E Electric and Gas Rule 17, 17.1; SCE Rule 17; SoCalGas Rule 14, 16; SDG&E Electric and Gas Rules 17, 18; PacifiCorp Rule 9, 17; Sierra Pacific Power Company Rule 18; Southwest Gas Rule 17; Mountain Utilities Rule 18; Golden State Water Company (Bear Valley Electric) Rule 17; West Coast Gas Company Rule 17, 17.1; Alpine Natural Gas Operating Company Rule 18.

2.1.1. Fast Meter

If a meter is found to be registering fast, the utility will refund to the customer the amount of the overcharge based on corrected meter readings or the utility's estimate of the energy usage either for the known period of meter error or, if the period of error is not known, for the period during which the meter was in use, not to exceed six months.

2.1.2. Slow Meter

If a meter is found to be registering slow, the utility may bill the customer for the amount of the undercharge based on corrected meter readings or the utility's estimate of the energy usage either for the known period of meter error or, if the period of meter error is not known for the period the meter was in use, not exceeding three months in the case of a residential service, and three years for all other service.

2.1.3. Non-registering Meters

If a meter is found to be non-registering, the utility may bill the customer for the utility's estimate of the utility service used but not registered, not exceeding three months in the case of residential service, and three years for all other service.

2.2. Billing Errors

Where the utility overcharges or undercharges a customer as the result of a billing error, the utility may render an adjusted bill for the amount of the undercharge, and must issue a refund or credit to the customer for the amount of the overcharge for the period of the billing error, but not exceeding three years in the case of an overcharge, and, in the case of an undercharge, not exceeding three months for residential service, and three years for all other service.

2.3. Deposits

When a customer opens a new account for service, they must establish credit with the utility. For non-residential accounts, the amount of the deposit

required may be twice the maximum monthly bill as estimated by the utility. If the customer must reestablish credit, the same amount of deposit is required.⁴

The Commission recently opened R.10-02-005 addressing residential service disconnections. R.10-02-005 proposed the following rule:

Once a customer has established credit as a customer of that utility, the utility must not require that customer to pay additional reestablishment of credit deposits with the utility for either slow-payment/no-payment of bills or following a disconnection.

2.4. Business & Community Outreach

The Commission's Business & Community Outreach group, which has dedicated staff to work with small businesses, has been receiving an increasing number of calls about billing/metering errors. These small businesses are being charged for errors made by the utility and not discovered for at least three years. The Business & Community Outreach staff state that in some cases the small business may be forced to shut down and/or claim bankruptcy due to the high amount of back-billing by the utility. The calls to the Commission are seeking a remedy to avoid foreclosures. These small businesses are the backbone of our economy and especially in these tough economic times are trying their best to stay afloat. As President Obama recently said, "The true engine of job creation will always be small businesses. What government can do is fuel that engine: by giving entrepreneurs and companies the support to open their doors, expand, and hire more workers."⁵

⁴Tariff Rule 7 addresses deposit requirements for each energy utility.

⁵ ForConstructionPros.com; February 8, 2010.

2.5. Summary

In summary, the utility is able to go back three years in order to recover undercharges from any non-residential customer even if that customer has been paying its utility bill on time and due to an error on the utility's billing and/or metering system is now responsible for an additional, sometimes significant, charge. If these new charges result in late or non-payment of the new bill by the customer, they may be subject to additional deposit requirements that may be especially problematic for a small business customer. Consequently, this OIR is initiated to consider treating specified small businesses the same as residential customers for purposes of billing adjustments and deposits.

3. Preliminary Scoping Memo

As required by Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules), this Order includes a Preliminary Scoping Memo. In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

Currently, the Commission approved utility tariff rules are such that all businesses – small or large - categorized as non-residential (i.e. commercial or industrial) and treated the same. The primary question in this OIR is to consider whether it is good and fair policy to treat a “micro-business” that, together with affiliates, has average annual gross receipts of two million seven hundred and fifty thousand dollars (\$2,750,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees the same as residential customers only in terms of back-billing and deposit requirements. Adding a definition of micro-business to each utility tariff rule 1 (Definitions) would set the groundwork for treating micro-businesses the same as residential customers in tariffs regarding billing adjustments and deposits.

Treating small businesses similarly to residential customers is not without precedent. The Commission in some prior telecommunication cases has concluded that small businesses should be treated similarly to residential customers. In fact in D.04-05-057, the Commission found that the consumer protection rules applicable to individuals (i.e., residential customers) should also apply to small businesses. The Commission found that “[i]t is also true that there are many small business customers who suffer the same problems as residential customers: slamming, cramming, the difficult process of gathering sufficient information to make informed service choices, billing problems, and so forth.”⁶

Because the Commission views the length of time a utility may back-bill a customer to be a consumer protection measure, we begin this OIR from the premise that these micro-businesses should be treated the same as a residential customer for billing purposes and that utilities should only be able to back-bill micro-business customers for three months rather than three years.

The Business & Community Outreach staff indicate that many of these businesses are barely able to make ends meet and often are too small to be able to afford three years of back-billing. In their communications with customers staff have also noted that there is a discrepancy between treatment of an overcharge for a billing error versus a metering error. If the utility determines it is overcharging a residential or commercial customer for a billing error, it provides a refund of up to three years of bills, but if it is overcharging as the result of a metering error, the residential or commercial customer gets a refund

⁶ 2004 Cal. PUC LEXIS 240, 35 (Cal. PUC 2004).

of only six months. This discrepancy along with the treatment of micro-businesses is something that we need to reconsider in this economic climate. Consequently, this OIR will allow time for a workshop to better understand the rationale behind six months of refunds and three years of back-billing.

In this proceeding, we will consider revisions to utility tariff rules 1 and 7 and the relevant billing adjustment rules as set forth in footnote 3. Because utilities have different numbering systems for their tariff rules, and slightly different language for each tariff rule, we do not provide sample language for proposed revisions. We envision the changes to simply be to add the definition of micro-business to each utility's rule 1 definitions, and at each location in the specified tariff rules where the treatment of residential and non-residential customers is different, to treat micro-businesses the same as residential customers. The respondents to this OIR are all California jurisdictional energy utilities. All respondents are directed and other interested parties are invited to comment on the proposal to treat micro-business customer the same as residential customers for purposes of billing adjustments and deposit requirements. We urge DRA to file and serve comments and to participate fully in this proceeding to ensure that ratepayers are represented.

4. Preliminary Categorization of the Proceeding

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is "quasi-legislative," as defined in Rule 1.3(d). We anticipate that the issues in this proceeding may be resolved through a combination of workshops and formal comments, and that evidentiary hearings will not be necessary.

Any person who objects to the preliminary categorization of this rulemaking as “quasi-legislative” or to the preliminary hearing determination, shall state the objections in their opening comments to this rulemaking. If the person believes hearings are necessary, the comments should state: (a) the specific disputed fact for which hearing is sought; (b) justification for the hearing (e.g., why the fact is material); (c) what the moving party would seek to demonstrate through a hearing; and (d) anything else necessary for the purpose of making an informed ruling on the motion. After considering any comments on the preliminary scoping memo, the assigned Commissioner may issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 7.6(a).

5. Schedule

We ask parties to comment on the proposed changes to utility tariff rules described in the Preliminary Scoping Memo and to suggest other changes to utility tariff rules relating to small businesses that we should adopt.

Opening comments and comments pursuant to Section 3 above are due June 7, 2010 and reply comments are due June 21, 2010. The assigned Commissioner will issue a Scoping Memo with a more detailed schedule upon receipt of the opening and reply comments. The tentative schedule which is subject to change by the assigned Commissioner or the assigned Administrative Law Judge (ALJ) after review of the comments is set forth below:

June 7, 2010	Opening Comments on the OIR
June 21, 2010	Reply Comments
July 6, 2010	Small Business Group Workshop
September 28, 2010	Proposed Decision mailed for comment
October 28, 2010	Final Commission Decision issued

The timetable for this proceeding will depend on the input we receive from the parties. It is our goal to issue a final Commission decision in this proceeding within one year of issuing this OIR, but consistent with Pub. Util. Code § 1701.5, we anticipate this proceeding to be concluded within 18 months of the issuance of the Scoping Memo.

6. Becoming a Party; Joining and Using the Service List, and Subscription Service

Alpine Natural Gas Operating Company, Golden State Water Company, Mountain Utilities, PacifiCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company, Southern California Gas Company, Southwest Gas Company, and West Coast Gas Company are made respondents to this rulemaking. Within 20 days of the effective date of this OIR, each respondent shall inform the Commission's Process Office of the contact information for a single representative for party status, although other representatives and persons affiliated with the respondents may be placed on the Information Only service list.

We will provide for service of this order on the respondents and on the individuals in Attachment A, a list of associations and chambers of commerce that the Commission's Business & Community Outreach group has worked with to communicate information to the small business community. Such service does

not confer party status in this proceeding upon any person or entity, and does not result in that person or entity being placed on the service list for this proceeding. If you want to participate in the rulemaking or simply to monitor it, follow the procedures set forth below. To ensure you receive all documents, send your request within 20 days after the OIR is published. The Commission's Process Office will publish the official service list at the Commission's website (www.cpuc.ca.gov), and will update the list as necessary.

6.1. During the First 20 days

Within 20 days of the publication of this rulemaking, any person may ask to be added to the official service list. Send your request to the Process Office. You may use e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). Include the following information:

- Docket Number of this rulemaking;
- Name (and party represented, if applicable);
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party, State Service, or Information Only).⁷

⁷ If you want to file comments or otherwise actively participate, choose "Party" status. If you do not want to actively participate but want to follow events and filings as they occur, choose "State Service" status if you are an employee of the State of California; otherwise, choose "Information Only" status.

If the rulemaking names you as respondent, you are already a party, but you or your representative must still provide this information to be added to the official service list.

6.2. After the First 20 Days

If you want to become a party after the first 20 days, you may do so by filing and serving timely comments in the rulemaking (Rule 1.4(a)(2)), or by making an oral motion (Rule 1.4(a)(3)), or by filing a motion (Rule 1.4(a)(4)). If you make an oral motion or file a motion, you must also comply with Rule 1.4(b). These rules are in the Commission's Rules of Practice and Procedure, which you can read at the Commission's website. If you want to be added to the official service list as a non-party (that is, as State Service or Information Only), follow the instructions in Section 6.1 above.

6.3. Updating Information

Once you are on the official service list, you must ensure that the information you have provided is up-to-date. To change your postal address, telephone number, e-mail address, or the name of your representative, send the change to the Process Office by letter or e-mail, and send a copy to everyone on the official service list.

6.4. Serving and Filing Documents

When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office. If you use e-mail service, you must serve by e-mail any person (whether Party, State Service, or Information Only) on the official service list who has provided an e-mail address.

The Commission encourages electronic filing and e-mail service in this rulemaking. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5 p.m. on the date that service is scheduled to occur.

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

6.5. Subscription Service

This proceeding can also be monitored by subscribing in order to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

7. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

8. Intervenor Compensation

Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor

compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure within 30 days of the mailing of this Rulemaking.

9. *Ex Parte* Communications

In accordance with Rule 8.2, *ex parte* communications⁸ in this proceeding are allowed without restriction or reporting requirement.

Findings of Fact

1. The Commission's Business & Community Outreach staff reports an increasing number of small businesses are reporting that energy utilities are adjusting their bills after discovery of metering or billing errors made by the utilities which is resulting in economic hardship.

2. Small businesses are expected to drive job growth and economic turnaround.

Conclusion of Law

The Commission should initiate a new rulemaking to consider treating micro-businesses and residential customers the same for purposes of energy utility tariffs related to deposits and adjusting bills.

⁸ An *ex parte* communication is defined in Rule 8.1(c) as:

... a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

- (1) concerns any substantive issue in a formal proceeding, including categorization of a proceeding, or assignment or reassignment of a proceeding to an Administrative Law Judge,
- (2) takes place between an interested person and a decisionmaker, and
- (3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking on the Commission’s own motion is instituted to determine whether any revisions and/or updates are necessary to utility tariff rules governing adjustments of customer bills due to meter and/or billing errors and whether utility deposit rules need to be revised for micro-business customers.

2. Alpine Natural Gas Operating Company, Golden State Water Company, Mountain Utilities, PacifiCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company, Southern California Gas Company, Southwest Gas Company, and West Coast Gas Company are made respondents to this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents and on the associations and chambers of commerce in Attachment A.

4. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission’s Process Office, 505 Van Ness Avenue, San Francisco, California 94102, or electronically to process_office@cpuc.ca.gov, asking that his or her name be placed on the service list for this rulemaking.

5. The category of this rulemaking is preliminarily determined to be “quasi-legislative.” Any persons objecting to the preliminary categorization of this rulemaking as “quasi-legislative” or to the preliminary determination that evidentiary hearings are not necessary shall state their objections in their

opening comments on this rulemaking as more fully set forth in Sections 4 and 5 above.

6. Opening comments on the matters set forth in Sections 3 and 4 must be filed by June 7, 2010 and reply comments by June 21, 2010.

7. The Commission's Business & Community Outreach branch will hold a workshop to discuss the revisions to the rules on July 6, 2010, unless a different date is specified in a ruling of the assigned Administrative Law Judge. The Workshop Notice will be issued at least 10 days prior to the date the workshop is held.

8. The assigned Administrative Law Judge shall conduct proceedings in this rulemaking to effect the Commission's policy and direction as set forth herein; in that capacity the assigned Administrative Law Judge, in consultation with the assigned Commissioner, may make any adjustments to the schedule and service list for this proceeding.

9. Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, with 30 days of the mailing of this Rulemaking.

This order is effective today.

Dated _____, at San Francisco, California.

[Bohn Attachment A](#)