Decision **DRAFT DECISION OF ALJ WEISSMAN (Mailed 1/17/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing post-2003 Low-Income Assistance Programs.	Rulemaking 04-01-006 (Filed January 8, 2004)
Application of Pacific Gas and Electric Company (U 39 M) For Approval of the 2006 and 2006 California Alternative Rates for Energy and Low Income Energy Efficiency Programs and Budget.	Application 05-06-005 (Filed June 1, 2005)
Southern California Edison Company's (U 388-E) Application Regarding Low Income Assistance Programs for Program Years 2006 and 2007.	Application 05-06-009 (Filed June 1, 2005)
Application of Southern California Gas Company (U 904 G) for Approval of Low Income Assistance Programs and Budgets for Program Years 2006 and 2006.	Application 05-06-012 (Filed June 1, 2005)
Application of San Diego Gas & Electric Company (U 902 M) for Approval of Low Income Assistance Programs and Budgets for Program Years 2006 and 2006.	Application 05-06-013 (Filed June 1, 2005)

OPINION DENYING THE PETITION OF THE SOUTHERN CALIFORNIA EDISON COMPANY FOR MODIFICATION OF D.05-10-044

I. Summary

On October 27, 2005, the Commission issued Decision (D.) 05-10-044, in response to concerns about the impact on low-income customers of the anticipated high natural gas prices during the winter of 2005-2006. Among many other things, in that decision, the Commission directed the energy utilities not to disconnect residential customers for failure to pay their full utility bills during the 2005-2006 winter months, as long as they pay at least 50% of the amount due, and agree to comply with a levelized payment plan. In the alternative, the utility could offer a nine-month repayment plan for past due amounts related to this particular winter. On November 28, 2005, Southern California Edison Company (SCE) filed a petition for modification of D.05-10-044, asking that the Commission exempt SCE, an electric-only utility, from what it refers to as the "winter shut-off moratorium" or, in the alternative, restrict the shut-off moratorium to low-income customers, as opposed to all residential customers.

In this order, we deny the petition for modification. The fundamental request is one that SCE made in the pleadings that lead to D.05-10-044. As we stated in that decision, we are concerned about the ability of customers to pay their utility bills this winter. Since most of SCE's customers also use natural gas, and since natural gas is also a major cost component of electric rates, it is not appropriate to exempt SCE from the obligation to provide shut-off protection for its residential customers.

II. Procedural Background

The Commission issued D.05-10-044 on October 27, 2005. SCE filed its petition on November 28, 2005. The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) each filed responses on December 28, 2005.

III. Discussion

In seeking an exemption from providing shut-off protections, SCE argues that the adopted protections have the potential of doing more harm than good. SCE states that the increased cost of power purchased in November 2005 will not be reflected in the electric customers' bills until early 2006. As a result, the higher bills for electric customers will not occur in the November to January period, but likely in the February to July period. On this basis, SCE concludes that a winter shut-off moratorium will have little benefit for electric customers this winter.

Further, SCE argues that the effect of the shut-off moratorium on SCE's electric customers who fail to pay up to half of their charges this winter will be the opposite of what the Commission intended. The shut-off moratorium could encourage SCE's customers to "buy on credit" this winter, forcing them to pay off their winter balances over the hot summer months when their bills are the highest (and when they do not have the benefit of avoiding disconnection by making only minimum bill payments). In fact, as SCE sees it, most of its customers who take advantage of the shut-off moratorium could face a triple impact of: (1) potentially increased electric bills – beginning in February 2006 – as a result of high natural gas costs, (2) high summer electric bills; and (3) deferred winter bill amounts added to the already high summer electric bills.

SCE points out that under a levelized payment plan, a customer would pay more toward its electric bill during the winter months than the cost of its actual usage, and under a nine-month repayment plan the customer's electric bills

would be shifted to the summer months, exacerbating its already high summer bills. According to this argument, while the shut-off moratorium may relieve gas customers of the burden of higher gas bills this winter, it will only compound the problem of high electric bills for electric customers down the road. For SCE's customers in particular, this could create a very real danger of increased shut-offs during the hottest summer months when air conditioning is a necessity.

In its comments on the Draft Decision (DD), SCE requested that all electric utilities be exempted from the shut-off moratorium. The Commission denied this request, reasoning that "most of [SCE's] customers consume gas as well." (Decision, p. 26.) SCE argues that based on the Commission's reasoning, however, all utilities – gas, electric, telecommunications, water, etc. – should institute a shut-off moratorium this winter as these utilities' customers likely "consume gas as well." As SCE sees it, this proceeding was triggered by gas utility issues, and applying shut-off protections to electric utilities is not well founded.

Both TURN and ORA disagree. TURN argues that the shut-off moratorium is intended to afford residential customers, struggling to pay bills that are higher this winter than in years past, increased financial flexibility so that they may be able to continue to receive both gas and electric service. By allowing customers to avoid shut-off by paying at least 50% of their monthly gas and electric bills, some customers would be able to avoid the impossible choice between paying for housing, food or medical expenses, or keeping the lights and gas appliances on. We agree.

As TURN states, the shutoff protections adopted by D.05-10-044 are an essential part of the package of measures we embraced to "ensure that residential customers struggling to pay higher bills this winter are able to continue receiving

gas and electric service." (D.05-10-044, p. 27.) We took a multi-pronged approach to preventing a natural gas price-driven crisis this winter in D.05-10-044, including expanding eligibility for rate subsidies through the California Alternative Rate for Energy (CARE) program, helping more low-income consumers reduce their energy usage through modifications to the Low-Income Energy Efficiency program, and by providing increased credit and collections flexibility for residential consumers who lack sufficient disposable income to absorb the bill impacts of higher natural gas costs this winter. This latter group of measures includes winter shut-off protections for residential customers paying at least 50% of their monthly bills and adhering to reasonable repayment plans to cover associated arrears, expanding and improving the utilities' levelized payment plans and, also, for CARE customers, the waiving of reconnect fees and deposits. (*See* D.05-10-044, p. 3, Summary Points 7-9.)

ORA points out that in the decision, the Commission specifically addressed whether the shut-off protections should apply to SCE, an electric utility, and concluded that it should. (D.05-10-044, p. 27.) The critical question is whether SCE, in its petition, provides any new information or circumstance that would warrant modification of D.05-10-044. ORA concludes that the petition does not clear this threshold, and we agree.

At the center of SCE's current argument, as well as that made before D.05-10-044 was issued, is the fact that its electric customers face high bills in the summer, in contrast to the high bills realized by gas customers in the winter. SCE asserts that the winter shut-off moratorium program, by allowing 50% of winter bills to be paid off over time during subsequent months, including the summer months, would exacerbate the normally higher electric summer bills. In

support of its petition, SCE offers numerical tables illustrating various scenarios of an average residential customer affected by the shut-off moratorium.

Although these tables, and SCE's additional explanation of the issues justifying exemption from the shut-off protections provide a better understanding of its concerns, they merely illustrate the company's prior argument that gas utility bills are high in winter, whereas electric bills are higher in summer.[1] We understood this argument in issuing D.05-10-044. In fact, we specifically acknowledged this argument when rejecting SCE's earlier request to be exempt from the shut-off protections. (D.05-10-044, p. 27.) We reasoned that for the most part, an electric utility customer is also a gas utility customer, and as such the electric customer will benefit by the program during this coming winter. This conclusion is not altered by any of the argument or tables in SCE's petition. Therefore, because it does not set forth new information or circumstances supporting any change in the Commission's conclusions in D.05-10-044 the petition should be denied.

SCE questions our rationale by arguing that we might as well protect telecommunications and water customers from shut-offs, since most of those customers also use natural gas. This argument ignores the obvious trade-offs between gas and electric service (such as turning to electric space heaters or hot

[1] We note that SCE is not without means to mitigate this potential problem. First, SCE could make sure that defaulting customers are aware of the consequences of failing to make a full and timely payment. If customers are well informed of the possibility that a failure to pay the full bill in February may lead to a dramatically higher bill in March, they may strive harder to find a way to pay all that is due in February. Second, SCE need not force defaulting customers onto a levelized payment plan. Instead, SCE could offer to mitigate the bill impacts by using the nine-month repayment option.

plates when gas prices are too high) that do not apply to other utility services. Further, it fails to consider the challenges that many residential customers will face in managing their overall energy budgets in a time of exceptionally high costs.

SCE further argues that if it must continue to provide the winter shut-off protections, the Commission should limit them to the most vulnerable customers – low-income customers. SCE points out that the proceeding was initially focused on the impacts of high gas prices on low-income customers, not the greater body of residential ratepayers. TURN responds that in adopting these protective measures, the Commission rightfully recognized that many residential customers, not only the poorest customers who are eligible for CARE, will need assistance in managing winter utility bills as a result of the direct and indirect impacts of exceptionally high natural gas prices.

At the heart of D.05-10-044 was the Commission's consideration of how best to help cash-strapped consumers retain gas and electric utility services this winter. At the Full Panel Hearing on October 6, 2005, we learned about the large gap between the income levels within the limits of CARE eligibility and the average cost of supporting a family with the bare essentials. Even with the expanded CARE eligibility approved in D.05-10-044, a very large number of customers that do not qualify for CARE will have insufficient income to support their families.

Exceptionally high natural gas prices create extraordinary costs for these customers in meeting basic needs during the winter. Whether due to the direct and immediate natural gas price impacts on natural gas bills, or gas bills coupled with higher electric bills once fuel price increases are accounted for in electricity rates, families with limited disposable income will be at increased risk of simply

not being able to make ends meet. When that happens, these consumers could be forced to do without one or more essential services. And because many residential customers – many of whom are ineligible for CARE -- already live with insufficient income to meet basic monthly expenses before the impact of heightened natural gas prices, a large number of California families are at risk this winter. (*See i.e.,* D.05-10-044, pp. 6-8.)

Finally, SCE argues that it was not provided an opportunity to inform the Commission of the impacts on electric customers of the expansion of the shut-off protections due to the expedited nature of this proceeding and what it characterizes as the Commission's last-minute changes to the decision. SCE refers to a change to the DD made in response to comments, clarifying that the shut-off protections would apply to all residential customers, not just low-income customers. However, as TURN points out, this clarification did not reflect a last-minute change, and SCE had sufficient opportunity to participate in the debate that led to this portion of the decision.

TURN, joined by Utility Consumers' Action Network, Greenlining Institute, Latino Issues Forum, and Disability Rights Advocates, had brought the issue of shut-off protections to the Commission's attention, proposing that the Commission "[d]eclare a moratorium on energy utility service cut-offs for delinquent bills where the customer is making at least partial payments in excess of 50% of the amount billed each month." (Comments of TURN, et. al. Presenting Proposals for Reducing Bill Impacts Associated with High Natural Gas Prices this Winter, Sept. 28, 2005, p. 3). In response to the more limited proposal of Southern California Gas Company and San Diego Gas & Electric Company to enact a shut-off moratorium for CARE, Family Electric Rate Assistance and medical baseline customers who make a minimum payment

equal to the amount owed for the same period last year, TURN reiterated its request that the Commission direct all jurisdictional utilities to institute a shut-off moratorium for all residential customers paying at least 50% of their bills. (*See* Comments of TURN on the Proposals to Mitigate Bill Impacts From Natural Gas Price Spikes This Winter, Oct. 17, 2005, pp. 3-4.)

The DD adopted this recommendation. It determined that:

> "the utilities shall not shut off service during the winter months to customers that continue to make minimum bill payments. As proposed by The Utility Reform Network, Utility Consumers' Action Network, Greenling Institute, Latino Issues Forum, and Disability Rights Advocates, utilities shall retain service, at a minimum, to those customers paying at least 50% of their bills. (DD, p. 27.)"

Similarly, the DD concluded, "The utilities should not shut off service, during the coming winter months, to customers that continue to pay at least 50% of their bills." (DD, Conclusion of Law 13.) To implement this policy, the DD ordered as follows:

> The utilities shall not shut off service during the winter months to customers that continue to make minimum bill payments. CARE customers shall not be disconnected if they agree to, and comply with, a plan to repay all past-due amounts within 12 months. In addition, utilities waive reconnection fees and deposits for CARE customers during the winter months. (DD, Ordering Paragraph 16.)

The only ambiguity on this point in the DD came as a result of language in the Summary, which stated, "The utilities are prohibited from shutting off service this winter to low-income customers that make regular payments of at least 50% of their bills." (DD, p. 3, Summary Point 8.) TURN asked that the DD be modified to eliminate the confusion created by this sentence. (*See* TURN

Comments on the DD, Oct. 26, 2005, p. 3.) The Commission agreed, and D.05-10-044 contains such clarifying edits.

We emphasize that SCE has a critical role to play in the success of this effort. The winter initiative should not lead to a dramatic change in the number of customers that are or are not shut off for failure to pay. It does not appear that SCE or any other utility consistently terminates service to each and every customer that fails to pay all of its bill in a given month. The utilities' monthly reports in response to D.05-10-044 support this observation. Our intent is to ensure that the utilities will work with each customer to facilitate and encourage payment, and that rather than simply shutting off service to a customer that pays at least half of its bill in a given month, the customer will be able to continue service by agreeing to a repayment plan. If the customer will not agree to a repayment plan then, and only then, can the utilities begin the normal process for bill collection and service termination. It may well be that a levelized payment plan is not the best option for an electric customer that faces a summer peak. The best option would be for the customer to pay each bill as it comes due. Where that option fails, it may make more sense to arrange for a nine-month repayment rather than a year-long levelized bill. We rely on the good judgment of customers as well as a good faith effort by utilities to inform their customers fully and to provide the most helpful repayment approach.

For all of these reasons, SCE has failed to carry its burden of demonstrating a need to modify D.05-10-044. Accordingly, we will deny the petition.

IV. Assignment of Proceeding

Dian Grueneich is the Assigned Commissioner and Steven Weissman is the assigned Adminitrative Law Judge (ALJ) in this proceeding.

V. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Finding of Fact

SCE has not demonstrated a compelling reason to modify D.05-10-044.

Conclusion of Law

SCE's Petition for Modification of D.05-10-044 should be denied.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Petition for Modification of Decision 05-10-044, dated November 28, 2005, is denied.
2. Proceedings Application (A.) 05-06-005, A.05-06-009, A.05-06-012 and A.05-06-013 are closed.

This order is effective today.

Dated _____, at San Francisco, California.