

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK
ON THE ORDER INSTITUTING RULEMAKING TO INVESTIGATE AND
DESIGN CLEAN ENERGY FINANCING OPTIONS FOR ELECTRICITY AND
NATURAL GAS CUSTOMERS**

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In accordance with Rule 6.2 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), The Utility Reform Network (“TURN”) hereby submits these comments in response to the September 4, 2020 Order Instituting Rulemaking to Investigate and Design Clean Energy Financing Options for Electricity and Natural Gas Customers (“OIR”) in the above-captioned proceeding.

I. INTRODUCTION

The OIR seeks comments from parties on how best to target and scope the proceeding to result in maximum benefits to customers.¹ The Commission appropriately recognizes that consumer protection will be a key question in considering financing mechanisms that will encourage customer investments in clean energy.² As the OIR notes, customers should be “informed about the obligations they may be taking on by financing one or more energy improvements,” and the Commission needs to “ensure that opting in to one or more financing mechanisms does not significantly increase the risk of disconnection from service for non-payment of utility bills.”³

TURN commends the Commission’s proactive approach in addressing customers’ diverse needs, barriers to accessing financing options, and the risks associated with taking on financing obligations to invest in clean energy. Consumer protection and equity considerations have been an important element in the development of some Commission-

¹ OIR at 34.

² OIR at 32.

³ OIR at 32.

sponsored consumer energy programs.⁴ But addressing consumer protection in this rulemaking will be particularly critical if the objective is to scale financing options to a broader set of customers. While California has made strides with the passage of stronger consumer financing protection laws in recent years,⁵ there are still unique concerns to consider for consumer protections related to clean energy investments.

Given the equity concerns of different customer segments, TURN recommends addressing consumer protection as a threshold matter prior to evaluating potential financing mechanisms. This would include determining the diverse needs of various customer segments, evaluating whether certain customers, especially low-income customers, are appropriate for different financing products, and potentially creating a comprehensive set of consumer protection measures and standards that could apply to the approved financing programs. TURN provides a list of issues to consider in this first “phase” or “track” in this proceeding. TURN also recommends a list of issues to address in the Commission’s subsequent evaluation of different financing mechanisms. Finally, TURN proposes a revised procedural schedule to address consumer protection as a threshold matter through workshops, comments, and a staff whitepaper, as well as procedural steps for addressing issues beyond consumer protection.

⁴ See Decision (“D”) 16-01-044, adopting a minimum 10-year warranty and safety requirements for solar equipment under the net energy metering successor tariff; and D.18-09-044, requiring consumer information packets for customers taking service under the net energy metering successor tariff.

⁵ Assembly Bill (“AB”) 1070 (2017) requiring disclosure documents for solar customers; and AB 1864 (2020) aimed at strengthening consumer protections from unlawful, unfair, deceptive, or abusive acts or practices with respect to consumer financial products or services.

II. CONSUMER PROTECTION AS A THRESHOLD MATTER

The Commission emphasized the diversity of needs across customer segments, such as access to capital, creditworthiness, funding for rehabilitation, awareness of and exposure to new energy technologies, and the potential to underserve certain communities.⁶ TURN appreciates the Commission’s acknowledgment that customers have different capacities, tolerances, and needs when it comes to financial undertakings. With regard to energy financing, inadequate consumer protections can result in undesirable to severe consequences for the customer, ranging from service disconnections to impacts on credit and loss of home.

Additionally, from a practical perspective, addressing consumer protection as a preliminary matter will enable strategic participation and a more efficient process as some special interest stakeholders may have an interest in either consumer protection, or energy resources and financing, but not both.

The following sections provide additional background for TURN’s recommendation to designate consumer protection as a threshold matter and proposes preliminary scoping issues for the Commission’s consideration.

A. Energy-Related Financing Mechanisms Pose Unique and Significant Risks to Customers

The Commission touches on some of the limitations of financing options currently available to low-income and other vulnerable customers. For example, the OIR notes that on-bill financing (“OBF”) can result in service disconnections for nonpayment.⁷ While the OIR seems to imply that the threat of disconnection would

⁶ OIR at 30-31.

⁷ OIR at 7.

incentivize customers to pay their OBF bill, the reality is that some customers will nonetheless be vulnerable to defaulting on payments and service disconnections. In other words, financing programs like OBF that seek to improve access to energy financing for a broader group of customers (*e.g.*, interest free loans, no minimum credit scores), will inevitably draw in customers vulnerable to financial risks of taking on the loan.

The consequences of losing essential services can include serious impacts on the health and safety of residential customers, especially for the economically and medically vulnerable.⁸ As the Commission acknowledged in D.20-06-003, “Customers’ access to electric and gas service is critical to economic and social stability and well-being.”⁹ Further, the Commission explained, “[C]ustomer disconnections are a public health issue, and impact people with physical disabilities, and with life-threatening medical conditions.”¹⁰ The National Consumer Law Center (“NCLC”) has recommended that the Commission “proceed extremely cautiously” when endorsing financing programs that threaten essential utility services for residential customers who do not have the financial cushion to bear the risk. In addressing consumer risks related to energy efficiency financing, NCLC has recommended consumer protection measures, including simplified, standard loan terms;¹¹ prioritizing partial payments to first cover utility charges and then the loan;¹² and pro-consumer dispute resolution processes.¹³

Moreover, programs such as the Property Assessed Clean Energy (“PACE”) have

⁸ See *Comments of the National Consumer Law Center on Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing* (R.09-11-014), February 22, 2012 (“NCLC Comments”), p. 14.

⁹ D.20-06-003, p. 2.

¹⁰ D.20-06-003, p. 11.

¹¹ NCLC Comments, pp. 7-9.

¹² NCLC Comments, pp. 13-16.

¹³ NCLC Comments, p. 4.

especially been of great concern to consumer advocates. The OIR noted that PACE financing has been associated with “anti-consumer business practices in California, particularly by contractors.”¹⁴ According to NCLC, recent trends have raised questions about the potential for scams and abuse targeted against older consumers, homeowners with limited English proficiency, and residents of communities already devastated by disinvestment, redlining, and unaffordable lending.¹⁵ Other standard PACE practices have also contributed to an increase in homeowners seeking legal and financial counseling. These practices include inadequate screenings for ability to pay, fraudulent marketing of loan products to uninformed customers, and insufficient assessments of actual customer savings.¹⁶ While some of these practices are not created by fraudulent third parties, they nonetheless show that even a well-developed financing program can have harmful impacts on consumers unless proactive measures are implemented. They also highlight how other demographics, such as age and race, can contribute to a customer’s vulnerability.

Finally, the Commission acknowledged the large number of households that qualify as low-income in California and financial situations for many may be worsening due to the COVID-19 pandemic.¹⁷ The Commission states that this calls for creative ways to support customers investing in energy projects that will improve their properties, save

¹⁴ OIR at 6.

¹⁵ See *Property Assessed Clean Energy (PACE) Loans: State and Local Consumer Protection Recommendations*, National Consumer Law Center (November 2019), available at: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-nov2019.pdf.

¹⁶ See *Residential PACE Loans: The Perils of Easy Money for Clean Energy Improvements*, National Consumer Law Center (September 2017), available at: https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf

¹⁷ OIR at 31; See also Resolution E-5072 (April 16, 2020), p. 12 fn. 30 (“The default rate has stayed low but could rise, particularly if there is an economic downturn,” referring to preliminary evaluation of REEL program.)

money, improve air quality, and provide for health and comfort in the long run. However, it also requires a preemptive approach to mitigate the risks to these vulnerable customers.

B. Addressing Consumer Protection is Necessary to Evaluate Whether a Financing Option Will Be Scalable

The ability to scale any financing option beyond financially sophisticated “early adopters” to a larger pool of customers will require understanding which customers will be appropriate participants. Customers have a diversity of needs, barriers and risks when it comes to financing.¹⁸ Thus, some customers will not be suitable for certain financing options. The unique risks associated with energy-related financing mechanisms should play a primary role in assessing whether the mechanism will be scalable. This requires a careful review of the potential risks and consumer protection concerns. Whether or not these risks and concerns can be mitigated or avoided will also inform the scalability of the financing program.

For example, if a financing program eliminates certain barriers to reach more customers (*e.g.*, no minimum credit score or down payment), it will be critical to evaluate which particular customer segments may experience more harm than benefits from the program. This evaluation can inform the Commission on which and how many customers could feasibly partake in the program. Likewise, financing mechanisms that are unable to ensure certain consumer protection measures would inform the Commission that those programs may not be able to scale to a broad set of customers.

C. Addressing Consumer Protection First Will Promote Procedural Efficiency.

Front-loading consumer protection issues early on in the proceeding also makes

¹⁸ OIR at 33.

sense from a logistical standpoint. This Rulemaking will likely bring participation of stakeholders with a specific interest in consumer protection issues. Conversely, some stakeholders may only desire to participate in the evaluation of financing mechanisms or consideration of which clean energy resources should be eligible for financing. Additionally, addressing consumer protection issues as a threshold matter will make it easier to assess the viability of the various financing mechanisms and can therefore promote efficiency.

D. Preliminary Scope for Consumer Protection Issues

TURN recommends that the Commission address consumer protection as a threshold matter before determining which financing mechanisms warrant adoption. To that end, the Commission should include the following issues within a first “phase” or “track” of this proceeding:

1. What are the key issues to resolve in consumer protection that the Commission must address?
2. Which customer segments are or are not appropriate participants for the different financing products? (*i.e.*, who will actually benefit or be harmed?)
 - a. Which financing products, if any, would be appropriate to offer to low-income utility customers?
 - b. Which financing mechanisms provide benefits to low-income utility customers without increasing their financial risk?
 - c. If financing mechanisms are not suitable for certain customer segments, what alternative programs can be offered to those customers to promote equitable access to clean energy resources? (*e.g.*, rebates, tariff-based approaches, third-party ownership models)
3. Should the Commission adopt a comprehensive set of consumer protection measures, standards or policy objectives that will apply to all approved financing mechanisms?

- a. If so, what measures, standards or policy objectives should the Commission adopt?
 - b. Should the consumer protections apply to residential customers only or also to small business customers?
 - c. To what extent can the Commission implement and enforce any consumer protection measures or standards?
4. What measurement and evaluation requirements should be put in place for consumer protection measures so that the Commission can adjust these measures in the future as needed?

III. EVALUATING FINANCING MECHANISMS

The Commission instituted this rulemaking to consider financing options that will assist customers with energy investments designed to decrease energy use, reduce greenhouse gas (“GHG”) emissions, and produce clean energy for the customer on-site.¹⁹ As the Commission noted, financing strategies will be increasingly important for the state’s climate protection goals in the energy sector, which will require involvement of all residential, commercial, industrial and agricultural sectors, at unprecedented levels.²⁰

As the OIR implies, not all financing mechanisms will be appropriate for implementation. Some financing mechanisms may increase risk to certain customer segments, particularly low-income customers. Thus, the feasibility of any financing program will depend on the potential impacts to the customer. The Commission will need to evaluate financing mechanisms, in part, by assessing whether the mechanism can result in benefits (*e.g.*, energy and utility bill savings) that outweigh the risks to the customer.

The Commission should also consider expanding upon the metrics provided in Resolution (“Res.”) E-4900 not only to assess the long-term viability of existing

¹⁹ OIR at 1.

²⁰ OIR at 2.

financing programs, but also in designing new programs. While the existing metrics will certainly be helpful, additional metrics are necessary to consider the most optimal financing mechanisms, such as post-enrollment data on default rates and other financial risks to the customer.²¹ In fact, Res. E-5072 noted that, although default rates were low for the Residential Energy Efficiency Loan (“REEL”) program, it recognized that the evaluation did not have enough historical data to assess the risk of defaulted loans and that these rates could rise, “particularly if there is an economic downturn.”²² Thus, it is imperative that metrics reviewing post-enrollment data are included.

Finally, because the OIR will be examining options for multiple sources of funding to support comprehensive investments, a thorough evaluation of the cost-effectiveness of energy investments should be conducted. Energy resources must have actual GHG reductions and bill savings for the customer to justify the costs and the source of funding. In Res. E-5072, the Commission concluded that the REEL pilot was not cost-effective due to heavy administrative and loan loss reserve costs and that changes in the marketplace show a declining trend in cost-effectiveness of energy efficiency programs.²³ Evaluating cost-effectiveness will also inform whether the financing program can eventually be self-supporting without the need for ratepayer funding support.²⁴

²¹ OIR at 15.

²² Res. E-5072 – Disposition of the Residential Energy Efficiency Assistance Loan Program (REEL) pursuant to Decision 17-03-026 (April 16, 2020), at 12, fn 30.

²³ Res. E-5072 at 13, 16.

²⁴ Res. E-5072 at 16 (citing to the evaluation study concluding that it would take years for REEL to be self-supporting even with innovations designed to help make it self-sufficient.)

A. Recommended Scope for Evaluating Financing Mechanisms

TURN recommends the Commission include the following issues related to the evaluation of financing mechanisms within the scope of this proceeding:

1. Which financing mechanisms offer the greatest potential to be financially and practically scalable to reach more consumers?
2. How can “holistic” financing be used to promote additional customer investment in clean energy resources in a manner that maximizes benefits and minimizes costs for consumers?
 - a. Are there specific clean energy resources that should be co-promoted by “holistic financing” programs?
 - b. Are there specific financing mechanisms that increase cost-effectiveness from the perspective of the customer deciding to invest in clean energy resources?
 - c. Are there financing mechanisms that can promote clean energy investments that benefit low-income customers without burdening them with any financial risk?
3. How can a suite of different energy resources eligible for financing impact cost-effectiveness of financing mechanisms from the perspective of ratepayers?
4. Are there cost-effective financing mechanisms that can replace existing ratepayer-funded incentives like rebates? For which customer segments and/or types of clean energy investments would this be appropriate?
5. To the extent that financing would complement rather than replace other forms of ratepayer subsidies, how should incremental benefits from financing be measured?
6. To the extent that financing would cover multiple types of clean energy investments with distinct funding sources and statutory or regulatory requirements, how should costs be allocated and recovered?
7. Should the Commission place any conditions on access to ratepayer-supported clean energy financing, such as requirements related to energy audits or “right sizing” energy equipment purchases, or participation in demand response programs, to promote intended ratepayer benefits?

8. After an initial period of using ratepayer funds to leverage private capital, can the financing mechanism eventually be self-supporting without ratepayer support?
9. Given the investments to date in the REEL program, should the Commission modify the REEL program to permit financing of other types of clean energy investments besides energy efficiency?
 - a. If so, how should the funding for REEL, which currently comes from the energy efficiency portfolio, be modified?
 - b. Should the expansion be “fast-tracked” on a pilot basis, ahead of the Commission’s more comprehensive determinations in this proceeding?
 - c. What other aspects of the REEL program would need to change if other customer clean energy investments were to be included?
10. What metrics will the Commission apply to determine if the adopted financing mechanisms are supporting achievement of the Commission’s climate, energy, and equity goals?

IV. SUGGESTED PRELIMINARY SCHEDULE

In light of the above recommendations, TURN suggests the following modifications to the preliminary schedule, which should not impact the Commission’s target to complete this proceeding within 24 months from the date of the OIR.

EVENT	DATE
Prehearing Conference	Fall 2020
Scoping Memo	Fall 2020
Preliminary workshop on consumer protection issues	Fall/Winter 2020
Post-workshop comments and replies	Winter 2020
Staff Whitepaper on Consumer Protection Measures and Standards	Winter 2021
Party comments and replies on Staff Whitepaper	Winter 2021

