BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Investigate and Design Clean Energy Financing Options for Electricity and Natural Gas Customers.	Order Instituting Rulemaking 20-08-022 (filed August 27, 2020) (issued September 4, 2020)

COMMENTS OF THE CALIFORNIA LOW-INCOME CONSUMER COALITION (CLICC) REGARDING THE ORDER INSTITUTING RULEMAKING 20-08-022

October 5, 2020

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I. Introduction

The California Low-Income Consumer Coalition ("CLICC") is thankful for the opportunity to comment on OIR 20-08-022 to investigate and design financing options to assist electricity and natural gas customers with investments in residential and commercial buildings and at industrial and agricultural sites designed to decrease energy use, reduce greenhouse gas emissions, and/or produce clean energy to support customers' on-site needs.

CLICC consists of fifteen nonprofit organizations that provide free legal services to indigent Californians across the state: Bet Tzedek Legal Services (Los Angeles), Centro Legal de la Raza (Oakland), the East Bay Community Law Center (Berkeley), Marin Legal Aid (Marin), Community Legal Services in East Palo Alto (Palo Alto), Elder Law & Advocacy (San Diego), the Justice & Diversity Center of the Bar Association of San Francisco (San Francisco), the Katherine & George Alexander Community Law Center at Santa Clara School of Law (Santa Clara), the Law Foundation of Silicon Valley (San Jose), Legal Aid Society of San Bernardino (San Bernardino), Public Counsel (Los Angeles), Public Law Center (Santa Ana), Riverside Legal Aid (Riverside), the Consumer Law Clinic at UC Irvine School of Law (Irvine), and the Watsonville Law Center (Watsonville).

CLICC's member organizations collectively assist thousands of Californians annually, most of whom have household incomes at or below 200 percent of the federal poverty line.

They include people of color, people with limited English proficiency, senior citizens, people with disabilities, and other low income individuals who may be tenants, fixed- and low-income homeowners, self-employed business owners (often called micro-entrepreneurs), employees of small businesses, or otherwise directly financially impacted by local commerce.

II. Comments

A. Incentivizing clean energy investments includes ensuring they are affordable and will benefit current community residents

CLICC and our members share the desire to meet California's climate protection goals, and to help utility consumers invest in energy projects that improve their physical environment (including homes, places of business, transit channels, and other physical infrastructure), save money on energy bills, improve air quality, and provide for health and comfort for generations to come. We also appreciate the Commission's concern for to the many thousands of California households who qualify as low-income, live in low-income communities with less access to public services, or are bearing the worst financial impacts since the onset of the COVID-19 pandemic. We urge the Commission to ensure that any new or newly supported financing mechanisms, including those involving governmental backing through taxing authority, loan guarantees, or interest rate buy-downs, must benefit, be affordable to, and not ultimately displace the homeowners, tenants, small business owners, and other residents of these communities.

In prior Commission proceedings, CLICC has advocated for the interests of utility customers who survive on razor thin financial margins for whom a large or simply unexpected increase in household expenses can be radically destabilizing often leading to devastating consequences, including foreclosure and utility shut-off. Such expenses can be the result of poorly underwritten loans that could never be affordably repaid within the consumer's means and financial condition at the time of financing. They can result from unfulfilled promises of reduced energy costs meant to offset the investment in green energy. They can result through fraud, gross misrepresentation, omission, and lack of language-appropriate materials used by salespeople, contractors, and financiers about the cost, quality, and performance of equipment installation, hook up, and government programs meant to induce green investments.

Unfortunately, CLICC members have numerous examples of harms arising through government supported financing and savings programs like the Property Assessed Clean Energy (PACE) loan program and solar net energy metering program, such as:

- A single, low-income African American woman who faced possible foreclosure of the Habitat for Humanity home that she lived in and was only one year from paying off. As the servicer of her mortgage and escrow, Habitat saw a huge spike in her tax assessment that she had no ability to pay given her unstable work history. Upon investigation, Habitat determined that the homeowner had been solicited door-to-door for solar panels and was led to believe that the energy improvements would be done at no cost to her. She had no paperwork, but apparently signed on an electronic tablet. The terms of the PACE loan included an initial principal balance of $24,000, an interest rate of 9%, and a term of 25 years, for a total cost of over $64,000. Fortunately, in this case, Habitat was able to refinance the loan at 0% interest over a term of ten years.
- An elderly homeowner whose primary language is Spanish and has limited English proficiency facing foreclosure after she agreed to financing solar panels based on the lies and misrepresentations of a door-to-door salesperson from Fidelity Home Energy. These included assurances that she would receive a $10,000 check from the IRS, her home value would increase, and her energy bills would be lowered. None of these were true. She was not eligible for the refundable federal tax credit because her income of only social security was too low to credit tax liability that could be offset. Instead of increasing the value of her home, the PACE lien that financed the work made it more difficult for potential buyers to obtain a loan to purchase the house. And finally, her monthly energy bill of $125 was replaced by a monthly tax bill of $450. Unable to pay the additional property tax, she has defaulted and is now facing foreclosure.

CLICC appreciates the amount of work that the Commission has done and continues to do to resolve and prevent problems like these by creating consumer protection measures and enforcement mechanisms and strengthening consumer complaint and restitution programs. Yet, these issues continue to arise so frequently that California's most populated county, Los

Angeles has ended its Property Assessed Clean Energy (PACE) loan program, concluding the County could not be certain the program can provide sufficient protection for all consumers. We have good reason to be concerned that expanded financing programs could deliver unintended and harmful consequences to large numbers of California residents, affecting their individual financial health and that of entire communities.

B. Each proposed financing mechanism must be designed to produce the best financial result for consumers and intended beneficiaries, including tenants.

Without stepping too deeply into the technical weeds of each financing option that will be explored in this proceeding, CLICC here lays out general concerns and dangers that we ask the Commission to investigate thoroughly and prevent through the adoption of safeguards.

1. Though real property is often the first and best form of security for a loan, we caution against allowing green energy investments secured property liens that could endanger the housing security of energy consumers, be they homeowners or tenants, commercial property owners or their tenant small businesses. Loans using property liens must be strictly underwritten and based on the borrower's ability to repay without reliance on potential savings, increased property value, or other future expectations.
2. Financing of any kind should not risk destroying the credit score or financial health of the borrower. Too often, we have seen lending programs targeted to people with low or no credit scores promising to establish, improve, or not impact their credit scores only to feature predatory interest rates that can upend the borrowers financial stability or ruin their credit history for years ahead.
3. Green loans should also be strictly underwritten based on current ability to repay. The lender's double impact motives of profit and reinvestment should never eclipse the benefit of such financing to borrowers.
4. PACE loan programs are still rife with complicated and far reaching problems. We recommend that this option not be considered for expanded use until known hazards are addressed.
5. On bill financing poses dangers to consumers' reliable use of their utilities. On bill financing should be strictly underwritten based on current ability to repay and consumers that use on-bill financing should be protected against disconnections due to inability to

repay the loan. At most, consumers that use on-bill financing options should be provided with the same arrears management and payment protections offered to all utility customers.

6. Utility providers that choose to offer on bill repayment options should have no ability to enforce collection through threat of disconnection. Consumers should be assured against even the appearance that the utility provider has collection authority whatsoever. Financiers that choose to work with utility providers to offer on bill repayment must use the same strict underwriting standard of ability to repay as previously mentioned.
7. If the Commission opts to allow utility providers to be involved with marketing finance options, qualification of contractors, and project inspection, they should obligate utility providers to enforce consumer protection measures at risk of a substantial monetary citation.
8. Tariff On-Bill (TOB) or Tariff-Based Recovery (TBR) mechanisms should be guided by a commitment to equitable investment, such as prioritizing communities with high energy needs, high disconnection rates, and least able to access financing. The PUC's May 2019 study, *An Empirical Analysis of Residential Utility Service Disconnections in California: An Energy Division Staff Report* ("Disconnection Study" or "The Study") identifies communities with the socioeconomic, demographic, and weather conditions that are most likely to face disconnections due to inability to pay. [1] We suggest that these communities are likely to be the most in need energy savings. (We look forward to learning more about these options and are specifically interested in understanding who has the authority to initiate such investments, the utility only or can property owners and tenants petition for them?)
9. Tax equity financing has caused displacement of low-income residents and small businesses in the past through gentrification. We urge the Commission to consider safeguards that ensure current community residents and business owners benefit from the projected increase in property assessment without being priced out of the neighborhood. California's prior large-scale tax increment financing program required a set aside of the

[1] Jenneille Hsu and Bruce Kaneshiro, Energy Division Public Utilities Commission, State of California, *An Empirical Analysis of Residential Utility Service Disconnections in California: An Energy Division Staff Report* (2019).

projected tax revenues be used for affordable housing. We suggest a similar set aside that will benefit existing low-income residents and entrepreneurs.

10. Loan loss reserve programs and interest-rate buydowns are used successfully by Community Development Financial Institutions and public agencies that underwrite for the success of the borrower. We urge that these be sponsored and managed by government or quasi-governmental non-profit institutions that have a public purpose and are accountable to both the public and borrowers rather than to the private finance institutions that will use them.

III. CONCLUSION

CLICC generally supports green investments, especially in low-income communities, and communities of color, including immigrants, who are often the worst impacted by pollution, high-energy costs, climate change, and right now, the health and financial consequences of the COVID-19 pandemic. We are committed to working within this proceeding to ensure that the financing options for such investments do not undermine the economic health of the communities who may need them the most.

Respectfully submitted,

October 5, 2020

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