BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
10/15/21
04:59 PM

Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service.	Rulemaking 18-07-006 (Filed July 12, 2018)

COMMENTS OF THE UTILITY REFORM NETWORK ON THE ASSIGNED COMMISSIONER'S FOURTH AMENDED SCOPING MEMO AND RULING

Ashley Salas, Staff Attorney
David Cheng, Staff Attorney
The Utility Reform Network
1620 5th Ave, Ste. 810
San Diego, CA 92101
(619) 398-3680 x103
dcheng@turn.org

Gabriela Sandoval, Director of Strategic Initiatives
Jennifer Dowdell, Energy Analyst
The Utility Reform Network
785 Market Street, Suite 1400
San Francisco, CA 94103
(415) 929-8876 (office)

October 15, 2021

TABLE OF CONTENTS

COMMENTS OF THE UTILITY REFORM NETWORK ON THE ASSIGNED COMMISSIONER'S FOURTH AMENDED SCOPING MEMO AND RULING

I. INTRODUCTION

Pursuant to the Assigned Commissioner's Fourth Amended Scoping Memo and Ruling ("Scoping Memo"), issued on September 15, 2021, The Utility Reform Network ("TURN") submits these comments on the scope for Phase 2 and Phase 3 of the instant proceeding.

II. PHASE 2

A. <u>Changes to Phase 2 Scoping</u>

With respect to determining whether non-discretionary expenses other than housing should be considered, the Scoping Memo finds that there is no "reason to disturb" the Commission's previous decision to exclude those expenses.[1] TURN believes that while ignoring state and federal income taxes may be a reasonable simplification when looking at affordability at the AR_{20} income level (where households likely will not owe taxes due to relatively low earned income levels), affordability concerns also need to be considered for households at the median income level (AR_{50}).

In fact, analysis and calculation of the Affordability Ratio at the AR_{50} are integral to the Commission's first annual Affordability Report findings, published in April 2021. The report included AR_{50} to draw conclusions about middle income households and affordability, and it provides detailed geographic calculations at AR_{50} as well as AR_{20} to aid affordability comparisons.[2] Ignoring all non-discretionary expense other than housing—and taxes in

---

[1] Scoping Memo, p. 4.

[2] *See* 2019 Annual Affordability Report, pp. 28, 37-39, 48.

particular—not only significantly misstates affordability for middle income families, but it also reduces the value of using affordability levels at AR_{50} as a basis for comparison to determine low-income affordability.

Households at AR_{50} represent middle income consumers of essential services; and while low-income customers (for which AR_{20} provides a good proxy) are "canaries in the coal mine" of affordability, should essential utility services become unaffordable to middle income California households, the forced tradeoff between supporting low-income customers through programs like the CARE subsidy and maintaining affordability for middle income customers would quickly undermine the Commission's goals of providing universal affordable access to essential services.

AR_{50} households, unlike low-income AR_{20} households, are very likely to have tax burdens that significantly impact the level of discretionary income available to afford essential utility services. Thus, excluding taxes negatively impacts the AR metric's accuracy and how well it reflects the actual affordability of essential utility services in household budgets of most Californians. This is especially true since the State of California has the highest state income taxes in the United States.[3] California state income tax brackets for single, head of household and joint filers range generally from 1% to 12.3% of taxable income.[4] Considering the median household income in California for 2020 of $77,358,[5] a single adult filing as head of household taking the standard federal deduction of $12,000 would have taxable income of roughly

[3] https://www.thebalance.com/state-income-tax-rates-3193320
[4] For income exceeding $1 million, a 1% additional mental health services tax is assessed bringing the California State marginal tax rate for incomes above $1 million to 13.3%.
[5] https://fred.stlouisfed.org/series/MEHOINUSCAA646N

$65,358.00[6] and owe about $1,600[7] in California State Income Taxes annually at current rates. This is an unavoidable non-discretionary cost of about $130.00 per month or the equivalent of paying a second electricity bill for roughly 550 kWh[8] every month. Such a regular expense would most certainly impact the level of essential services affordable for middle income households, and it could potentially result in an inaccurate estimate of $AR_{50.}$ It would also impact the validity of comparisons of AR_{20} to AR_{50} such as those used in the Annual Affordability Reports.

As shown above, precluding consideration of non-housing, non-discretionary expenses such as taxes will overlook significant household costs and thus, may grossly misstate the level of affordability for middle income households. TURN fears that this would be a disservice to the technical rigor and thoughtfulness that the Commission and Staff brought to the creation of the Affordability Methodology Framework. It would also be a disservice to the goal of ensuring affordability of essential services for middle income Californians.

B. <u>Phase 2 Scope</u>

1. How to coordinate ongoing data requests for information related to the affordability metrics

In D.20-07-032, the Commission found that, "it is necessary for Commission staff to collect data to support the creation of an annual affordability report mandated by this decision. Therefore, the annual data reporting requested by staff to support the annual reporting is reasonable and approved."[9] The Affordability Metrics Framework Staff Proposal acknowledges the need for data procurement, analysis and presentation as a crucial part of the adopted annual

---

[6] Calculation: $77,358-12,000=$65,358.00.
[7] Tax owed calculated as $668.36 plus 4% x ($65,358-$42,353)=$1588.56. Source: https://www.nerdwallet.com/article/taxes/california-state-tax
[8] Estimate based on $133 per month/24 cents per kWh =554 kWh
[9] D.20-07-032 at p. 83.

reporting and calls for "coordinating ongoing utility data requests" to facilitate "a regular and timely process" for the annual data reporting obligations imposed by D.20-07-032.

The data procurement process for communications utility services combines data requests that are unique to the affordability report metrics and methodologies with existing annual data reporting requirements issued by Communications Division, such as the Request for Broadband Deployment and Subscription Data.[10] The 2019 Annual Affordability Report uses data request responses regarding communications services from multiple sources to find that, "affordability challenges are widespread across the state of California" and that the application of the affordability metrics to communications services "show the digital divide is wide in specific areas of the state."[11] Therefore, these ongoing data requests and responses have implications for the Staff's work to further assess and identify affordability challenges for communications services in this proceeding, but also on-going work in other proceedings that are addressing public purpose programs for low-income consumers and affordable communications services. For example, the Commission recently set interim rate caps for incarcerated calling phone services and will continue to collect data to analyze affordability of these services.[12] The Commission is also reviewing the design and application of end user surcharges that support public purpose programs.[13] In addition to the Commission's on-going proceedings, the Legislature recently acknowledged the importance of ongoing rate and service data to address affordability concerns when it explicitly authorized the Commission to require internet service

[10] D.20-07-032, Appendix A Staff Proposal at p. 50
[11] 2019 Annual Affordability Report (April 2021) at p. 80.
[12] D.21-08-037 (R.20-10-002) (setting interim calling services rate relief for persons who are incarcerated).
[13] See generally, R.21-03-002.

providers (ISPs) to report the costs, eligibility, limitation, and enrollment, in the ISPs "free, low-cost, income-qualified, or affordable" service plans.[14]

To appropriately synthesize, analyze and apply this wide variety of data request responses, TURN encourages the Commission to coordinate the issuance of ongoing data requests related to the affordability metrics adopted in this proceeding with the following Commission proceedings that are also considering issues related to the affordability of communications services in other contexts:

- R.11-11-007 (A Fund)
- R.20-02-008 (LifeLine)
- R.20-08-021 (CASF)
- R.20-09-001 (Broadband OIR)
- R.20-10-002 (Incarcerated Persons Phone Service)
- R.21-03-002 (Surcharge)

As the Communications Division receives critical data from communications providers in response to issued data requests in these proceedings, TURN urges the Staff to combine its resources and pool individual expertise across dockets to synthesize and analyze the data responses to create a complete picture of how the data reflects the affordability of communications services throughout California. Communications Division Staff should use this work to develop a joint staff report with the analysis of the data responses, and the data responses themselves attached to the report. The report should be introduced into the record of each relevant proceeding to inform the Commission's decision making and to provide anonymized

[14] AB 14 (Aguiar-Curry) (Chapter 658, October 8, 2021) codified as Public Utilities Code sec. 884.2.

and aggregate data available to the stakeholders of the above proceedings to further the Commission's work.

III. PHASE 3

A. <u>Preliminary Phase 3 Scope</u>

1. What action, if any, should the Commission take to mitigate future increases in energy costs, rates and bills?

The Commission has taken a bold and groundbreaking step in developing a robust methodology to begin quantifying affordability levels in D.20-07-032. Having developed affordability metrics and a methodology, the Commission should not shrink from using the metrics widely to inform proceedings. While the Commission has noted the opportunity for future refinement in its metrics, their use will greatly inform what refinements are necessary as well as any limitations in their appropriateness. Waiting to use the metrics until the Commission is confident that they have been perfected will be less useful in understanding and improving them.

TURN has discussed repeatedly the regressive nature of financing policy mandates using customer utility bills. The cost of these policies falls disproportionately on customers who can least afford to fund them. The Commission should work with the California legislature to develop additional mechanism to fund the State's 2045 climate change goals and electrification targets. These could include general fund revenues from income and property taxes and public private funding partnerships. Financing fewer policy costs through utility rates will leave greater headroom in budgets to pay for increasing safety and reliability programs in the near-term and foster more funding sources for policy initiatives that can be used well into the future.

Finally, TURN's proposal to require utilities to provide an inflation constrained showing along with their primary GRC requests should be formally explored. TURN raised this in

PG&E's 2023 GRC Proceeding (A.21-06-021), and the Commission stated that TURN's suggested approach for inflation-constrained spending should be analyzed by the Commission and stakeholders.[15] Phase 3 of this proceeding would be the appropriate forum for the Commission and stakeholders to analyze this approach.

A bookended approach to utility GRC requests including both an inflation constrained "low case" and the utility's primary request, which has in recent years significantly exceeded inflation, helps to address "anchor bias" in regulatory outcomes. That is the tendency to start at the utility request as the point of reference for what revenues should be. Understanding what work would be performed under an inflation constraint, will help widen the range of outcomes. Specifically, TURN recognizes the importance of utility infrastructure and operational improvement and does not propose that IOU GRC requests or the resulting rate adjustments be limited by CPI inflation. However, requiring the utilities to explain what adjustments they would make to their plans based on a spending constraint such as CPI increases the transparency into what is truly needed and most urgent to maintain safety and reliability on their systems. Additional information will necessarily improve decision-making and strengthen the regulatory process. Removing anchor bias in regulatory outcomes will likely work to slow the rate of growth in revenue requirements and rates as well.

2. **What action, if any, should the Commission recommend other entities take to mitigate future increases in energy costs, rates and bills?**

B. Additional Phase 3 Scope Issues

1. **To What extent should Phase 3 consider strategies to mitigate future increases in natural gas costs and bills? Please consider the scope of the Gas Transition Rulemaking and other relevant proceedings in your response?**

[15] A.21-06-21, Assigned Commissioner's Scoping Memo and Ruling, p. 9.

2. Telecommunications, Broadband, and Water

The Fourth Amended Scoping Memo notes that the Commission "may revisit affordability specific to the water and communications industries in a subsequent phase of this proceeding [. . . and] intend[s] to monitor related strategies developed in the Low-Income Water Affordability proceeding (R.17-06-024)."[16] TURN encourages the Commission to make a more definitive commitment and to set a schedule to revisit affordability issues specific to water and communications services as part of Phase 3.

Over the last year and a half, access to affordable communications services—including voice and broadband—has become increasingly essential in response to the global coronavirus pandemic. For example, while state and federal policy-makers and nonprofits made efforts to support connectivity for school children, there were still harrowing accounts of children sitting outside fast-food restaurants to use the free Wi-Fi to complete school work, even during wildfires.[17] Data and statistics demonstrate that the lack of affordable broadband continues to be a barrier widening the homework gap caused by the digital divide.[18] Governor Newsom directed the Commission to address issues of broadband affordability and adoption and the Commission itself found robust broadband access an "essential service" that is currently unaffordable to many Californians.[19] Therefore, the Commission must commit to work in this docket to ensure that all Californians will have access to affordable and robust broadband services. This work is needed

---

[16] Scoping Memo at p. 8.
[17] See, e.g., The Hill, "Viral Photo of Girls Using Taco Bell WiFi To Do Homework Highlights 'Digital Divide,'" dated September 2, 2020, available at https://thehill.com/blogs/blog-briefing-room/news/514905-viral-photo-of-girls-using-taco-bell-wifi-to-do-homework (last viewed October 11, 2021).
[18] 2019 Affordability Report at pp. 79-80; *See*, also, Aguilar, Galperin, Le, CETF-USC Statewide Broadband Adoption Survey (April 2021) retrieved from https://assets.uscannenberg.org/docs/CETF-USC_Statewide_Broadband_Adoption_Survey_3.pdf.
[19] Governor Executive Order N-73-20 (August 14, 2020); D.20-07-032 at p. 24; 2019 Annual Affordability Report at pp. 79-80.

now to inform the vital work of the Commission in other dockets such as the Broadband OIR (R.20-09-001), Surcharge OIR(R.21-03-002), and the LifeLine proceeding (R.20-02-008). The record of this docket, and the Commission's conclusions and findings on affordability should be incorporated into any related and relevant proceedings. Addressing affordability of voice and broadband communications in Phase 3, at the latest, is crucial to the development of policies and programs that will support access for some of the State's most vulnerable consumers.

Dated: October 15, 2021

Respectfully submitted,

By: __________/S/_______________

David Cheng
Staff Attorney

THE UTILITY REFORM NETWORK
1620 5th Ave, Ste 810
San Diego, CA 92101
Phone: (619) 398-3680 x103
E-mail: DCheng@turn.org