

Decision 10-10-032 October 28, 2010

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 10-05-005
(Filed May 6, 2010)

DECISION REVISING TARIFF RULES FOR SMALL BUSINESS CUSTOMERS

1. Summary

Today's decision revises certain tariff rules for "small business"¹ customers of electric and gas utilities. One tariff rule revision provides that small business

¹ A small business customer is defined as a non-residential customer with an annual electric usage of 40,000 kilowatt hours (kWh) or less, or an energy demand of 20 kilowatt (kW) or less, or annual consumption of 10,000 therms of gas or less. Alternatively, a small business customer is a customer who meets the definition of "micro-business" in California Government Code Section 14837 (Section 14837). Section 14837 defines a micro-business as a business, together with affiliates, that has average annual gross receipts of \$3,500,000 or less over the previous three years, or is a manufacturer, as defined in Section 14837 subdivision (c), with 25 or fewer employees. The California Department of General Services is authorized to amend the gross receipt amount. In January 2010 DGS increased the gross receipt amount from \$2,750,000 to the current amount of \$3,500,000. (*see*, California Office of Administrative Law, Regulatory Action Number 2000-1110-01S.) This definition does not include fixed usage or unmetered rate schedule customers.

customers may only be back-billed² for a maximum of three months instead of the current three-year back-billing rule. A second tariff revision establishes deposits at two times the average monthly bill, rather than two times the maximum monthly bill. This decision also addresses a discrepancy between overcharges for billing errors and overcharges for metering errors, re-establishment of service deposits, refunds due to billing and metering errors, service discontinuation notice requirements, potential costs of tariff revisions, and provides direction to the utilities on implementing the adopted tariff changes.

This proceeding is closed.

2. Background

On May 6, 2010, the Commission issued Order Instituting Rulemaking 10-05-005 (OIR) to determine whether revisions 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 OIR strictly limited any tariff revisions to treating small business customers the same as residential customers for specific billing and deposit purposes. The OIR also established a preliminary scoping memo identifying the issues and a schedule.

The OIR was initiated as a result of numerous business customer complaints to the Commission's Business and Community Outreach (BCO) staff. These complaints were from business customers that were unexpectedly faced

² Back-billing results when the utility overcharges or undercharges a customer as the result of a billing or metering error. The utility may render an adjusted bill for the amount of the undercharge, and issue a refund or credit to the customer for the amount of the overcharge.

with large utility back-bills for service dating back several years. The back-bills resulted from utility errors and were not discovered for at least three years. Because these customers operated small businesses, they could not pay such large bills in the short timeframes that the utilities demanded, nor could they recover these funds from their customers. The Commission concluded that small business customers suffer the same problems as residential customers and thus should be treated the same for billing and metering errors and back-billing purposes.

On June 14, 2010, Opening Comments were filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Southern California Gas Company and San Diego Gas and Electric Company (collectively, Joint Utilities), PacificCorp, Mountain Utilities, Southwest Gas Company (Southwest Gas), Golden State Water Company,³ the Division of Ratepayer Advocates (DRA), the Greenlining Institute (Greenlining), and The Utility Reform Network (TURN).

On June 28, 2010, Reply Comments were filed by the Joint Utilities, PG&E, Southwest Gas, SCE, Greenlining, TURN, and DRA.

On July 6, 2010, pursuant to the OIR, a workshop was held at the Commission's offices in San Francisco. Parties attending the workshop focused on three main issues:

1. A definition of "small business."
2. Tariff policies addressing back-billing for small business customers.
3. Tariff policies addressing deposits for small business customers.

³ Golden State Water Company owns and operates its Bear Valley Electric Service.

On July 28, 2010, an Assigned Administrative Law Judge's (ALJ) Ruling provided an opportunity for comments on a Business and Community Outreach Staff Report (Report). The Report, summarizing the comments of parties who attended the Workshop, states that parties generally were in agreement that a small business should be defined as one of the following:

1. A non-residential electric customer with annual consumption of 40,000 kWh or less or an energy demand of 20 kW or less.
2. A non-residential gas customer with an annual consumption of 10,000 therms or less.
3. A non-residential customer meeting Section 14837 of Government Code's definition of "micro-business."

The Report concludes that parties agreed to revise the back-billing tariff rule for small businesses such that the maximum back-billing period would be three months, rather than the current rule of three years. In addition, the Report recommends that the overcharge refund period for billing errors, currently six months, be revised to three years so it is the same as the overcharge refund period for metering errors.⁴ Although the Report notes that parties were unable to agree on changes in deposit rules, BCO staff recommends changes in deposit rules that would effectively limit deposits to twice the average monthly bill rather than twice the maximum monthly bill. BCO staff also recommends small business disconnection notice practices and pursuit of alternative credit and payment policies.

⁴ Current tariffs generally provide that overcharges for billing errors may be refunded for up to three years, while overcharges for metering errors may be refunded for up to six months. PacifiCorp's tariff Rule 9 is an exception as it provides that overcharges for both billing and metering errors be refunded for up to six months.

3. Comments of Parties on Report

On August 6, 2010, comments on the Report were filed by PG&E, DRA, TURN, the Joint Utilities, Southwest Gas, SCE, Greenlining, and PacificCorp. Late comments were filed by the California Small Business Roundtable and California Small Business Association (CSBRT/CSBA) on September 2, 2010.⁵ Reply comments were filed on August 17, 2010, by DRA, PG&E, Greenlining, the Joint Utilities, PacificCorp, and SCE.

Parties' comments on the three main Report issues are discussed below.

3.1. Defining Small Business Customers

Parties generally support the Report's recommendation that Small Business Customers be defined as non-residential electric customers using no more than 40,000 kWh per year or an electrical demand of 20 kW or less, or non-residential gas customers using no more than 10,000 therms per year.

Alternatively, a small business customer is a non-residential customer who meets the definition of "micro-business" as provided in Government Code Section 14837. Although it does not oppose the Section 14837 definition, PacificCorp points out that accommodating the Section 14837 definition of a small business may require it to undertake significant reprogramming.

The utilities request clarification on applying these definitions when there are changes in energy usage. Utilities also note that determining whether some business customers qualify under the Section 14837 definition will require hand processing of such requests.

⁵ CSBA/CSBRT requested authorization to file late-filed comments and for party status in this proceeding on September 2, 2010; this motion is unopposed and is granted.

3.2. Back-billing

Parties generally agree with the Report's recommendation to change the current back-billing rule and require that small businesses are back-billed for a maximum of three months. However, parties raise questions on implementing this rule, including measurement of the twelve-month period for determining energy usage, and qualification of small businesses under the Section 14837 definition.

3.3. Deposits

Southwest Gas and PacifiCorp agree with the Report's recommendation that small business deposits be reduced from two times the maximum monthly bill to two times the average monthly bill, while the Joint Utilities oppose this change. SCE would agree to revise deposit rules if the revisions sunset on January 1, 2012. PG&E explains that it already assesses deposits at twice the average monthly bill, except when PG&E is notified of financial deterioration of the business.

All of the non-utility parties support the proposed change in the deposit rule. In addition TURN and Greenlining recommend that deposits be prohibited for re-establishment of service due to disconnections for late or non-payment of bills.

4. Discussion

We opened this OIR to reexamine utility tariff rules and practices pertaining to billing and deposits for small business customers. As a result of the Workshop and parties' comments, the Report recommends certain tariff changes for small business customers. We will adopt these recommendations as discussed below.

4.1. Defining Small Business Customers

We adopt the Report's definition of small business customers as those non-residential electric customers who use 40,000 kWh or less annually or whose demand is 20 kW or less, or non-residential gas customers who use 10,000 therms of gas or less annually.⁶ Alternatively, we agree that non-residential customers may qualify as a small business customer if they qualify as a micro-business under Section 14837. In order to qualify under Section 14837 a non-residential customer must provide the utility with necessary documentation. The utility shall accept as appropriate documentation an affidavit signed by the owner of the business certifying and declaring that the business qualifies under Section 14837. In addition, for dual-commodity (electric and gas) utilities, a non-residential customer may qualify separately under either electric or gas maximum annual usage rules (e.g. the customer would be treated as a small business only for the service type for which it qualifies.)⁷

As many non-residential customers may be unaware of the Government Code Section 14837, self-certification option, for customers subject to back-billing who do not qualify based on demand or usage we direct the utilities to inform these customers that there is a self-certification option, so they may ascertain their eligibility.

⁶ Under this definition, "annually" is measured by electric or gas use in the twelve (12) billing months ending in the most recent calendar year. Small businesses that have less than 12-months' usage can qualify as small businesses through Section 14837.

⁷ For example, a non-residential customer of a dual-commodity utility could use less than 40,000 kWh and qualify as a small business electric customer, or use less than 10,000 therms and qualify as a small gas business customer.

4.2. Back-billing

The proposed change in the back-billing rule for small businesses from the current three-year period to three months is reasonable, is not opposed by any party, and should be adopted.

In adopting this revision we clarify certain implementation matters. If the small business energy usage exceeds the maximum electric or gas usage as a result of applying the three-month back-billing to calculate annual usage, this exception is permissible, and the small business definition still applies.

4.3. Refund Periods for Metering and Billing Errors

BCO staff recommends that utility tariffs be revised to correct a discrepancy between the refund period for billing errors and metering errors. Currently the refund period is a maximum of three years for billing errors and six months for metering errors, except that PacifiCorp's tariffs provide that the refund period is a maximum of six months for both billing and metering errors. BCO staff recommends that refund periods for both billing and metering errors be a maximum of three years for both types of errors.

SCE and PG&E state they are not opposed to revising their tariffs to align these refund periods. Non-utility parties also support this BCO staff recommendation.

In order to provide consistency between the maximum refund periods for billing and metering errors we will adopt the refund period of three years for overcharges resulting from both billing and metering errors. This shall apply to all utilities, including PacifiCorp.

4.4. Deposits

We will adopt the Report's recommendation that small business deposits be equal to twice the average bill. As pointed out by Greenlining, small

businesses may use large amounts of energy in certain months and it would be unreasonable to base a deposit on a customer's unusual energy use in one month. Furthermore, as DRA explains and as noted in the Report,⁸ only five states require deposits equal to twice the maximum bill. This lower deposit requirement is a reasonable step in reducing the financial burden on small businesses.

BCO staff also recommends development of other utility payment plans and programs as an alternative to a deposit. We encourage and support these alternative credit mechanisms, including automatic or direct pay plans, which provide an alternative to a deposit. We will not direct utilities to offer specific types of alternative credit mechanisms, but will allow utilities to develop their own alternative credit mechanisms in lieu of deposits, and give customers the choice of making a deposit or using an alternative credit mechanism.

4.5. Re-Establishment of Service Deposits

Although we revise tariff rules to reduce the financial burden on small businesses by adjusting the back-billing period and reducing deposit requirements, we are also mindful that deposits provide a degree of financial security which may reduce the potential for increased uncollectible expenses. In order to balance the potential for increased uncollectible expenses against the need to reduce these costs for small businesses, we will not waive the deposit requirements for re-establishment of service except where re-establishment of service is due to failure to pay charges related to back-billing. This one exception is consistent with our adoption of the tariff change to back-billing.

⁸ Report at 19.

4.6. Notice Requirements

BCO staff recommends that small business customers be entitled to receive one warning letter per 12-month period prior to any deposit request for a late payment.⁹ After a late payment, the small business customer would receive a warning letter informing that customer that the next time there is a late payment within the calendar year, the utility may require a deposit to re-establish credit. We agree with this recommendation and expect utilities to include this warning notice requirement in their tariffs for small businesses.

4.7. Implementation Period for the Revised Tariff Measures

Joint Utilities and SCE estimate that it will take approximately six to eight weeks for the utilities to develop communication practices and to fully implement these new requirements.¹⁰ We agree that this is a reasonable period for implementation and will order that the measures adopted herein must be implemented within 60 days of the effective date of today's decision through a Tier I Advice Letter.

4.8. Proposed Sunset Date for the Adopted Tariff Measures

The utilities recommend that if the deposit rules are changed these measures should sunset on January 1 or 31, 2012, or the effective date of the utilities' next general rate case (GRC).¹¹ The utilities explain that adopting a sunset date is appropriate for determining whether these rule revisions are

⁹ As discussed above, the deposit is limited to twice the average monthly bill. In addition, the customer may make the choice to enroll in an automatic payment or similar program in lieu of a deposit.

¹⁰ Joint Utilities Opening Comments at 6, and SCE Reply Comments at 8.

¹¹ SCE Reply Comments at 8, PG&E Reply Comments at 5, Joint Utilities Opening Comments at 6.

effective in the long-term. DRA argues that the National Bureau of Economic Research declares the beginning and end of recessions retroactively, and any relief provided may not reach some small businesses in time.¹² Greenlining also points out that small businesses continue to face a severe cash and credit crunch and thus it would be premature to conclude that this measure should sunset.¹³

We have considered these arguments and agree that it is not appropriate to sunset our adopted tariff measures for small businesses. It is difficult to become a successful small business, even in the best of economic times. Moreover, it is appropriate to treat small businesses like residential customers in terms of back-billing. Like residential customers, small businesses do not usually have the ability to pay large back-bills on short notice and they do not, as a general matter, have the expertise to be able to prevent and detect potential billing or meter errors.

4.9. Utility Costs Due to Revised Small Business Tariff Measures

The utilities request that they be allowed to recover any costs associated with the revised back-billing and deposit rules.¹⁴ DRA¹⁵ and Greenlining¹⁶ contend that utility compliance with the adopted measures should not result in significant cost changes, however if there is cost recovery, such costs should be recovered in GRCs. The revised small business tariff measures adopted in this

¹² DRA Reply Comments at 4-5.

¹³ Greenlining reply comments at 5.

¹⁴ Joint Utilities Opening Comments at 6, SCE Opening Comments at 9, PacifiCorp Reply Comments at 4, Southwest Gas Opening Comments at 4, and PG&E Reply Comments at 4.

¹⁵ *Id.* at 8.

¹⁶ Greenlining Reply Comments at 6.

decision are new and there is little information available to estimate the costs of implementing these measures. Therefore, it would be premature to either estimate such costs or include them in a cost recovery mechanism such as a memorandum account. We do not anticipate there will be a significant financial impact on the utilities as a result of the changes set forth in this decision. However, utilities have the opportunity to request changes in their GRCs.

5. Categorization and Need for Hearing

The OIR preliminarily categorized this proceeding as quasi-legislative and stated that hearings are not necessary. We affirm these designations.

6. Comments of Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's rules of Practice and procedure. Comments were filed on October 18, 2010, by TURN, SCE, Greenlining, PG&E, the Joint Utilities, CSBRT/CSBA, and PacificCorp, and reply comments were filed on October 25, 2010 by TURN, PG&E, DRA, SCE, Greenlining, and TURN.

We make no substantive changes to the proposed decision in response to the comments, but make minor corrections to the definition of small business customers, notice requirements, definition of back-billing, and elimination of a warning notice after the first late payment. We also eliminate the need for an annual review of a customer's status by utilities and direct utilities to inform customers of their option to self-certify under Government Code Section 14837.

7. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner, and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. A maximum non-residential customer consumption of 40,000 kWh or less, or an energy demand of 20 kW or less provides a reasonable definition of a small business electrical customer.
2. A maximum non-residential customer consumption of 10,000 therms or less provides a reasonable definition of a small business gas customer.
3. A small business may be a non-residential customer meeting the micro-business definition in Government Code Section 14837.
4. Utility qualification of a non-residential customer as a small business under Government Code Section 14837 may require reprogramming of utility tariffs or hand processing.
5. No party opposes changing the length of time a utility may back-bill a small business customer from three years to three months, and this change is reasonable.
6. Revising the back-billing rule from three years to three months should not impact the electrical and gas use definitions of a small business.
7. Only five states require customer deposits equal to twice the maximum monthly bill.
8. It would be unreasonable to base a deposit on exceptional energy use for one month.
9. Automatic or direct utility payment plans or similar programs are a useful alternative to a deposit, upon the customer making that choice.
10. Deposits provide a degree of financial security and thus may reduce potential uncollectible expenses.
11. Deposit requirements should not be waived for re-establishment of service except when re-establishment of service is due to back-billing.

12. It is reasonable to allow two months to implement the tariff revisions in this decision.

13. The National Bureau of Economic Research declares the beginning and end of recessions retroactively, and therefore it is premature to sunset small business tariff revisions.

14. Small businesses continue to face a severe cash and credit shortage problem.

15. It is difficult to run a small business, even in a positive economic climate.

16. It is reasonable to treat small business customers like residential customers.

17. It is unclear whether the small business tariff revisions in this order result in significant utility costs at this time.

Conclusions of Law

1. The changes in small business tariffs in this order should be adopted.

2. The CSBRT/CSBA motion to file comments late and for party status should be granted.

3. The preliminary categorization of this proceeding as quasi-legislative as defined in Rule 1.3(d) and our statement that hearings are not necessary are affirmed.

4. This order should be effective immediately to assist small business in this difficult economic period.

O R D E R

1. Alpine Natural Gas Operating Company, Golden State Water Company, Mountain Utilities, PacificCorp, 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 shall revise their tariff rules for non-residential electric customers using less than 40,000 kilowatt hours or a demand of 20 kilowatts or less, or gas customers using 10,000 therms or less, or non-residential customers meeting the requirements of a micro-business as defined in Government Code Section 14837 (small business customers) as follows:

- a) reduce the back-billing period from three years to three months for undercharges resulting from billing and metering errors;
- b) reduce the deposit requirements to twice the average monthly bill and permit the utilities to offer alternative credit mechanisms in lieu of deposits if customers select this option;
- c) establish that refund periods for overcharges resulting from metering and billing errors be a maximum of three years;
- d) specify that re-establishment of service deposits shall not apply when failure to pay results from charges that are back-billed;
- e) establish that a small business customer, as specified above, shall receive a warning letter after the first late payment during any calendar year, which informs that a deposit to re-establish credit may be required if a second late payment occurs within the same calendar year; and
- f) clearly define the small business customers which qualify for these tariff revisions.

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 shall file Tier I Advice Letters implementing the revised tariff rules specified herein within 60 days of the effective date of this

order. The Advice Letters shall be effective on the date filed, pending disposition by the Energy Division staff pursuant to General Order 96-B.

3. Alpine Natural Gas Operating Company, Golden State Water Company, Mountain Utilities, PacificCorp, 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 shall inform non-residential customers subject to back-billing that they may self-certify as a small business customer under Government Code Section 14837.

4. The revised tariff rules in this order are effective until otherwise changed by the Commission.

5. The California Small Business Roundtable and California Small Business Association's motion to file comments late and for party status is granted.

6. Rulemaking 10-05-005 is closed.

This order is effective today.

Dated October 28, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President

JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.