

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

**Order Instituting Rulemaking on the)
Commission's Own Motion to address the) R.10-02-005
Issue of customers' electric and natural gas) (Filed February 4, 2010)
service disconnection)**

**THE NATIONAL CONSUMER LAW CENTER'S
RESPONSE TO PETITION FOR MODIFICATION
OF D.10-12-051 AND D.12-03-054**

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I. PROCEDURAL BACKGROUND

On February 5, 2010, the Commission opened this docket, R.10-02-005, to reduce the number of residential gas and electric utility service disconnections due to nonpayment, and also to develop more effective methods to reduce unnecessary disconnections without undue cost burden to other customers.¹ Along with the National Consumer Law Center (“NCLC”), other parties actively participating in this proceeding on behalf of consumer interests were the Division of Ratepayer Advocates (“DRA”),² Disability Rights Advocates (“DisabRA”),³ the Greenlining Institute (“Greenlining”), and The Utility Reform Network (“TURN”). Participating utilities were Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric Company (“SDG&E”), Southern California Gas Company (“SoCalGas”), and Southern California Edison Company (“SCE”).

On December 27, 2010, the Commission issued D.10-12-051, a decision approving a Settlement Agreement among consumer groups consisting of NCLC, DRA, DisabRA, Greenlining, TURN, and utilities consisting of SDG&E and SoCalGas. The Settlement Agreement resolved all issues in this proceeding as they related to SDG&E and SoCalGas. The terms of the approved Settlement Agreement provided, among other things, that SDG&E and SoCalGas would (1) adhere to certain payment arrangement practices and restrictions on collecting credit deposits if they failed to meet a performance benchmark for disconnections; (2) establish an extreme weather policy prohibiting disconnections at certain severe temperatures; (3) implement a transition process for at least 12 months following smart meter installation

¹ See Order Instituting Rulemaking to Establish Ways to Improve Customer Notification and Education to Decrease the Number of Gas and Electric Utility Service Disconnections, Docket R. 10-02-005 (Feb. 5, 2010) at 1.

² On September 26, 2013, the governor of California signed a bill changing the name of DRA to the Office of Ratepayer Advocates (“ORA”).

³ The Center for Accessible Technology (“CforAT”) has since replaced DisabRA as an interested party in this case.

before remote disconnections are allowed; (4) extend the practice of in-person field contact for manual disconnections to remote disconnections; and (5) not remotely disconnect customers who are particularly vulnerable to the health and safety risks of losing utility service.⁴ The terms of the Settlement expired after December 31, 2013.⁵

On March 29, 2012, after several rounds of comments and reply comments, the Commission issued D.12-03-054 and resolved all remaining issues in this docket related to the non-settling utilities, SCE and PG&E. The Commission ordered, among other things, that (1) the utilities shall offer the option of live CARE enrollment and this protection is permanent; (2) PG&E and SCE utility representatives shall perform on-site visits within 48 hours of, or at the time of remote disconnection, to protect vulnerable or sensitive customers as a permanent protection; (3) customers who have filed bankruptcy should not be categorized as customers involved in fraud or bad check writing who are excepted from applicable deposit waivers; (4) the in-field payment collection requirement of D.10-07-048, which does not require a cash deposit shall continue; (5) utilities should allow customer choice in billing date, to the extent billing systems allow; (6) benchmarks coupled with disconnection practice requirements be established to serve as incentives for lowering disconnections for each utility; and (7) utilities must continue to inform customers, who have arrearages that place them at risk of disconnection, of a right to a bill payment plan of at least three months. Except for the two permanent protections listed above

⁴ See Decision Granting Petition to Modify Decision 10-07-048, and Approving Settlement Agreement, Docket R-10-02-005 (Dec. 12, 2010) (“D.10-12-051”).

⁵ See D.10-12-051 at 7 (noting term of settlement agreement ends Dec. 31, 2013). It appears, however, that in response to a letter request from the Commission’s Executive Director, the utilities maintained the status quo of the disconnection rules adopted in D.10-12-051 until March 3, 2014, and the utilities subsequently voluntarily agreed to maintain the status quo until March 17, 2014. See Joint Motion of the Office of Ratepayer Advocates; The Utility Reform Network; The Greenlining Institute; the Center for Accessible Technology; Pacific Gas and Electric Company (U39E); Southern California Edison Company (U338-E); San Diego Gas & Electric Company (U902M); and Southern California Gas Company (U904G) for the Adoption of the Settlement Agreement, Docket R. 10-02-005 (Apr. 1, 2014) (“Joint Motion for Settlement”) at 4.

(i.e. live CARE enrollment and premise visits within 48 hours of disconnection to protect vulnerable or sensitive customers), the directives of D.12-03-054 also expired after December 31, 2013.⁶

In the last quarter of 2013, NCLC and all of the active parties to this docket commenced negotiations to determine whether any of the protections of the Settlement and Order could be extended. The Settlement expired on December 31, 2014 without the parties reaching agreement on new terms to govern post-settlement credit, collection and disconnection practices. On April 1, 2014, a joint motion for adoption of a new Settlement Agreement (“Joint Motion for Settlement”)⁷ was filed by ORA, TURN, Greenlining, CforAt, PG&E, SCE, SDG&E and SoCalGas (collectively, the “Settling Parties”). Simultaneously with their Joint Motion for Settlement, the Settling Parties filed a petition to modify the two prior Commission orders described above (“Petition to Modify”).⁸ The Settling Parties also concurrently filed a motion to shorten time to respond to the Petition to Modify.⁹

In accordance with the Commission’s Rule 16.4(f) and the April 7, 2014 email ruling of Administrative Law Judge Maryam Ebke which granted Settling Parties’ Motion to Shorten Time, NCLC now respectfully submits the following Response.

⁶ See Decision on Phase II Issues: Adoption of Practices to Reduce the Number of Gas and Electric Service Disconnections, Docket R.10-02-005 (Dec. 16, 2010) (“D.12-03-054”) at 57-58 (Ordering Paragraph 4). As was the case with the expiring disconnection rules established by D.10-12-05, it appears that the utilities maintained the status quo of the customer disconnection rules of D.12-03-054 until March 17, 2014. See Joint Motion for Settlement at 4.

⁷ A copy of the proposed Settlement was attached to the Settling Parties’ Joint Motion for Settlement. See Joint Motion for Settlement at Appendix A.

⁸ See Petition to Modify Decisions 10-12-051 and 12-03-054 (Apr. 1, 2014) (“Petition to Modify”).

⁹ See Joint Motion to Shorten Time to Respond to the Petition for Modification of Decisions 10-12-051 and 12-03-054 (Apr. 1, 2014) (“Motion to Shorten Time”).

II. RESPONSE TO THE PETITION TO MODIFY

A. Rather than Modifying D.10-12-051 and D.12-03-053, the Commission Should Reopen the Record for the Sole and Limited Purpose of Receiving the Proposed Settlement and Related Comments into the Record as New Evidence Upon Which It May Issue a New Commission Order.

Along with the proposed Settlement, Settling Parties have filed a Petition to Modify D.12-03-054 and D.10-12-051 which is both late-filed and offers no change or correction in underlying facts, assumptions or law that would justify modification of D.12-03-054 or superseding D.10-12-051. In their Petition to Modify, the Settling Parties have requested that “the Commission (1) modify D.12-03-054 to incorporate the terms and provisions of the [proposed] Settlement Agreement; and (2) modify D.10-12-051 to allow the terms and provisions of the [proposed] Settlement Agreement to supersede the terms and provisions of the settlement agreement proposed in D.10-12-051.”¹⁰ The only basis that the Settling Parties have offered for modifying the decisions is simply that “a comprehensive resolution of the issues pertaining to the expiring provisions of the credit, collection and disconnection practices of the Joint Utilities ordered in D.10-12-051 and D.12-03-054, and adoption of the Settlement Agreement would be in the public interest.”¹¹

Without more compelling or significant changes beyond the fact that the proposed Settlement attempts to revise and extend obligations that have already expired under D.12-03-054 and D.10-12-051, NCLC disagrees that the public interest would be served by modifying D.12-03-054 or superseding D.10-12-051. Rather, D.12-03-054 and D.10-12-051 should be allowed to stand as properly adjudicated Commission decisions based on an adequately developed record timely argument in this docket. NCLC offers an alternative that does not

¹⁰ Petition to Modify at 5-6.

¹¹ Petition to Modify at 5.

compromise the integrity of the Commission's deliberations in this docket and recommends that it would be more appropriate to issue a new Commission order, based on the introduction of the proposed Settlement into the record as new evidence to support that order.¹²

B. The Commission Should Reject the Proposed Modifications to D.12-03-054.

The Settling Parties have requested modifications to D.12-03-054,¹³ which resolved all previous issues in this docket as relates to PG&E and SCE. At the outset, NCLC notes that the petition to modify has been filed much later than the one year period proscribed for filing such a petition.¹⁴ To explain this delay in filing, the Settling Parties state that “the need for this petition for modification did not arise until the sunset date [December 31, 2013] approached.”¹⁵

However, NCLC submits that unlike cases in which a petition for modification settlement has been granted because a term of settlement rested on an incorrect assumption,¹⁶ such is not the case here. The sunset date for the obligations under the prior Settlement was not unknown.¹⁷ A modification of D.12-03-054 is unnecessary where nothing in the proposed Settlement puts forth any new fact for the record which diminishes or changes the PUC's original findings and

¹² The Settling Parties submitted their proposed Settlement under Article 12. *See* Joint Motion for Settlement at 1. The Commission's Rule 13.14 provides the appropriate vehicle for issuance of a Commission order on a settlement in a closed docket. *See* Rule 13.14(b) (reopening record for consideration of a settlement under Article 12).

¹³ *See* Petition to Modify at 6-10.

¹⁴ *See* Rule 16.4(d) (requiring that a petition to modify a Commission decision be filed within one year following the effective date of the decision). As the effective date of D.12-03-054 was March 22, 2012, Settling Parties' Petition to Modify should have been filed by March 22, 2013.

¹⁵ Petition to Modify at 6.

¹⁶ *See* In the Matter of San Diego Gas and Electric Company's Application for Authorization to (1) Participate in the Steam Generator Replacement Project as a Co-Owner of San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3); (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues. (U 902 E), 2011 Cal. PUC LEXIS 385 at *3-*8 (“D.11-07-049”).

¹⁷ *See* D.12-03-054 at 57-58 (Ordering Paragraph No. 4) (settlement obligations expire Dec. 31, 2013).

conclusions in D.12-03-054.¹⁸ Unlike cases where a petition to modify has been granted because an underlying assumption or fact has been shown to be in error,¹⁹ the Petition to Modify makes no such showing to support its request to make extensive deletions and some additions to D.12-03-054.²⁰ While Settling Parties' proposed changes may attempt to modify D.12-03-054 to make it consistent with the proposed Settlement, the changes do not accurately reflect the Commission's determinations based on the overall record in docket R.10-02-005, to date of that decision.

Most of the requirements of D.12-03-054 expired at the end of 2013, but a few important mandates remain in place. The Commission established two ongoing, permanent protections for PG&E and SCE customers. First, PG&E and SCE are required to offer the option of live CSRs for CARE enrollment, and second, a pre-disconnection site visit by a field representative for vulnerable customers is required within the 48 hour window prior to disconnection. NCLC stands by its previously submitted comments in this docket, which the Commission accepted in D.12-03-054 by determining to establish these permanent protections. The Petition to Modify contains no argument or detail that would justify changing the conclusions reached in D.12-03-054.

¹⁸ The Commission denied a petition to modify a Commission order approving settlement where utility action violative of settlement did not diminish or change the Commission's original finding in the order. *See* Application of Pacific Gas & Electric Company for Approval of a Power Purchase Agreement with Mariposa Energy, 2012 Cal. PUC LEXIS 115 at *8-*11 ("D.12-03-008"). *See also* In the Matter of the Application of Golden Hills Sanitation Company (U 438- SWR) for Authority to Increase Rates Charged for Sewer Service by \$ 148,076 or 120% in January 2012, \$ 148,076 or 54% in January 2013, and \$ 148,076 or 35% in January 2014 And Related Matter, 2014 Cal. PUC LEXIS 90 (Commission denying petition to modify where parties did not provide any new information that would cause it to change its order).

¹⁹ *See* D-11-04-049.

²⁰ *See* Petition to Modify at 7-9 (deleting Conclusions of Law 6 – 10 and Ordering Paragraphs 1, 2a – 2e, 2g).

As the Petition to Modify stands alongside the proposed Settlement, it appears that without clarification, the two permanent protections established in D.12-03-054 for PG&E and SCE customers could inadvertently be lost. First, the Petition to Modify proposes to delete Ordering Paragraph 2.b of D.12-03-054, which provides the field visit protection.²¹ Additionally, the proposed Settlement frames the field visit requirement and option for live enrollment in the CARE program requirement as negotiated terms of the proposed Settlement, by including them as Provisions 4.1.1 and 4.3, respectively, under the header of “Settlement of Issues.”²² By inclusion of these permanent protections under such header, with the added provision that Settlement provisions expire on December 31, 2016,²³ a fair reading of the proposed Settlement, without clarification, is that it transforms these permanent protections into negotiable, temporary ones.

In response to discovery by NCLC, the Settling Parties have confirmed that they did not intend to revoke the permanent protections of a field visit and live CARE enrollment as provided in D.12-03-054.²⁴ The proposed changes to D.12-03-054 in Settling Parties’ Petition to Modify do not align with the stated intent of the parties and these proposed changes should be rejected.

C. The Commission Should Reject the Proposed Modifications to D.10-12-051.

The Settling Parties have requested that their proposed Settlement be allowed to “supersede” the prior, already-expired Settlement which the Commission approved in D.10-12-

²¹ The changes to D.12-03-054 in the Petition to Modify would delete Ordering Paragraph 2.b. which states: “No customer who is on medical baseline or life support or who certify that he or she has a serious illness or condition that could become life threatening if service is disconnected shall be disconnected without an in person visit from a utility representative.” Petition to Modify at 9.

²² See Joint Petition for Settlement at Appendix (Pages 6, 8-9 of Proposed Settlement).

²³ See Joint Petition for Settlement at Appendix (Page 4 of Proposed Settlement sets forth expiration date).

²⁴ See The National Consumer Law Center’s Comments on Joint Motion for Settlement (Apr. 15, 2014) at Attachment (Settling Parties’ Response to NCLC’s Data Request Set A).

051.²⁵ NCLC submits that as the terms of the prior Settlement have expired, this request is moot.²⁶

There is neither clarification nor correction necessary to be made to an expired document with obligations that have already, in fact, occurred. Additionally, the obligations in the expired Settlement are no longer legally in force. There is no authority to be superseded. Settling Parties have not offered any factual or legal corrections that would undermine the validity of D.10-12-051 as an accurate representation of the Commission's decision describing the rules that governed the past conduct of the parties involved in that decision for the relevant period of time.²⁷ The authority of D.10-12-051 to govern the utilities' conduct can no longer be called into question.

D. The Commission Should Deny the Petition to Modify and Instead Reopen the Record for the Limited Purpose of Accepting the Proposed Settlement and Accompanying Comments into the Record.

Although granting Settling Parties' Petition to Modify D.12-03-054 and D.10-12-051 cannot be justified for the reasons above, it appears that the intent of the parties is to reopen the record for a Commission decision on the proposed Settlement. NCLC recommends to the Commission that rather than modifying D.12-03-054 or D.10-12-051, the appropriate vehicle for a decision on whether to approve the Settling Parties' new Settlement would be the issuance of a new Commission order, independent of D.12-03-054 and D.10-12-051.

It is in the public interest to retain the integrity of both D.12-03-054 and D.10-12-051 as Commission decisions that were properly adjudicated based on the record of this docket as of the

²⁵ See Petition to Modify at 10.

²⁶ Additionally, the request to modify D.10-12-051 comes in excess of 3 years after the effective date of D.10-12-051 which was December 16, 2010, or 2 years after the time proscribed in the Commission's regulations to bring a petition for modification. See Rule 16.4.

²⁷ See Rule 16.4(b) (petition for modification must state justification for requested relief and support factual allegations with cites to the record and a declaration or affidavit).

date each was decided. Therefore, NCLC recommends that the Commission reject the Petition to Modify and instead reopen the evidentiary record for the sole and limited purpose of receiving the proposed Settlement and related Comments into the record as new evidence to support the issuance of a new Commission decision.²⁸

III. CONCLUSION

NCLC respectfully requests that the Commission consider the above Response in resolving the Settling Parties' Petition to Modify the Commission's Decisions at D.12-03-054 and 10-12-051.

Respectfully Submitted,

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²⁸ See Rule 13.14(b).