

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Rulemaking 09-11-014
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**THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
ENERGY EFFICIENCY FINANCING**

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these reply comments as provided by the January 10, 2012 “Administrative Law Judge’s Ruling Regarding Financing (Ruling). None of the parties who submitted opening comments on January 25, 2011 dispute the premise that providing financing has the potential to increase energy efficiency savings in California.¹ However, several parties point out significant challenges to implementing the on-bill repayment (OBR) proposals of the Energy Division² and the Environmental Defense Fund (EDF).³ It is possible that these challenges will be resolvable over the long-term, although some may be fatal flaws that prevent the implementation of OBR in California.

However, with less than a year remaining before the 2013-2014 transition period starts, it is unrealistic to expect to resolve the issues in time to implement OBR during the transition period. DRA therefore recommends that the Commission devote a substantial portion of the upcoming three-day workshop to discussing options for energy efficiency (EE) financing that could feasibly be implemented during the 2013-2014 transition period.

In addition to the proposal to implement an off-bill program administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) described in DRA’s comments, other options include expanded on-bill financing and expanded financing offered by local governments.

¹ DRA agrees however, that financing is not a silver bullet and that we “cannot assume we can borrow our way to higher levels of energy efficiency, especially in this economy.” Comments of the California Energy Efficiency Industry Council (Efficiency Council) in Response to the Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012, p. 4. Rather, financing should support the implementation of a well-designed portfolio, providing ratepayers who cannot afford the upfront cost of energy efficiency improves the means to move forward, much the way many consumers need financing to purchase a car.

² Energy Division’s recommendations are appended to the Ruling as Attachment A, “Energy Division Proposal on Energy Efficiency Finance Activity for 2013-2014 (1/5/2012) Proposed Changes to Utility Energy Efficiency Portfolios for the 2013-2014 Transition Period” (Staff Proposal).

³ “On Bill Repayment: Unlocking the Energy Efficiency Puzzle,” a proposal prepared by the Environmental Defense Fund (EDF) is appended to the Ruling as Attachment C (EDF Proposal).

II. DISCUSSION

A. **The Commission should recognize that the significant legal challenges identified in the opening comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Gas Company, Southern California Edison Company, as well as DRA, make implementation of on-bill repayment (OBR) during the transition period infeasible.**

The Energy Division and EDF envision OBR as allowing deeper retrofits because the loan would be tied to the meter, thereby encouraging customers to implement a more comprehensive set of energy efficiency improvements, even though the repayment period for such improvements might extend beyond their ownership or occupancy of the property.⁴ The Energy Division and EDF also assume that third party lenders would be more inclined to extend credit for energy efficiency improvements under favorable terms because the threat of disconnection of utility service would lower the risk of default.⁵ Both these assumptions appear unsupported by or inconsistent with California law.

First, there are “significant legal issues” raised by the proposal to require a subsequent owner or occupant to assume a loan obligation of the prior occupant on the theory that the repayment obligation is tied to the meter.⁶ While a subsequent owner or tenant could agree to assume an ongoing loan, there appears to be no statutory authority requiring a tenant or owner to assume a loan made to a prior tenant or owner using the meter as security.⁷ Unless the subsequent tenant or owner customer agrees to accept the assignment of the prior debt, there appears to be no legal basis for a utility to collect a debt from the subsequent tenant or owner.⁸

⁴ Staff Proposal, p. 6; EDF Proposal, p. 15.

⁵ Staff Proposal, p. 5; EDF Proposal, p. 14.

⁶ Pacific Gas and Electric Company Opening Comments in response to Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing. January 25, 2012 (PG&E Comments), p. 17.

⁷ PG&E Comments, p. 18; Southern California Edison Company’s Comments on Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing. January 25, 2012 (SCE Comments), p. 6; Comments of San Diego Gas & Electric Company and Southern California Gas Company on Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012 (SDG&E/SoCalGas Comments), p. 17.

⁸ PG&E Comments, pp. 18-19;

It would be unwise for the Commission to design an energy efficiency financing program that is unsupported by the necessary legal authority.⁹

Moreover, as Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) point out, Public Utilities Code sections 771.1(e) (3) and 779.2(a) “prohibit the [investor-owned utilities] IOUs from terminating residential service due to nonpayment of a debt that is owed by the residential customer to a person or corporation other than the billing IOU.”¹⁰ Thus, absent revision of these Public Utilities Code Sections, utilities would not be able to disconnect residential customers for non-payment of their energy loans. This appears to eliminate the foundation for an OBR program for residential customers unless the Public Utilities Code sections preventing utilities from disconnecting residential service for nonpayment of a debt owed to an entity other than the utility were amended. Furthermore, as DRA pointed out in its opening comments, removing such an essential protection for residential ratepayers would be unwise and DRA (and likely other parties) would oppose any such amendment to this important ratepayer protection.¹¹

SCE, San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) note that it is not clear whether consumer lending laws would apply to the Utilities under the proposed OBR program.¹² The Ruling states that “since the IOUs would not be originating loans, they would not be subject to current limitations set by the Department of

⁹ As PG&E and SCE point out, the NYSERDA EE financing program was authorized in statute. PG&E Comments. p. 18; SCE Comments, pp. 4-5.

¹⁰ PG&E Comments, p. 19; SCE Comments, p. 6; *see also* The Division of Ratepayer Advocates Comments in response to Administrative Law Judge’s Ruling Regarding Energy Efficiency Financing, January 25, 2012 (DRA Comments), pp. 11-12.

¹¹ DRA Comments p. 12; *see also* Opening Comments of the National Consumer Law Center, January 25, 2012, p. 3 (recommending that “no residential customer experience a disconnection of service for non-payment of an energy efficiency loan.”).

¹² SCE Comments, pp. 5-6; SDG&E/SoCalGas comments, p. 6.

Corporations.”¹³ SDG&E and SoCalGas observe that current Department of Corporations ruling that allows utilities to offer the on-bill financing subject to certain restrictions, while remaining exempt from consumer lending laws that would otherwise apply, is limited to business lending. Thus, SDG&E and SoCalGas state that “we do not know whether or how consumer lending laws would apply to the OBR concept,” but “believe it is a threshold issue.”¹⁴ SDG&E and SoCalGas attached basic information about twenty federal and state laws related to consumer lending that potentially apply to the proposed OBR program. DRA agrees that the applicability of consumer lending laws to OBR is a threshold issue, and that the Commission should resolve it before expending significant resources on OBR.

In addition to the legal obstacles preventing its implementation in the near term, OBR would be a completely new product. Accordingly, SCE points to the need for a rigorous and systematic product development effort that not only includes internal systems and workflow requirements but also necessary “handshakes” with external systems and workflows.¹⁵ What makes this product development effort significant is the absence of an established institutional structure that integrates laws, regulations, business practices, systems, and workflows of different sectors of the economy and industries into a coherent product that is OBR. This will require substantial effort, and it will certainly be very time and resource intensive.

B. The Commission should ensure that there is ample time during the upcoming three-day workshops to discussing financing options that could feasibly be implemented during the 2013-2014 transition period.

Energy Division staff distributed a draft agenda for three days of energy efficiency financing workshops to be held February 8-10, 2012. Precise details have not been distributed, but DRA recommends that the Commission devote a significant amount of time to the discussion

¹³ Ruling, p. 14. *See also* DRA Comments, p. 13, and Reply Comments in Response to Assigned Commissioner’s Ruling and Scoping Memo Regarding 2013-2014 Bridge Portfolios And Post-Bridge Planning, Phase IV, November 16, 2011, p. 6, fn. 25 (recommending that the Commission obtain a legal opinion from the California Department of Corporations and the United States Department of Justice on whether or not a utility would be governed by regulations and requirements applicable to regulated lenders if the utility provides On-Bill Repayment that includes disconnection or withholding of an essential utility service as part of a Billing and Collections tariff.)

¹⁴ SDG&E/SoCalGas Comments, p. 6.

¹⁵ SCE Comments, pp. 8-10.

of energy efficiency finance options with the potential for implementation during the 2013-2014 transition period. Those options include: DRA's proposal for energy efficiency financing implemented by CAEATFA;¹⁶ augmenting local government funding for energy efficiency loans;¹⁷ expanded on-bill financing;¹⁸ and devising a pilot program for a non-tariffed product that would use third party financing and the utility-billing infrastructure, but would not tie the loan to the meter or disconnect service.¹⁹ SCE indicates it will bring information about energy efficiency financing programs to the workshops, so there may be more options worth exploring.²⁰

C. The Commission should ensure that knowledgeable representatives participate in the workshop to discuss the mechanics of any potential OBR program.

The issues raised regarding the feasibility of tying an energy efficiency loan to the meter highlight the importance of inviting stakeholders with knowledge of the real estate market to the workshop. DRA agrees with the Natural Resources Defense Council that the Commission should invite "holders of mortgage risk on residential and commercial property, mortgage originators, title insurers, appraisers, real estate brokers, mortgage insurers and building owners."²¹ DRA also recommends inviting real estate developers and property management companies in both the commercial and residential market. To the extent that the workshop discusses OBR (rather than focusing on financing solutions that can feasibly be implemented by the start of the transition period), DRA believes such experts are critical to a discussion of OBR.

¹⁶ DRA Comments, pp. 2-4.

¹⁷ Comments of the Local Government Sustainable Energy Coalition regarding Energy Efficiency Financing, January 25, 2012, p. 5 (loan loss reserve program); p. 7 (PACE programs); p. 12 (working directly with lending institutions).

¹⁸ PG&E Comments, p. 13 (recommending increased emphasis on small and medium sized building with owner occupied facilities).

¹⁹ PG&E Comments, p. 13.

²⁰ SCE Comments, p. 13, fn. 10.

²¹ Opening Comments of the Natural Resources Defense Council (NRDC) on Administrative Law Judge's Ruling Regarding Energy Efficiency Financing, January 25, 2012, p. 8.

III. CONCLUSION

DRA respectfully requests that the Commission recognize the significant legal barriers to the implementation of OBR as proposed by Energy Division and EDF, which will make implementation within the transition period infeasible. Given those legal barriers, the Commission should ensure that a substantial portion of the time at the upcoming three-day workshop is devoted to energy efficiency financing options with the potential to be implemented during the transition period. Finally, holders of mortgage risk on residential and commercial property, mortgage originators, title insurers, appraisers, real estate brokers, mortgage insurers and building owners, and other real estate experts, including real estate developers, property owners, and property management companies in both the commercial and residential market, should be invited to any discussion of OBR.

Respectfully submitted,

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