

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

Order Instituting Rulemaking to Address Energy
Utility Customer Bill Debt Accumulated During
the COVID-19 Pandemic.

RULEMAKING 21-02-014
(Filed February 11, 2021)

**COMMENTS OF THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE,
LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY AND THE
GREENLINING INSTITUTE ON ADMINISTRATIVE LAW JUDGE'S RULING
INVITING RESPONSES TO POST-WORKSHOP QUESTIONS AND EXTENDING
FILING DATES OF BRIEFS**

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I. Introduction

Pursuant to the April 2, 2021 *Administrative Law Judge’s Ruling Inviting Responses to Post-Workshop Questions and Extending Filing Dates of Briefs* (“Ruling”), the California Environmental Justice Alliance (“CEJA”), Leadership Counsel for Justice & Accountability (“LCJA”) and the Greenlining Institute (“Greenlining”), respectfully submit the following comments on emergency energy arrearage relief accumulated during the COVID-19 pandemic. The COVID-19 pandemic is an unprecedented emergency that has impacted every aspect of life in California. The Commission acted swiftly to implement Resolution M-4842¹ to order emergency protections, including the current disconnection moratorium. In this set of questions, the Commission seeks clarity on what constitutes fair and equitable relief, which ought to be the primary values that animate this proceeding. CEJA, LCJA and Greenlining propose understanding fairness and equity through a broader frame than provided.

¹ Extended through June 30, 2021 in Resolution M-4849 (February 12, 2021).

Fairness and equity require accounting for the fact that PG&E executives saw salary increases and stock-sale windfalls in the millions in 2020² while Environmental and Social Justice communities struggle to eat.

The question of who deserves financial assistance during a pandemic is a moral, policy, and legal question. Consistent with procedural due process requirements, the Commission should not arbitrarily provide relief to some Californians and not others without justification and should not make a final decision without factual findings on the record. Should the Commission elect to exclude segments of ratepayers from participation in related programs, it must provide those impacted meaningful notice and the opportunity to influence related decisions consistent with the constitutional requirements of due process.³ The rapid schedule of this proceeding and current level of public outreach is procedurally insufficient if the Commission wants to adopt a final decision that will deny vital relief and protections to impacted ratepayers.

As a result, CEJA, LCJA, and the Greenlining Institute recommend—as the Public Advocates Office (“Cal Advocates”) proposed⁴—that the Commission adopt interim emergency relief that erases all debt accrued during the COVID-19 emergency disconnection moratorium.

² George Avalos, *PG&E: Several execs captured pay raises in 2020, SEC docs show*, Mercury News (Apr. 8, 2021), <https://www.mercurynews.com/2021/04/08/pge-execs-pay-raises-2020-sec-docs-gas-electricity-wildfire/>.

³ California Constitution Article 1 section 7 (“A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation.”)

⁴ Comments of the Public Advocates Office on R.21-02-014 Order Instituting Rulemaking, p. 9 (“[T]he Commission consider and evaluate the cost impact of providing meaningful relief in the form of a forgiveness plan that would erase all or a significant portion of the arrearages accumulated during the disconnection moratorium”).

Additionally, the Commission should pause payment requirements for debt accrued prior to the pandemic and implement related longer-term policies in subsequent decisions.

II. The Pandemic is an Emergency

In order for the Commission to implement a relief program that adequately addresses COVID energy debt, it is essential to remember that we are in an emergency — meaning that the Commission and all parties in this proceeding must act with a sense of urgency and that relief must be designed and distributed with the intent to address that emergency. As the United Nations recently explained, “COVID-19 has caused an extraordinary socio-economic crisis throughout the world. More than a year into the pandemic, the world is still in firefighting mode.”⁵

No one knows when this emergency will end. Although the shutoff moratorium is currently set to end on June 30, 2021 there is no reason to believe that the COVID-19 global pandemic will end on that day. We will be living with COVID-19’s impact for years to come. It is also clear that many Californians will not economically recover by June 30. Any relief program must be designed to address this emergency as it exists and not arbitrarily time-bound relief.

For these and other reasons, we continue to urge the Commission to adopt a relief program that would forgive all energy debt accumulated during the COVID emergency consistent with the proposal from the Public Advocates Office (“Cal Advocates”).⁶ The end date

⁵ United Nations, *Liquidity and Debt Solutions to Invest in the SDGs: The Time to Act is Now*, March 2021, p.3, https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_liquidity_and_debt_solutions_march_2021.pdf

⁶ Comments of the Public Advocates Office on R.21-02-014 Order Instituting Rulemaking, p. 9 (“[T]he Commission consider and evaluate the cost impact of providing meaningful relief in the

for this relief must be when, in fact, the public health and economic emergency ends. In the inevitable absence of precise information on the end date of this emergency, we request the Commission adopt interim emergency relief now and long-term related policies in subsequent decisions.

III. Precedent for Interim Rules (Questions 7-9)

In this proceeding the Commission must adopt interim rules on debt relief and disconnections protections commensurate with the scale, urgency, and disproportionate impacts of the COVID-19 pandemic. Consistent with Commission precedent implementing Senate Bill 598 (Hueso 2017), the Commission must respond to the rising rates of arrearages and corresponding disconnection risks in a manner that mitigates the “public health impacts in terms of hardship and stress resulting from disconnections, especially among vulnerable populations.”⁷ The emergency conditions present in 2017, a rising rate of arrearages and disconnections, are even more significant now during the pandemic. “Despite the efforts to moderate customer energy use and bills during the pandemic, arrearages for residential customers have increased substantially.”⁸

As stated throughout this proceeding, the economic impacts of the pandemic are also disproportionate on already low-income people and people of color, “Low-paid workers continue to be hit hardest. Workers in California’s lowest-paying private-sector industries lost more than 100,000 jobs in December, while those in higher-paying industries gained jobs...Layoffs during the pandemic have reduced the earnings of the majority of Black and brown households [in

form of a forgiveness plan that would erase all or a significant portion of the arrearages accumulated during the disconnection moratorium”).

⁷ D.18-12-013, p. 3.

⁸ R.21-02-014 Order Instituting Rulemaking, p. 9.

California]. About 3 in 5 Latinx and Black households in California lost earnings during the pandemic as of late 2020.”⁹

These drastic and life-threatening conditions, like those inspiring SB 598, require both emergency interim rules and a long-term strategy, “This decision adopts interim rules to take effect immediately on an emergency basis to provide rapid relief while we consider longer term solutions.”¹⁰ The long-term impacts of the pandemic are unknown in terms of both public health¹¹ and California’s economy. Some households, sectors of the economy, and entire communities will experience long-term or potentially permanent financial impacts from the pandemic. Low-income people and people of color who disproportionately lost income and employment at the beginning of the pandemic overwhelmingly have less income now than before COVID-19.¹² Experts predict it will take years for all the workers displaced in California to find new jobs.¹³ Even with ongoing inequitable vaccine distribution,¹⁴ low-income

⁹ California Budget and Policy Center, *Low-Paid Workers and Their Families Take Another Blow as California Begins to Lose Jobs Again*, February 2021, <https://calbudgetcenter.org/resources/california-is-losing-jobs-again/>.

¹⁰ D.18-12-013, p. 2.

¹¹ Christine Yu, *Study Probes the ‘Long-Haul’ Effects of COVID-19*, Johns Hopkins University Hub (Mar. 22, 2021), <https://hub.jhu.edu/2021/03/22/long-covid-long-haulers/> (Emergent studies are documenting the increasing prevalence of long-term health effects of COVID-19, referred to as “Long COVID”, including fatigue, neurological disorders, and difficulty breathing. Patients with severe chronic conditions may be unable to return to work, or school or other activities, but currently, they may not be eligible for Social Security Disability Insurance benefits.)

¹² Pew Research Center, *A Year into the Pandemic, Long-Term Financial Impact Weighs Heavily on Many Americans*, March 2021, <https://www.pewresearch.org/social-trends/2021/03/05/a-year-into-the-pandemic-long-term-financial-impact-weighs-heavily-on-many-americans>.

¹³ California Budget and Policy Center, *Low-Paid Workers and Their Families Take Another Blow as California Begins to Lose Jobs Again*, February 2021, <https://calbudgetcenter.org/resources/california-is-losing-jobs-again/>.

¹⁴ Amy Graff, *California ranks among worst in the U.S. on Vaccine Equity, CDC Says*, SFGATE, (Mar. 19, 2021) <https://www.sfgate.com/bayarea/article/California-vaccine-equity-worst-in-US-CDC-report-16036883.php> (ranking California among the 5 worst states for vaccine equity nationwide).

communities and communities of color that face barriers to access a vaccine, risk future economic losses returning to work prior to vaccination.¹⁵ The Commission forecasts electricity rates will continue to rise regardless of the pandemic.¹⁶

No party in this proceeding or decision-maker on earth may accurately predict the total economic impacts of the pandemic on energy arrearages. The precise date of which the pandemic will end is unknown. The precise date that the ongoing economic shock associated with the pandemic is even more speculative. The Commission then possesses two distinct options to either arbitrarily underestimate the economic impacts of COVID-19 on energy arrearages and thereby provide inadequate relief or to adopt an interim emergency response. In the absence of concrete and specific information, the Commission must issue emergency interim protections now and commit to further long-term COVID protections in a subsequent decision.¹⁷

IV. Interim Rulemaking for Complete COVID-19 Arrearage Relief Is the Only Adequate, Fair, and Equitable Solution (Questions 4, 10, 11)

Much of this proceeding to date has focused on who is or is not deserving of relief.

Various criteria and enrollment procedures have been elevated by parties and the Commission,

¹⁵ California Budget and Policy Center, *Low-Paid Workers and Their Families Take Another Blow as California Begins to Lose Jobs Again*, February 2021, <https://calbudgetcenter.org/resources/california-is-losing-jobs-again/>.

¹⁶ CPUC, *Utility Costs and Affordability of the Grid and Future; an Evaluation of Electric Costs, Rates and Equity Issues Pursuant to P.U. Code Section 913.1*, February 2021, p. 45, https://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Feb%202021%20Utility%20Costs%20and%20Affordability%20of%20the%20Grid%20of%20the%20Future.pdf (“These observed disparities may be exacerbated in the coming years as the impacts of the COVID-19 pandemic and accompanying economic recession unfold. Preliminary economic data indicates that prior disparities have likely worsened over the past year.”).

¹⁷ 5 U.S.C. section 706 et seq. (“hold unlawful and set aside agency action, findings, and conclusions found to be—(A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”).

which CEJA, LCJA, and Greenlining have thoroughly considered. These criteria have been framed as an attempt to minimize disconnections and ensure customers at greatest risk of disconnection or those who face that greatest harm from being disconnected are protected. Unfortunately, each of these criteria still exclude vulnerable Californians and condemn them to the loss of life-saving utilities during an emergency. This outcome is unconscionable.

Parties have raised concerns with alleged “free riders,” that is, customers who do not truly need relief but take advantage of the relief nonetheless. As explained below, this concern is both speculative in nature and likely inconsequential in practice.

a. California’s Public Assistance Programs Are Under-Enrolled, Therefore Insufficient Proxies

While parties presented no evidence that free riders even exist, there is a strong record of evidence to show that basic public assistance programs consistently fail to reach vulnerable Californians. California has one of the lowest rates of enrollment for food stamps in the country. In 2020, undocumented and mixed status families were excluded from thousands of dollars of federal assistance from Earned Income Tax Credit, which is one of the most important anti-poverty measures,¹⁸ and unemployment insurance funding.¹⁹ Additionally, the recently implemented Public Charge Rule has produced a chilling effect, meaning that one in six eligible immigrants — even those who would not be subject to the rule — has avoided enrolling in public assistance programs for fear of immigration consequences.²⁰

¹⁸ Public Policy Institute of California, *Poverty in California: 2018*, (July 2020), <https://www.ppic.org/publication/poverty-in-california/>.

¹⁹ California Budget Center, *Undocumented Californians Excluded from Federal Recovery Rebates* (Jan. 2021), <https://calbudgetcenter.org/resources/undocumented-californians-children-excluded-from-federal-recovery-rebates/>.

²⁰ Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute (May 2020),

In any case, for the “free rider” argument to be a colorable concern, parties would also need to show that the cost of any administrative application review was comparatively lower. During this unprecedented and dynamic public health emergency, it remains unclear and uncertain who, in fact, will need relief. As Southwest Gas noted in the Workshop, “[T]he COVID-19 pandemic has impacted everyone in different ways and certainly has impacted people who might not have otherwise qualified for low-income programs.”²¹ Third, and most importantly, even if there is a small number of customers who benefit from relief that they do not need, the alternative of excluding customers in need from essential power services in an unprecedented crisis is a far greater risk that the Commission cannot afford to take, both morally and economically.

b. HCD ERAP Is an Insufficient Proxy

Eligibility for HCD ERAP was designed to target tenants most vulnerable to eviction and rental debt because of COVID-19. The criteria include income, COVID-19 related financial impact, and risk of homelessness.²² HCD ERAP requires that tenants demonstrate *all three* of these criteria. Although there is likely some correlation between housing insecurity and risk of utilities disconnection, these criteria exclude many customers vulnerable to disconnection and at risk of disproportionate harm if they were disconnected from their utilities. However, implementation of HCD ERAP in California only began March 15, 2021, less than one month as of the date of filing.²³ There is insufficient data to demonstrate that it is effectively reaching

https://www.urban.org/sites/default/files/publication/102222/one-in-six-adults-in-california-immigrant-families-reported-avoiding-public-benefits-in-2019_1.pdf.

²¹ R.21-02-014 Status Conference Transcript, p. 15.

²² U.S. Department of the Treasury, *Emergency Rental Assistance Frequently Asked Questions Revised March 26*, (March 26, 2021), 2021 https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-3-16-21.pdf.

²³ CA Health & Safety Code 50897.3 (a)(1)(C)(ii).

vulnerable tenants. Furthermore, the somewhat subjective “risk of homelessness” requirement must still be assessed on its own terms as an effective criteria for rental assistance, let alone its efficacy in a utility debt needs determination.

c. CARE / FERA Are Limited and Under-Enrolled, Therefore Insufficient Proxies

Current enrollment in energy assistance programs to prevent disconnection remains too low to serve as a proxy. CARE and FERA enrollment are particularly low among residents in DACs.²⁴ This under-enrollment is likely due, in part, to a lack of culturally competent outreach from trusted messengers to raise awareness about CARE/FERA and to assist in navigating application processes that may otherwise be too complex or overwhelming. Funding such trusted navigators may be beneficial in the medium to long-run. However, the time required to contract, to hire, and to train outreach staff—at scale—necessitates a more immediate interim debt relief solution for June 30, 2021.

d. Administrative Burdens Will Be Too Time-Consuming and Costly

Across-the-board COVID arrearage relief limits time-consuming and potentially subjective administrative burdens, complexity, and costs of implementation. As Cal Advocates correctly noted the administrative burden and subsequent ratepayer incurred cost of implementing income verification requirements are tremendous, “Requiring verification of financial hardship to enroll...may also be administratively burdensome to the utility and costly to ratepayers.”²⁵ Cal Advocates further outlined the significant administrative and ratepayer costs associated with disconnections and reconnections risked by inadequate covid-19 arrearage

²⁴ LCJA and Greenlining Joint Opening Comments on Order Instituting Rulemaking, pp. 3-4.

²⁵ Comments of the Public Advocates Office on R.21-02-014 Order Instituting Rulemaking, p. 5.

relief.²⁶ The investor-owned utilities stated the need for “streamlined”²⁷ customer relief and many parties continually uplifted ease of implementation as a guiding principle in designing arrearage relief in this proceeding.²⁸ Implementing a new income verification program takes away vital time and resources from the emergency response required to protect Californians from serious financial injury and disconnection during a crisis.

V. Interim Rulemaking Should Pause Payment Plans for Pre-COVID-19 Debt
(Questions 6-7)

In addition to complete one-time COVID-19 arrearage relief, payment plans for debt accrued prior to the pandemic should be modified by interim rules to reflect the ongoing public health and economic crisis. Given California’s long history and present challenges with under-enrollment in public assistance programs, CEJA, LCJA, and Greenlining advise the Commission to refrain from narrowing payment plan options for debt forgiveness to certain customer classes or debt thresholds.

The Commission should adopt an interim automatic “pause” on pre-COVID-19 debt, including debt in payment plans. This emergency measure mirrors actions from the federal Department of Education (“DOE”) which recently expanded its “pause” on federal student loans accrued prior to the pandemic subject to repayment plans at a 0% interest rate.²⁹ The DOE retroactively extended this relief as well as other remedial protections to students who had

²⁶ Comments of the Public Advocates Office on R.21-02-014 Order Instituting Rulemaking, p. 10.

²⁷ R.21-02-014 Status Conference Transcript, p, 7 (quoting Southern California Edison).

²⁸ See e.g. R.21-02-014 Status Conference Transcript, pp. 16, 26 (quoting Southwest Gas; California Community Choice Association).

²⁹ U.S. Department of Education, Department of Education Announces Expansion of COVID-19 Emergency Flexibilities to Additional Federal Student Loans in Default (Mar. 30, 2021), <https://www.ed.gov/news/press-releases/departments-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default>.

previously defaulted on certain privately-held loans so they could “focus on meeting basic needs.”³⁰ The DOE “pause” has an opt-out option.

While the Workshop unearthed many important considerations, above all, it highlighted the urgent need to proceed with swift and straightforward action to address an imminent crisis. In the Workshop, investor-owned utilities noted several technological and design challenges that would affect their ability to create flexibility in payment plans.³¹ These real challenges highlight the importance of releasing interim measures to “pause” any repayment requirements, including debt accrued prior to the disconnection moratorium, so the Commission and the utilities can implement a payment plan program that actually reflects the economic impact of COVID-19 on the ability of customers to participate consistently in a payment plan.

VI. Historic Arrearage and Disconnection Data and Protections Are Extremely Insufficient to Meet the Need of The COVID-19 Pandemic (Question 11)

Any previous protections, programs, decisions,³² or strategies designed to mitigate arrearages and decrease disconnections that existed prior to the pandemic have limited utility in this unique emergency. These protections while substantive, well-reasoned and precedential relied on information and responded to circumstances fundamentally different than those currently before the Commission. Decision 20-06-003 on disconnections protections relied on baseline data from 2017³³ implementing a bill justified with data from 2010-2015.³⁴ No party in this proceeding has presented evidence demonstrating any similarities between energy arrearages and disconnection rates in 2010, 2015, 2017 and now during the pandemic. To the contrary, this

³⁰ *Id.*

³¹ R.21-02-014 Status Conference Transcript, p. 49 (“And as utilities outline their implementation challenges, we hope the Commission recognizes that these complex challenges will always be more difficult for utilities than doing nothing at all.”)

³² *See e.g.* D.20-06-003, Appendix 1, p.1 (disconnection caps methodology).

³³ D.20-06-003, p. 33.

³⁴ Senate Bill 598 (Hueso 2017) section 1(a).

proceeding exists because the Commission wisely sees “the need for arrearage relief tied to the COVID-19 period.”³⁵

The geographic caps on disconnections are an important tool generally, but are unable to fully respond to the severity of the ongoing crisis. Evidence presented by the Commission and parties suggests the justifying “geographic pockets of crisis” have significantly expanded,³⁶ “Enrollment in both CARE and FERA has increased significantly over the course of the pandemic, with over one million new customer accounts enrolled.”³⁷ The complete geographic dimensions of COVID-19 arrearages and their corresponding impact on disconnections risks are not yet in the record of this proceeding. While CEJA, LCJA and Greenlining have illustrated the disproportionate impacts of the pandemic overall on low-income communities of color and disadvantaged communities, more specific information is necessary to guide the Commission.³⁸ As stated above, in the absence of precise information the Commission must adopt holistic interim measures now and commit to designing more narrowly tailored solutions in the future.

VII. Conclusion

CEJA, LCJA and Greenlining thank the Commission for the opportunity to provide comments following the Workshop. We look forward to collaborating with the Commission and all parties on providing the emergency relief required during the pandemic.

³⁵ R.21-02-014 Order Instituting Rulemaking, p. 2.

³⁶ D.20-06-003, p. 36; R.21-02-14 Order Instituting Rulemaking, p. 9 (“residential customer energy use had increased, enrollment in bill payment assistance programs had increased, customers had larger and older arrearages, and the number of customers with bill payment arrangements decreased overall”).

³⁷ R.21-02-14 Order Instituting Rulemaking, p.13.

³⁸ R.21-02-014 Status Conference Transcript, pp. 29, 48-49; LCJA and Greenlining Joint Opening Comments on Order Instituting Rulemaking, pp. 2-5.

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