R.21-02-014

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)

JOINT OPENING COMMENTS OF LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY AND THE GREENLINING INSTITUTE ON ORDER INSTITUTING RULEMAKING

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I. Introduction

In accordance with Rule 14.5 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure and the schedule set out in the R.21-02-014 Order Instituting Rulemaking ("OIR"), Leadership Counsel for Justice and Accountability and The Greenlining Institute submit these timely joint opening comments.

The Commission must fulfill its moral obligation and statutory mission to offer just and reasonable rates[1] and affordable energy services to all Californians. In light of the devastating public health and economic crises of the COVID-19 pandemic, the Commission must not, under any circumstance, allow utilities to disconnect or otherwise financially injure vulnerable households during or in the aftermath of the public health emergency. In designing and implementing utility debt policy solutions during the pandemic, the Commission must "promote the safety, health, comfort, and convenience…[of] the public" and ensure that debt relief is equitable.[2]

II. General Comments

A. Disproportionate Impacts of Utility Debt

Prior to the pandemic, the energy system was already failing the residential customers in California's disadvantaged communities ("DACs"). In addition to bearing a disproportionate pollution burden, these adversely impacted communities also struggled with a greater energy burden.[3] Under-resourced, Black, Latinx, and rural households and renters have higher energy burdens. Prior to the pandemic, DACs were more vulnerable to increases in energy needs and fluctuating prices due to climate change.[4] It has been well-documented that the benefits of California's clean energy transition have not been equitable. The lack of clean energy policy

[1] See Cal. Pub. Util. Code §§ 701, 770.
[2] See Cal. Pub. Util. Code § 451.
[3] See, e.g., California Energy Commission ("CEC"), *SB 350 Barriers Study; Campaign for Home Energy Assistance, The LIHEAP Investment 1* (2010), available at http://liheap.org/assets/investment/LIHEAP_investment_june2010.pdf(discussing a program to provide assistance to low-income households to pay for heating and cooling their home)
[4] See Rachel Morello-Frosch, et. al., *The Climate Gap*, p. 5 available at https://dornsife.usc.edu/assets/sites/242/docs/The_Climate_Gap_Full_Report_FINAL.pdf.

management will likely continue to worsen the inequality crisis as wealthier households shift decarbonization costs onto lower-income households and otherwise vulnerable households.[5]

The CARE and FERA programs reduce overall bills for participants. Yet despite assurances that all utilities are reaching out to all qualified customers and relatively high enrollment overall, a significant participation gap persists. Qualifying residential customers in DACs often cannot or do not participate, for many reasons. In our experience, some qualified customers are not receiving or understanding communications about CARE, FERA and other beneficial energy programs, because of failure to do targeted outreach, language barriers, lack of access to administrative support to enroll, lack of trust in energy utilities or because the actual customer does not receive the bill information, but must still pay the bill. Fifty-four percent of low-income households in California, for example, speak a language other than English, compared to 42 percent of the general population.[6] Some additionally fear inspection of their immigration or legal status.[7]

The COVID-19 pandemic has disproportionately impacted communities of color in California. DACs are disproportionately communities of color.[8] Health impacts from COVID are racially disparate as well, both in terms of cases and mortality. While identified ethnically-White residents constitute 38.8% of Californians, as of March 2021 they make up only 21% of COVID cases, and 31% of deaths. By contrast residents who identify as Latino make up 36% of the population, 54% of cases and 46% of deaths.[9]

Disadvantaged communities also face disparities in air pollution burden. Air pollution causes many serious health effects.[10] Some areas of California have some of the most polluted

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[5] California Public Utilities Commission, *Utility Costs and Affordability of the Grid of the Future* (Feb. 2021), p. 6, available at 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.

[6] California Energy Commission, *SB 350 Low-Income Barriers Study, Part A* (2016), p. A.

[7] California Energy Commission, *SB 350 Low-Income Barriers Study, Part A* (2016), pp. 47-49.

[8] *See e.g.* https://oehha.maps.arcgis.com/apps/webappviewer/index.html [view "race" information on top 25th percentile census tracts.

[9] *See CDPH COVID-19 Race and Ethnicity Data*, *available at* https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx.

[10] Inhaling small particles called particulate matter ("PM") can lead to asthma attacks, hospitalization for worsened heart disease, and premature death. Exposure to ground level ozone,

air in the country due to ground-level ozone and particulate matter.[11] Prior to the pandemic, communities of color already experienced significant health disparities because they bore a disproportionate amount of the air pollution burden.[12] The pandemic has only worsened these health inequities. Harvard University's School of Public Health found that even a small increase in long-term particulate matter exposure was associated with a 15 percent increase in COVID-19 death rate.[13]

California's economic recession related to the COVID-19 pandemic disproportionately impacts cost-burdened low-income households and people of color. Even prior to the recession, people of color in California disproportionately experienced difficulty paying for necessary household expenses.[14] During the recession, people of color in California are experiencing higher job loss and unemployment rates.[15] During the pandemic, COVID-19 infection and mortality rates disproportionately impact people of color in California as well.[16] Whiter counties are

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which is created by chemical reactions between nitrogen oxides and volatile organic compounds in sunlight, can reduce lung function and harm lung tissue. Children, older adults, and people with asthma are at greater risk to these health impacts. *See, generally,* California Air Resources Board, *ARB Fact Sheet: Air Pollution and Health*, https://ww2.arb.ca.gov/our-work/topics

[11] E.g. the top five most polluted cities for ozone and particulate matter are all in California. https://www.stateoftheair.org/city-rankings/most-polluted-cities.html.

[12] *See CalEnviroScreen 3.0: Update to the California Communities Environmental Health Screening Tool*, at 12 (Jan. 2017), *available at* https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf.

[13] *See* Xiao Wu et al., *Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis*, Science Advances, Vol. 6, No. 45 (Nov. 4, 2020), *available at* https://advances.sciencemag.org/content/6/45/eabd4049. *See also* Harvard School of Public Health, Press Release: *Air pollution linked with higher COVID-19 death rates*, https://www.hsph.harvard.edu/news/hsph-in-the-news/air-pollution-linked-with-higher-covid-19-deathrates/ (last visited Dec. 8, 2020).

[14] California Budget Center, *ISSUE BRIEF: California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19*, (January 2021). https://calbudgetcenter.org/wp-content/uploads/2021/01/IB-Renters-Remediated.pdf.

[15] Public Policy Institute of California, *Will This Recession Deepen California's Economic Divide?*, (December 2020) https://www.ppic.org/blog/will-this-recession-deepen-californias-economic-divide/.

[16] California Department of Public Health, *COVID-19 Race and Ethnicity Data*, (January 27, 2021), https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx.

recovering faster; counties with more Latinx and Black families are recovering more slowly.[17] Further, the types of industry that are recovering, such as building trades,[18] historically under-employ people of color and especially exclude Black workers. Recent Commission data confirms that due to economic impacts associated with COVID-19 and increased residential energy and telecommunications use related to shelter-in-place orders, additional low-income Californians are facing significantly damaging energy and other utility burdens forcing households to choose between paying utility bills and for other necessities.[19]

Extreme weather events are having greater impacts on California's low-income communities of color and the Commission should, consistent with prior decisions and Goal 4 of the Environmental and Social Justice Action Plan,[20] prioritize their protection in this proceeding, "Certain groups [are] likely to require additional prioritization for protections in the adaptation context (e.g., vulnerable and disadvantaged communities, and low-income customers."[21] Heat waves and wildfires are especially dangerous for children, the elderly, outdoor workers, low-income communities, those who are socially or geographically isolated, and those with limited adaptive capacity. In 2006, a 10-day heatwave in California caused over 650 deaths due to extreme heat conditions. Extreme heat causes heat-related illnesses such as heat stroke, heat exhaustion, dehydration, and can worsen existing cardiovascular or respiratory diseases[22]. While many low-income communities may not have access to air conditioning, utility shut-offs are

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[17] *See As Crisis Continues, More Unemployed Californians are Receiving UI Benefits*, available at https://www.capolicylab.org/publications/february-25th-data-point-recipiency-rates-for-unemployment-in-california-during-the-covid-19-pandemic/.
[18] *See COVID-19 Recession at Six Months: California's Unemployment Remains High*, available at https://calbudgetcenter.org/resources/californias-unemployment-remains-high/#:~:text=At%20the%20peak%20of%20the,the%20rate%20for%20white%20Californians
[19] CPUC Energy Division, *CPUC Workshop on COVID Impacts on Customers in Energy Sectors*, (November 12, 2020), https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/DER/COVID%20Workshop%202%20Presentations.pdf.
[20] CPUC, *Environmental and Social Justice Action Plan*, (2019)(Goal 4: Increase climate resiliency in ESJ communities because of the disparate impacts that the changing climate has on ESJ communities in the CPUC decision-making process), p. 17.
[21] Decision 19-10-054, p. 25.
[22] The California Healthy Places Index, *California Building Resilience Against Climate Effects (CalBRACE) Project* (2017) https://healthyplacesindex.org/wp-content/uploads/2018/02/2017_brace_extreme_heat_narrative.pdf.

dangerous to their livelihoods and can limit their access to food, a cooling fan, or life-sustaining medical devices. The Commission must take into consideration the outcome of this proceeding to ensure that utility access is available to those bearing the brunt of climate impacts, because projections show there are consistent increases in annual average temperature, extreme heat events will occur more frequently, and nighttime temperatures will also increase[23].

The recent events in Texas provide a painful example of what happens when communities lose power. In wealthy white communities, people can leave town or stay with relatives or in hotels where the power is on. In low-income communities of color, people suffer in life-threatening conditions and may lose their lives.[24]Low-income people who use life support and other electric medical devices for pre-existing health conditions are particularly vulnerable.

The frameworks proposed thus far ignore and fail to meaningfully mitigate these life-or-death disparities. The recently-adopted Arrearage Management Plan ("AMP"), which was developed prior to COVID, is a step in the right direction for a specific subset of customers - those who are on CARE or FERA and have sufficient income to pay their utility bill every month. For eligible customers enrolled in CARE or FERA, the AMP is superior to the two alternatives proposed by Energy Division's straw proposals.[25] However, vulnerable individuals and families with employment may still not qualify for AMP given its many eligibility requirements. The requirement to consistently pay each month, without missing more than two or three months in a row to remain eligible, does not fully reflect the documented reality of high energy burdens in lower-income households. In practice, what a high energy burden means is "shuffling bills," alternating or delaying certain monthly purchases and bill payments for utilities, rent, food, loan minimum payments, medical care, assisting other family and community members who are unemployed, and so on.

A recent Princeton study of 2 million public benefits recipients found that when faced with housing insecurity, food scarcity, new debt accrual, and recent job loss because of COVID-

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[23]CHPI, *Preparing CA for Extreme Heat*,(October 2013). https://healthyplacesindex.org/wp-content/uploads/2018/02/2013_cph_preparing_california_for_extreme_eat.pdf.

[24] Texas Tribune, *Many Texans have died because of the winter storm. Just how many won't be known for weeks or months*, (February 19, 2021), https://www.texastribune.org/2021/02/19/texas-power-outage-winter-storm-deaths (documenting some of the tragic losses of life related to winter storm weather and power outages).

[25] *R. 21-02-014 Order Instituting Rulemaking*, Appendix A, pp. A-2 - A-7.

19, people prioritized food and shelter.[26] Most people faced more than one form of precarity, and Black households disproportionately experienced material distress. Additionally, lower wage workers are more exposed to COVID-19, have worse health care access, and are more economically vulnerable to losing the ability to pay because of the lack of meaningful paid sick leave policies.[27] Finally, these payment plans do nothing for vulnerable people who are still struggling to find employment, cannot find regular and reliable employment, or do not have the ability to work.

In light of these compounding crises, it is disheartening that the Commission is considering straw proposals that include potential disconnections for people in disadvantaged communities. Neither the AMP nor the straw proposals offer a realistic path for the most vulnerable residential customers in ESJ communities to avoid disconnection. Barring a new approach and vision that does not include disconnection of residential customers for inability to pay, these communities will be swept by a wave of disconnections soon after the moratorium expires, exposing residents to life-threatening consequences associated with loss of electricity during extreme heat, cold, and frequent unsafe and unhealthy air quality.

B. Third-Party Debt

Customers have had to make difficult decisions about which bills to prioritize. Many customers, fearing disconnection either immediately or in the future, borrowed money in order to remain current with their utility bills, or at least minimize their arrears. This third-party debt will burden low-income households in much the same way as energy debt owed to utilities, and may also carry with it the additional burden of high interest rates.

To provide relief to customers that took out loans during the COVID-19 pandemic to pay energy bills, any debt relief program must provide a path to debt forgiveness to customers with energy debt held by third parties.

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[26] Enriquez, D., & Goldstein, A., *Covid-19's Socio-Economic Impact on Low-Income Benefit Recipients: Early Evidence from Tracking Surveys,* (2020, June 16). https://doi.org/10.31235/osf.io/hpqd5.

[27] KFF, *Double Jeopardy: Low Wage Workers at Risk for Health and Financial Implications of COVID-19*, available at https://www.kff.org/coronavirus-covid-19/issue-brief/double-jeopardy-low-wage-workers-at-risk-for-health-and-financial-implications-of-covid-19/.

C. Multifamily Housing

The most vulnerable Californians must be able access utility debt relief programs. In particular, we are concerned about residents in master-metered multifamily housing and mobile home parks. Landlords of master-metered multifamily housing and mobile home parks continue to charge residents for utilities either separately or as a component of rent. While we readily acknowledge the challenge associated with providing debt relief and other benefits to sub-metered tenants who do not have a direct relationship with the utility, our view is that any program must ensure that residents of multifamily housing are eligible for and able to access the benefit of any program to address utility arrears. Among other approaches, the Commission should consider the multifamily pilot projects proposed in R.17-06-024.

III. <u>Initial Comments On Straw Proposals</u>

A. Reply to Straw Proposal A

We support debt forgiveness for residential customers who do not qualify or are not enrolled in CARE, FERA or AMP, but Straw Proposal A does not go far enough either in terms eligibility or the size of the benefit.

First, the Commission should not assume that customers eligible for AMP have no need for immediate debt forgiveness. AMP is an important tool, but does not immediately eliminate debt burden and requires that the customer make on time payments of the monthly charges, a requirement that is not always possible for all customers.

Second, the framework of forgiving a small percentage of only some customers is insufficient to address the overall scope of the utility debt crisis in California and fails to provide sufficient relief to those who face the greatest harm from the debt, namely communities of color and social and environmental justice communities.

Third, benefits should not be conditioned on past or future behavior. A program conditioned on past or future customer behavior is based on a flawed and biased presumption that when customers facing economic distress make a choice about whether or not to pay their utility bill, that such choices provide information about whether they are responsible or whether they are deserving of relief. This is both incorrect and cruel.

Finally, as noted above, any debt forgiveness program must also provide relief to customers that took out loans to pay utility debt. The clearest example of this is customers who have been paying utility bills with credit cards they then cannot pay. Such customers should not be punished for taking steps to remain current on their utility bills. Therefore, any program to address utility arrearages must include a mechanism to provide not only bill forgiveness, but a bill credit as well.

B. Reply to Straw Proposal B

Straw Proposal B, by itself, would be vastly insufficient to address the scale and scope of the crisis. As stated above, we believe that significant debt forgiveness must be included in any relief program. Such a program should also target relief to the most vulnerable customers, including environmental and social justice ("ESJ") communities.[28]

We agree that all customers should have a real opportunity to resolve utility arrears. To the extent that this proposal would prevent a wave of utility disconnections when the shutoff moratorium is lifted, it is a step in the right direction. The economic impact of COVID-19 will not end when the health crisis is over. It will take many customers months if not years to return to the level of financial stability they had pre-COVID, if they ever do, and the goal should be to improve access to energy beyond the pre-COVID normal. Customers cannot be expected to repay their utility arrears quickly after the shutoff moratorium ends.

However, Straw Proposal B alone does not go nearly far enough to provide relief to customers impacted by COVID-19.

[28] CPUC, *Environmental and Social Justice Action Plan*, (2019), pp. 9-10 (defining ESJ communities including, but not limited to: predominantly communities of color or low-income; underrepresented in the policy setting or decision-making process; subject to a disproportionate impact from one or more environmental hazards; and likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities; Disadvantage Communities located in the top 25% of communities identified by Cal EPA's CalEnviroScreen; all Tribal lands; low-income households; and low-income census tracts).

IV. Replies to Questions raised in OIR

A. Is it reasonable to rely upon existing policies and customer assistance programs to assist customers with arrearages that have accumulated during the COVID-19 period once the disconnection moratorium ends? On what basis?

No. Every Californian has felt the economic impact of COVID-19. Many who were able to pay their utility bills on time have been forced into utility debt. Those who struggled to stay current before the pandemic are at even greater risk of incapacitating utility arrears. These Californians also face mounting debt from other sources, culminating in critical vulnerability amongst those who were already struggling. As of December 2020, over 1 billion dollars of residential utility debt exists across the investor owned utilities territories with at least $324 million dollars in debt for economically vulnerable CARE and FERA customers.[29] There are over 1 million new CARE/FERA accounts since the start of the pandemic.[30] Both debt and enrollment in customer assistance programs continue to grow. The scale and scope of this crisis far surpasses historic crises and cannot be resolved by existing policies and programs that were simply not designed to for this unprecedented moment.

B. Is it reasonable to develop arrearage relief to assist customers with arrearages that have accumulated during the COVID-19 period once the disconnection moratorium ends? On what basis?

Yes, for the reasons stated in the answer above.[31]

C. If there is a need for arrearage relief, how might we determine the amount of funding necessary? Does the determination of the amount of relief depend upon the funding source? What data supports this?

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[29] *R. 21-02-014 Order Instituting Rulemaking*, pp. 9-10.

[30] *Id*. at p, 13.

[31] We also note that programs that provide a realistic path to bringing their account current can have a positive effect on incentives to pay monthly charges on time. *See* Harak, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)*, (September 2013), available at https://liheapch.acf.hhs.gov/pubs/amp_report_final_sept13.pdf.

One key element is to collect data on customers who, in order to minimize their utility debt, have arrears for non-utility bills or borrowed money they cannot afford to repay. Any calculation of utility debt cannot be limited to debt owed only to the utilities themselves.

D. Which customer classes, and within customer classes which customer segments, are most in need of relief, in light of the existing programs and policies currently available to energy utility customers, and on what basis? Should different customer classes receive different amounts or types of relief? What data supports this?

As stated above, communities of color and ESJ communities face a disproportionate utility debt burden, which has only been exacerbated by COVID-19. Any relief program must account for this inequity. Further, many Californians with significant utility debt and additional vulnerabilities will not be able to qualify for either AMP or the proposed AAP, and AMP was not designed to address a generational crisis like the COVID-19 pandemic. Any relief program must ensure that no Californian falls through the cracks.

E. How should customers be identified for arrearage relief?

We support automatic enrollment in an arrearage relief program for customers with utility debt accumulated during COVID-19. Additionally, we urge the Commission to create an application process for Californians who have debt located outside of the utilities that nonetheless is attributable to their inability to pay their utility bill without borrowing money. We urge the Commission to limit the administrative burdens placed on customers for enrollment and participation to the greatest extent possible. We encourage the Commission to allow self-certification of eligibility and participation similarly to the greatest extent possible.

F. Should arrearage relief be conditional upon customer payment behavior, either past or future? On what basis?

No. See our response to Straw Proposal A.

G. Should arrearage relief be integrated with existing customer assistance programs?

To the extent that it makes the administration of the program faster and more efficient, yes. To the extent that it excludes the same customers who are already excluded from existing programs, no.

H. What are the concerns and considerations unique to the small and multi-jurisdictional utilities and their customers? If necessary, identify variations or alternatives to the straw proposals that would be applicable to the small and multi- jurisdictional utilities.

We look forward to reviewing responses from other parties and engaging further on this issue. We preserve our right to comment on reply.

I. Should the Commission reserve any state or federal relief funding that becomes available for relief addressing customer utility debt accumulated during the COVID-19 period?

Yes, with the intent of targeting as much of that funding urgently to the most vulnerable customers and communities.

J. What will be the impacts on environmental and social justice communities, including the extent to which arrearage relief impacts achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

As discussed above, COVID-19 and the resulting economic and public health fallout has disproportionately impacted low-income communities of color. The Commission must consider how it can effectuate Goals 1, 4, 5, 6 and 7 of the *Environmental and Social Justice Action Plan* in this proceeding:

- Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts;
- Goal 4: Increase climate resiliency in ESJ communities;
- Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs;
- Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities;

- Goal 7: Promote economic and workforce development opportunities in ESJ communities.[32]

V. Conclusion

These organizations respectfully request that the Commission duly consider and incorporate these comments and recommendations in this proceeding.

Dated: March 3, 2021

Respectfully submitted,

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[32] CPUC, *Environmental and Social Justice Action Plan*, (2019), pp. 6-8.