

**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)

**OPENING BRIEF OF THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE,
LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY AND THE
GREENLINING INSTITUTE**

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I. Introduction

Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the April 8, 2021 *R.21-02-014 Email Ruling Granting PG&E’s Procedural Motion For an Extension of Time to File and Serve Opening and Reply Briefs* (“Ruling”), the California Environmental Justice Alliance (“CEJA”), Leadership Counsel for Justice & Accountability (“LCJA”) and the Greenlining Institute (“Greenlining”) respectfully submit this Opening Brief on emergency energy arrearage relief for debt accumulated during the COVID-19 pandemic.

II. Summary of Argument

Prior to the pandemic, the Commission recognized and committed to redressing the great injustice that Environmental and Social Justice Communities¹ disproportionately bear both the

¹ Environmental and Social Justice Communities include, but are not limited to, Disadvantaged Communities, located in the most environmentally burdened California census tracts, as determined by the 25 percent highest scores (75th percentile) when using Cal EPA’s EnviroScreen tool; all Tribal lands; low-income households (Low-income households (Household incomes below 80 percent of the area median income); low-income census tracts (Census tracts where aggregated household incomes are less than 80 percent of area or state median income).

pollution and energy burden in our extractive energy system.² These same communities have had disproportionately high COVID-19 infection and mortality rates. The Commission initiated this proceeding at an important inflection point in the pandemic. Over a year into the crisis, Environmental and Social Justice Communities continue to experience severe financial hardships with no visible recovery in sight. Faced with a decision about who will pay for the debt accumulated during the life-saving disconnection moratorium and how best to protect Environmental and Social Justice Communities, CEJA, LCJA, and Greenlining, urge the Commission to stay the course.

The Commission must again act swiftly and decisively to implement interim rules to eliminate utility debt, including sub-metered and third-party debt, and extend the disconnection moratorium until December 31, 2021. Eliminating the debt is the only avenue to address the scale, urgency, and disproportionate impact of the pandemic, it is consistent with Commission precedent, and it will protect residents from the life-threatening risk of disconnection. Additionally, all proposed proxies—including the California Housing Rental Assistance Program and CARE/FERA—fail to ensure the Commission protects all residents in need from life-threatening disconnection. If the pandemic has taught any lesson at all, it is that the greatest cost of all is the cost of human life.

III. The Commission Must Act to Meet The Emergency

Raging like wildfire, more than 3.6 million cases of the COVID-19 virus have resulted in almost 60,000 deaths in California.³ The Commission and parties in this proceeding must not lose sight of the fact that we are conducting this proceeding in the midst of an unprecedented and

² CPUC, *Environmental and Social Justice Action Plan*, (February 21, 2019), http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/EnergyPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan_%202019-02-21.docx.pdf, p. 6.

³ California COVID-19 State Dashboard <https://covid19.ca.gov/state-dashboard/> (Accessed April 21, 2021)

ongoing emergency. COVID-19 has wreaked havoc on pre-existing economic and social configurations and the full extent of the damage will only be revealed over time. Although there are positive indications that a return to “normal” is on the way for some, that road is long and deeply uncertain for many. 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.”⁴

COVID-19 has disproportionately impacted communities of color. For example, according to the California Department of Public Health, Latino residents make up 38.9 percent of California’s population. However, Latinos in California account for 55.6 percent of COVID-19 cases and 46.7 percent of COVID-19 deaths in California.⁵ Communities of color, because of their disproportionate exposure to air pollution, faced greater susceptibility to illness and death from COVID-19.⁶ Vaccine distribution has been similarly inequitable. Latinos in California account for only 23.3 percent of Californians who have received at least one dose of the vaccine.⁷ While communities of color have borne the brunt of this pandemic, those responsible for delivering relief have failed to do so.

In addition to the ongoing public health crisis, economic recovery is not yet on the horizon for many Californians. According to the United States Bureau of Labor Statistics, the unemployment rate in California for March 2021 was 8.3 percent. Taken in isolation, this demonstrates a significant improvement from the peak in April 2020 at 16 percent. However, this

⁴ 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

⁵ California Department of Public Health, *COVID-19 Race and Ethnicity Data*, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx> (Accessed April 22, 2021).

⁶ Wu, X., Nethery, R. C., Sabath, M. B., Braun, D. and Dominici, F., 2020. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis. *Science advances*, 6(45), p.eabd4049.

⁷ California Vaccination Progress Data, <https://covid19.ca.gov/vaccination-progress-data/> (Accessed April 22, 2021).

positive trend can disguise the dire situation for many Californians. In the prior month, March 2020, just before the economic fallout of the pandemic, California's unemployment rate was 4.5 percent. That means that despite improvement, the state's unemployment rate remains nearly double what it was at that same time the previous year.⁸ Californians with lower incomes pre-pandemic are more likely to have lost their jobs as a result of COVID-19.⁹ Based on the last 40 years of recession trends, the trajectory of economic recovery for lower income families has typically lagged behind overall recovery.¹⁰ Moreover, the trajectory of economic impact and recovery from a pandemic based on regional differences in economic opportunity, industry variation, and their interactions with underlying inequalities.¹¹ What is certain is that the scale of economic loss risks deleterious derivative health consequences that will ripple through the next generations without significant economic relief now. In 2019, only 3.4 percent of adults in the United States reported not having enough to eat. As of March 2021, that number has nearly tripled to 9 percent.¹² In California, that number is 11 percent of households without children and 14 percent of households with children, totaling more than 3.3 millions households who do not have enough to eat. These numbers are staggering. This is an emergency.

This proceeding was initiated to respond to this emergency.¹³ Yet we are greatly concerned at the lack of urgency and commitment displayed by some parties in this proceeding.

⁸ Bureau of Labor Statistics, Databases, Tables and Calculators by Subject, California, <https://data.bls.gov/timeseries/LASST060000000000003> (Accessed April 22, 2021).

⁹ Pew Research Center, *Economic Fallout From COVID-19 Continues to Hit Lower-Income Americans the Hardest*, Kim Parker, Rachel Minkin, and Jesse Bennett, September 24, 2020. <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

¹⁰ Sarah Bohn, Dean Bonner, Julien Lafortune, and Tess Thorman, *Income Inequality and Economic Opportunity in California*, Public Policy Institute of California (Dec. 2020) <https://www.ppic.org/wp-content/uploads/incoming-inequality-and-economic-opportunity-in-california-december-2020.pdf> (Accessed April 22, 2021).

¹¹ *Id.*

¹² Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*. <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and#ftn2> (Accessed April 22, 2021).

¹³ R.21-02-014 Order Instituting Rulemaking, p. 2-6.

In particular, we are concerned when Pacific Gas & Electric (“PG&E”) states in their filings that they will begin disconnecting customers in August 2021.¹⁴ Although the disconnection moratorium is currently set to end on June 30, 2021, this emergency will not.¹⁵ Nor will it end in August. We know that the Californians who were in debt or at risk of struggling to pay their utility bills prior to the pandemic are now worse off, but it is not clear when these lower income households will see an economic recovery. Therefore, any proposals that contemplate a return to the status quo utterly fail to contemplate the magnitude and complexity of this crisis. It is clear, however, that the Commission has the opportunity to offer meaningful relief and protection.

IV. The Commission Should Adopt Interim Emergency Rules Consistent with Emergency Disconnections Precedent

The Commission must adopt interim rules on emergency debt relief and disconnections protections narrowly tailored to the scale, urgency, and disproportionate impacts of the COVID-19 pandemic. Parties in this proceeding and the Commission outlined the tremendous financial and social impacts of the pandemic as we currently understand them.¹⁶ Parties and the Commission also recognized key information gaps exist about both the pandemic’s current and future impacts on arrearages.¹⁷ PG&E explained that it “continues to believe there is insufficient data to determine how many customers require additional arrearage relief and how much/what type of assistance they need to become current on their bills.”¹⁸

¹⁴ PG&E *Post Workshop Comments*, p. 11-12.

¹⁵ These joint commenters believe that the disconnection moratorium must be extended.

¹⁶ R.21-02-014 Order Instituting Rulemaking, pp. 6-12; LCJA and Greenlining Order Instituting Rulemaking Comments, pp. 2-8 (outlining disproportionate impacts of utility debt and the pandemic).

¹⁷ *Utility Consumers Action Network (“UCAN”) Post Workshop Comments*, pp.1-2 (highlight the economic impacts of the pandemic may become more dire as related moratoria and consumer protections expire e.g. eviction, rental assistance etc); *CEJA, LCJA and Greenlining Post Workshop Comments*, pp. 4-5; *UCAN Post Workshop Comments*, p. 6.

¹⁸ PG&E *Post Workshop Comments*, p. 16.

Consistent with prior disconnections precedent, the Commission must both respond to our collective understanding of the disconnections crisis before us now and in the long-term, “Given the continuing rise in the rate of residential customer disconnections throughout the service territories of California-jurisdictional utilities, it is reasonable to take quick action to adopt the interim rules set forth below while the Commission considers longer-term solutions[.]”¹⁹ The arrearages and disconnections crisis that inspired Senate Bill 598 (Hueso, 2017) is even more dangerous presently during the pandemic.²⁰

Quick action is similarly required of the Commission now to protect the health and safety of disproportionately impacted Environmental and Social Justice communities before the expiration of existing emergency customer protections on June 30, 2021.²¹ Additionally, the Commission must commit to further long-term COVID protections in subsequent decisions consistent with Senate Bill 598. Senate Bill 598 requires, “[t]he Commission shall develop policies, rules, or regulations with a goal of reducing, by January 1, 2024 the statewide level of gas and electric service disconnections for nonpayment by residential customers, including policies, rules, or regulations specific to the four gas and electrical corporations that have the greatest number of customers.”²² The Commission must anchor its ongoing COVID-19 energy debt responses in the statutory 2024 disconnections reduction goal which necessitates ongoing

¹⁹ D.18-12-013, p. 28.

²⁰ R.21-02-014 Order Instituting Rulemaking, pp. 9-12; R.18-07-005 Order Instituting Rulemaking, pp. Attachment 1-14 - Attachment 1-16; CPUC, Energy Division, *November 12, 2020 Workshop on COVID Impacts on Customers in the Energy Sector Slides*, (November 12, 2020), https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/DER/COVIDWorkshop2_Master%20Deck%2011-12-2020.pdf.

²¹ R.21-02-014 Order Instituting Rulemaking, p.6 (explaining Resolution M-4849).

²² Senate Bill 598 (Hueso 2017) section 2(a).

data collection, analysis and planning as the pandemic's impacts develop and electricity rates continue to rise.²³

V. Historic Arrearage and Disconnection Protections and Programs Cannot Meet the Need of the COVID-19 Pandemic

Any previous protections, programs, payment plans, decisions, or strategies designed to mitigate arrearages and decrease disconnections have limited utility now that the pandemic has completed changed the economy.²⁴ The breadth, depth and distribution of arrearages increased “substantially” during the pandemic.²⁵ Unemployment is significantly higher in April 2021 and throughout the pandemic than in 2017.²⁶ The health and safety impacts of potential disconnections are magnified during a public health emergency where many families are managing increased health burdens, sheltering in place, and severely financially distressed.²⁷

Parties agree with CEJA, LCJA and Greenlining that the thoughtful disconnections protections and caps in D.20-06-003 are alone inadequate to mitigate the current crisis.²⁸ As the

²³ 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.

²⁴ See e.g., R.21-02-014 Order Instituting Rulemaking, Appendix A; D.20-06-003, Appendix 1, p.1 (disconnection caps methodology).

²⁵ R.21-02-014 Order Instituting Rulemaking, p. 9.

²⁶ R.18-07-005 Order Instituting Rulemaking, p. Attachment 1-19 (documenting correlation between California's unemployment rate and IOU energy disconnection rate); R.21-02-014 Order Instituting Rulemaking, p. 5; Public Policy Institute of California, *The California Economy Unemployment Update* (2017), <https://www.ppic.org/publication/the-california-economy-unemployment-update> (finding an unemployment rate of 5%); D.18-12-013, p. 16 (relying on 2017 data for SB 598 implementation).

²⁷ CPUC, Energy Division, *November 12, 2020 Workshop on COVID Impacts on Customers in the Energy Sector Slides*, (November 12, 2020), https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/DER/COVIDWorkshop2_Master%20Deck%2011-12-2020.pdf (documenting energy use increases and corresponding impacts on arrearages of shelter in place orders); Union of Concerned Scientists, *Electricity Shut-Offs in a Pandemic: How COVID-19 Leads to Energy Insecurity, Burdensome Bills*, (April 2020), <https://blog.ucsusa.org/joseph-daniel/how-covid-19-leads-to-energy-insecurity> (listing specific harms of electricity loss during the pandemic).

²⁸ CEJA, LCJA and Greenlining *Post Workshop Comments*, p. 11-12.

Utility Reform Network (“TURN”) explained, “[p]olicies and changes ordered by D.20-06-003 were designed for “normal” circumstances prior to the pandemic...A sufficient arrearage forgiveness program needs to ensure that low income customers, who already routinely struggle with affordability, are not burdened with debts accumulated during the pandemic, and it also needs to ensure that customer are given enough time to recover financially.”²⁹ UCAN further illustrated the devastating consequences of relying on these protections alone for COVID-specific relief, “[T]he caps established in D.20-06-003, will allow hundreds of thousands of California households to lose utility services once the disconnections moratorium is lifted. This is not the policy outcome the legislature had in mind when it passed the legislation that led to R.18-07-005 and R.18-07-006 and the instant proceeding.”³⁰ The Center for Accessible Technology and National Consumer Law Center similarly advocated for “interim modifications” to D.20-06-003 disconnections protections that respond to COVID conditions.³¹

As stated above (*See Section II.*) and throughout this proceeding, the evolving economic and health impacts of the pandemic disproportionately affect Environmental and Social Justice communities.³² These impacts are both specific to this moment and exacerbate pre-existing social inequalities that significantly impact arrearage debt amounts, future payment options, and energy access.³³ As NCLC and CforAT explained, “Just as the economic and public health impacts of the pandemic have disproportionately harmed low-wage workers and communities of color, those on the bottom leg of the anticipated “K” shaped recovery (in which households that

²⁹ TURN *Post Workshop Comments*, p. 5.

³⁰ UCAN *Post Workshop Comments*, p. 7.

³¹ Center for Accessible Technology and National Consumer Law Center *Post Workshop Comments*, pp. 13-14.

³² *See* CEJA, LCJA and Greenlining *Post Workshop Comments*, pp. 4-5; UCAN *Post Workshop Comments*, pp. 1, 9-10; *Assigned Commissioner’s Scoping Memo and Ruling*, p. 9.

³³ CEJA, LCJA and Greenlining *Post Workshop Comments*, pp. 4-5; 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>.

were already doing well are likely to see their circumstances improve, and those already at risk may see their circumstances worsen) will experience slower economic recovery.”³⁴ The Commission must respond to these distinct, wide-ranging and disproportionate impacts consistent with its *Environmental and Social Justice Action Plan*.³⁵ As “geographic pockets of concern”³⁶ continue expanding during the pandemic, disconnection caps must counter the cumulative environmental, social, financial and health burdens Environmental and Social Justice communities are experiencing.³⁷ Since the COVID-specific disproportionate impacts did not exist prior to the pandemic, pre-existing disconnections protections are inadequate to redress them. The Commission must take bold, well designed, and innovative actions to protect Californians from further pandemic damage.

VI. The Commission Should Eliminate All Residential Customer Debt

CEJA, LCJA and Greenlining support Cal Advocates’ proposal on “arrearage forgiveness for all residential customers with significant arrears accrued during the disconnection moratorium.”³⁸ We find total arrearage elimination for all residential customers is the only realistic option to provide meaningful relief to the Environmental and Social Justice communities experiencing the greatest pandemic burdens. We find that sub-metered customers and customers whose utility debt is held by third parties must have access to this relief. We request the Commission adopt arrearage elimination for all residential customers during the pandemic.

³⁴ Center for Accessible Technology (“CforAT”) and National Consumer Law Center (“NCLC”) *Post Workshop Comments*, pp. 9-10.

³⁵ R.21-02-014 Scoping Memo and Ruling, p. 5 (highlighting goals 1, 4, 5, 7).

³⁶ D.20-06-003, p. 36; R.21-02-14 Order Instituting Rulemaking, p. 9.

³⁷ R.21-02-014 Status Conference Transcript, pp. 29, 48-49; LCJA and Greenlining Joint Opening Comments on Order Instituting Rulemaking, pp. 2-5.

³⁸ Cal Advocates’ Post Workshop Comments, p.2.

First, as many parties stated throughout the proceeding, income verification requirements impose significant access barriers on potential recipients through discriminatory and resource intensive application processes.³⁹ Many Californians whose economic status is shifting in the pandemic are unlikely to know they may qualify for Commission programs.⁴⁰ The income-based criteria and eligibility requirements of programs discussed thus far will further miss identifying and providing essential relief to Californians in need.⁴¹ For example, the Commission does not have a full understanding of the geographic distribution of arrearages and the impacts that affect households' utility payments during the pandemic. Collectively, the parties and the Commission do not sufficiently understand the shape and contours of the arrearage crisis, therefore any eligibility criteria is nearly guaranteed to exclude households in need of relief.

Second, total arrearage forgiveness ensures relief is meaningful enough to prevent life-threatening utilities disconnections. At this time, and during this rapid proceeding timeline, we lack the specific knowledge required to factually determine what amount of relief would be enough for which households in order to prevent disconnections. As Cal Advocates details, "The limitation of a flat percentage [or similar] approach is that for some customers with substantial arrearages, the remaining balance may remain an insurmountable debt that the customer is unable to pay."⁴² The Commission cannot precisely distinguish between surmountable and insurmountable debt, so any relief less than total elimination risks disconnections.

Third, Cal Advocates persuasively demonstrates the costs-savings and benefits to ratepayers of total arrearage elimination compared to other options before the Commission.⁴³

³⁹ Cal Advocates' Post Workshop Comments, p.2; R.21-02-014 Status Conference Transcript, pp. 31, 47-48.

⁴⁰ Cal Advocates' Post Workshop Comments, pp. 2-3.

⁴¹ UCAN *Post Workshop Comments*, p. 8; PG&E *Post Workshop Comments*, p. 4 (noting how different eligibility requirements can exclude households with the same income from relief).

⁴² Cal Advocates *Post Workshop Comments*, p. 6.

⁴³ Cal Advocates *Post Workshop Comments*, p. 3-5.

Eliminating all residential pandemic arrearages eliminates disconnection costs, and alternative program administration costs.⁴⁴ Any concerns on potential ratepayer impacts of arrearage elimination can be further mitigated by the Commission and all parties in this proceeding urgently joining existing advocacy from a coalition of direct service providers, grassroots activists and consumer advocates for alternative state funding support.⁴⁵ We discourage the Commission from drawing exclusionary lines for arrearage relief before we understand in greater details the need and what state resources are available.

Fourth, the Commission must ensure that the complete elimination of COVID-19 utility debt includes both sub-metered customers and those whose debt is held by a third party. This debt must be within the scope of this proceeding because to exclude these customers would unreasonably exclude among the most vulnerable customers. It would be inappropriate and injustice to provide utility debt relief to the owner of a mobile home park on behalf of sub-metered residents without ensuring that the relief reaches its intended beneficiaries. Further, customers should not be punished with burdensome, high interest, third party debt in order to remain current on their utility bills. These customers face substantial risk of disconnection. The elimination of COVID-19 utility debt must be designed to reach them.

Finally, and most importantly, disconnecting families from necessary utilities during a global public health crisis is morally unconscionable, impermissibly risks loss of life, and is fundamentally against the Commission's mission, responsibility, and commitment to the public. We support Cal Advocates' proposal eliminating all residential arrearages during the pandemic because it is the only material option to prevent disconnections, "This structure ensures that

⁴⁴ Cal Advocates *Post Workshop Comments*, p. 3-5.

⁴⁵ Letter Request to Provide \$2 Billion for Utility Customer Debt Relief, (April 2021), <https://greenlining.org/wp-content/uploads/2021/04/Utility-Customer-Debt-Relief-Updated.pdf>.

customers at risk for disconnection once the moratorium lifts, will receive sufficient relief to stay connected to utility services.”⁴⁶ As stated previously, we relatedly support extending the disconnections moratorium throughout the COVID-19 pandemic.⁴⁷

VII. Proposed Proxies Will Not Meet the Need of the COVID-19 Emergency

All proposed proxies for debt relief almost certainly condemn some residential customers and their communities to life-threatening destabilization during a pandemic. Various criteria and enrollment procedures have been elevated for consideration by parties and the Commission staff, which CEJA, LCJA, and GLI have thoroughly considered. Understandably, these criteria have frequently been framed as an attempt to identify residents who may have the most economic need, residents who will have the hardest time recovering, or residents who face the greatest risk of harm. Yet, as described above (*See Section IV.*), no pre-existing dataset and no public assistance program can reliably discriminate between one category of residents that deserves relief and one that does not. The demonstrated risk of under-inclusion in a debt relief program outweighs the speculative risk of over-inclusion. While a pandemic persists or in any critical recovery period thereafter, disconnection is unconscionable.

a. The California Emergency Rental Assistance Program Should Not Be Used as a Proxy Eligibility Determination System

The California Emergency Rental Assistance Program (“HCD ERAP” or “Housing is Key”)⁴⁸ should not be used as the primary eligibility determination system for debt relief. The

⁴⁶ Cal Advocates *Post Workshop Comments*, p. 3.

⁴⁷ R.21-02-014 Status Conference Transcript, p. 73-74.

⁴⁸ California Department of Housing and Community Development <https://www.hcd.ca.gov/grants-funding/active-funding/erap.shtml>; https://housing.ca.gov/covid_rr/program_overview.html#renter.

homelessness risk criteria, unresolved enrollment process concerns, and landlord consent provisions should dissuade the Commission from seeing the program as more than an important source of funding for some households with both rental housing and utility debt. The Commission should, however, work with HCD to improve awareness of the supplementary utility debt elimination benefit in its program.

First, the Stay Housed program was designed to target tenants most vulnerable to eviction and rental debt—not utility debt. *All three* eligibility criteria of the program must be met.⁴⁹ The California Housing is Key website advertises: “If one or more individuals in your household meet all of the following, you are eligible to apply (emphasis added):

1. Have qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due to COVID-19; and

2. Demonstrate a risk of experiencing homelessness or housing instability, which may include:

a. a past-due utility or rent notice or eviction notice;

b. unsafe or unhealthy living conditions; or

c. any other evidence of such risk, as determined by the program

3. Have a household income that is not more than 80% of the Area Median Income”

As a condition of federal funding, households below 50% AMI will be prioritized.⁵⁰ Although there is likely a correlation between housing insecurity and risk of utilities disconnection, this requirement will still exclude customers vulnerable to disconnection and at risk of harm if disconnected from power. Furthermore, in the “any other evidence of such risk” criteria, the requirement has an element of subjectivity, which could lead to under-inclusion. UCAN also raises the important points that income data “from prior years used as screening criteria may not

⁴⁹ Of the parties that spoke to the use of HCD ERAP as an eligibility proxy, only CEJA, GLI, and LCJA as well as SCE accurately represented all three mandatory requirements. SCE *Post Workshop Questions*, p. 2.

⁵⁰ BCSH Housing Is Key, *SB 91 and the State Rental Assistance Program*, see slide 12, https://www.bcsb.ca.gov/covidrelief/sb91_presentation.pdf.

fully reflect how COVID-19 has affected individual households” and households living in rural areas that are “prone to having erratic income streams may still need assistance although they do not qualify for aid.”⁵¹

Second, even with staff from trusted community-based organizations, the difficulty of completing the application process has been a significant barrier to enrollment. Advocates have yet to see improvements about the following concerns. First, the actual application portal account required to file an application has yet to be translated from English and requires an email address.⁵² The application process is only available online or by phone. Given the digital divide⁵³ across income, race, language, and age, this program is disproportionately inaccessible. Even if the enrollment is completed over the phone, applicants must still be able to access the online portal to check for updates. As with many other public assistance programs, compiling the many verification documents is also an overwhelming process for households in crisis. Even if a qualified individual is able to apply, it is likely not without a cost to their health.⁵⁴

Third, the landlord provisions are not only an enrollment barrier, but also evidence of the unique context of the private housing market. The primary rental assistance benefit provides the landlord a state benefit that reliably covers 80% of the rental arrearage in exchange for the

⁵¹ UCAN *Post Workshop Comment*, p. 2.

⁵² CA COVID-19 Rent Relief Application Portal. <https://hornellp-ca.neighborlysoftware.com/CaliforniaCovid19RentRelief/Participant>.

⁵³ Pew Research Center, *7% of Americans don't use the internet. Who are they?* April 2, 2021. <https://www.pewresearch.org/fact-tank/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they/>; See UCLA Center for Neighborhood Knowledge, *COVID-19 and the Digital Divide in Virtual Learning*. Fall 2020. https://knowledge.luskin.ucla.edu/wp-content/uploads/2020/12/Digital-Divide-Phase2_brief_release_v01.pdf; See Also Desert Sun, *Seniors, rural residents face challenges in accessing COVID-19 vaccine*, Rebecca Plevin and Maria Sestito, January 31, 2021. Available at: <https://www.desertsun.com/story/news/2021/01/31/seniors-rural-residents-face-challenges-access-covid-19-vaccine/4288519001/>

⁵⁴ Health Affairs, *How Administrative Burdens Can Harm Health*, October 2020. <https://www.healthaffairs.org/doi/10.1377/hpb20200904.405159/full/health-affairs-brief-administrative-burdens-social-welfare-Herd.pdf>

landlord's forgiveness of 20% of the rental arrearage ("80-20").⁵⁵ If the landlord does not agree to forgive 20% of the rent, then the renter may receive a state benefit of 25% of the rental arrearage, which should protect the renter from eviction under SB 91.⁵⁶ In short, the application process relies on benevolent landlords with whom heavily indebted renters may have frayed relationships. Landlords are also required to sign declarations that attest to compliance with the warranty of habitability and lease terms. Yet not all landlords even provide tenants with leases or receipts of payment, because that would formalize the arrangement, and make predatory landlords susceptible to tenants rights enforcement. At the same time, low-income homeowners will not receive any relief from this program. The 80-20 provision was and continues to be widely criticized by tenants rights advocates.⁵⁷ Evident in the 80-20 provision, the emergency rental assistance program is specifically designed to engage with landlords, who are owners of private property with whom the state has no other relationship, unlike investor-owned utilities.

b. California's Public Assistance Programs Should Not Be Used as Proxy Eligibility Criteria

The limitations of California's basic public assistance programs indicate that utility debt relief should not be contingent on participation in these programs. Not only are these long-standing programs under-enrolled because they consistently fail to reach some of the most vulnerable Californians, but also because they are designed for under-enrollment with their lifetime caps.

⁵⁵ State of California Business, Consumer Services and Housing Agency, *COVID-19 Tenant Relief Act FAQ*, https://www.bcsb.ca.gov/covidrelief/tenant_relief_faq.html

⁵⁶ *Id.*

⁵⁷ Public Advocates, *Forgive Rent and Stop the COVID Evictions - SB 19*, <https://www.publicadvocates.org/stop-the-covid-evictions/>.

California has consistently held one of the lowest rates of enrollment for food stamps in the entire country.⁵⁸ As the pandemic raged in 2020, two of the most important anti-poverty measures—the Earned Income Tax Credit and unemployment insurance funding—legally barred undocumented and mixed status families from thousands of dollars of federal assistance.⁵⁹ The California Work Opportunity and Responsibility to Kids (“CalWORKS”)/Temporary Assistance for Needy Families (“TANF”) program has a lifetime cap, meaning that no individual can receive CalWORKS for more than four years.⁶⁰ Even Covered California and Medi-Cal, which have received millions of dollars in federal and state funding for outreach and marketing, have remained under-enrolled during the pandemic.⁶¹ As of February 2021, an estimated 2.7 million Californians remained uninsured, including a projected 1.2 million who are eligible for financial help through Covered California or for low-cost or no-cost coverage through Medi-Cal.⁶²

Additionally, the recently implemented 2019 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.⁶³ The announcement and stipulations that the 2019 Public Charge Rule has been

⁵⁸ San Francisco Chronicle, *California has one of the country’s lowest rates of food stamp enrollment. Could Test messages help?* Tara Duggan, October 21, 2019.

<https://www.sfchronicle.com/food/article/California-has-one-of-the-country-s-lowest-14577872.php>.

⁵⁹ Public Policy Institute of California, *Poverty in California: 2018*, (July 2020),

<https://www.ppic.org/publication/poverty-in-california/>;

California Budget Center, *Undocumented Californians Excluded from Federal Recovery Rebates* (Jan. 2021),

<https://calbudgetcenter.org/resources/undocumented-californians-children-excluded-from-federal-recovery-rebates/>.

⁶⁰ California Department of Social Services, *Eligibility and Assistance Standards Manual*, §42-302.1.

⁶¹ Covered California <https://www.coveredca.com/newsroom/news-releases/2021/02/15/covered-california-launches-new-television-ad-campaign-to-reach-uninsured-californians-during-the-covid-19-pandemic/>

⁶² Covered California News Release, January 28, 2021. <https://www.coveredca.com/newsroom/news-releases/2021/01/28/california-joins-president-biden-in-responding-to-covid-19-pandemic-by-announcing-special-enrollment-to-help-people-get-insurance/>

⁶³ 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), 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.

discontinued do not eliminate the public charge rule altogether, which has resulted in ongoing confusion for immigrant communities.⁶⁴ Relying on existing public assistance programs as eligibility criteria would certainly disproportionately exclude immigrant households.

c. CARE/FERA Should Not Be Used as Proxy or Sole Eligibility Criteria

Current enrollment in energy assistance programs to prevent disconnection remains too low to serve as a proxy. Particularly distressing is the low CARE and FERA enrollment among residents in DACs.⁶⁵ This “CARE Gap”⁶⁶ 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. The outreach plans from recently submitted transition plans from the investor-owned utilities are not entirely reassuring. PG&E, for example, has a Marketing, Education and Outreach plan that is functionally more of the same with no concrete plan to engage community based organizations (“CBOs”). The Low-Income Oversight Board recommended several changes to the investor-owned utilities’ transition plans.

Additionally, CBOs in these regions have been disproportionately impacted by the pandemic. Frontline CBOs are trusted often because their staff are from and live in the same disadvantaged communities they serve, and because many CBOs limited in-person outreach efforts during the pandemic. As residents of frontline communities themselves, outreach staff are no exception to the disproportionate health and economic impact of the pandemic. Staff conducting outreach for Stay Housed may have had COVID-19 themselves as a result of living

⁶⁴ National Immigration Law Center, *Public Charge Update: What Advocates Need to Know Now*, March 18, 2021. <https://www.nilc.org/wp-content/uploads/2020/03/Public-Charge-What-Advocates-Need-to-Know-Now.pdf>

⁶⁵ LCJA and Greenlining Joint Opening Comments on Order Instituting Rulemaking, pp. 3-4.

⁶⁶ D.20-06-003, p. 82

in close quarters with family members, roommates, or neighbors disproportionately exposed by low-wage work while precariously balancing the acute stresses of grief from the death and declining health of close family and friends, setting up GoFundMe pages to pay for funeral expenses⁶⁷ or food for neighbors⁶⁸, constantly organizing to pool money within and beyond their community networks, and caring for children who have lost their caretakers⁶⁹. While it may be necessary as a medium to long-term solution, the time required to contract, to hire, and to train outreach staff—at scale and in these conditions—necessitates a more immediate interim debt relief solution.

d. The Commission Should Avoid Eligibility Determination Systems that Unnecessarily Increase Administrative Burdens and Perpetuate Institutional Racism

Complete COVID arrearage relief limits costly administrative burdens and removes the risk of perpetuating the racist history of public assistance eligibility requirements. As Cal Advocates correctly noted, “requiring verification of financial hardship to enroll...may also be administratively burdensome to the utility and costly to ratepayers.”⁷⁰ In addition to the significant administrative ratepayers would shoulder, Cal Advocates further outlined the significant ratepayer costs associated with disconnections and reconnections risked from inadequate COVID-19 arrearage relief. During the Workshop, investor-owned utilities also stated the need for “streamlined” customer relief and many parties continually uplifted ease of

⁶⁷ Time Magazine, *Funeral Costs Are Driving Families Hit by COVID-19 to Desperate Measures*. Melissa Chan. December 21, 2020. Available at: <https://time.com/5915748/covid-19-funeral-costs/>.

⁶⁸ Los Angeles Times, *On GoFundMe in the time of coronavirus: pleas in the dark for money for food and rent*. Nita Lelyveld, May 2, 2020. Available at: <https://www.latimes.com/california/story/2020-05-02/gofundme-campaigns-coronavirus-money-food-rent>

⁶⁹ An estimated 43,000 children in the United States according to: Kidman R, Margolis R, Smith-Greenaway E, Verdery AM. Estimates and Projections of COVID-19 and Parental Death in the US. *JAMA Pediatr*. Published online April 05, 2021. doi:10.1001/jamapediatrics.2021.0161

⁷⁰ Cal Advocates *Opening Comments* p. 5.

utility implementation as a priority in designing arrearage relief in this proceeding.⁷¹

Implementing a new eligibility verification program may take away vital time and resources from the emergency response required to protect Californians from serious financial injury, disconnection during a crisis, and already existing programs like CARE and FERA that need significant attention.

Consistent under the Environmental and Social Justice Action Plan, the Commission should not use public assistance eligibility as a proxy, in order to intervene in the history of state-sanctioned racism. Alluring incentives and the fear of the “free rider” are frequent market-based tools. However, in this context of public benefits eligibility, the idea of integrating behavioral incentives into policy design is at best, an abstraction, and at worst, racism. Current public assistance program eligibility criteria and processes are the result of a well-documented long history of racial exclusion.⁷² Parties raising concerns about “customer behavior” and alleged “free riders,” meaning customers who do not truly need assistance but take advantage of the relief nonetheless echo the same racist tropes⁷³ that established more stringent eligibility and surveillance requirements in public assistance programs despite no reliable evidence of beneficiary fraud.⁷⁴ Communities in need of public assistance do not have the luxury

⁷¹ R.21-02-014 Status Conference Transcript, p, 7 (quoting Southern California Edison).

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

⁷² *See e.g.*, Dorothy E. Roberts, Review: Welfare and the Problem of Black Citizenship, 105 Yale L. J. 1563 (1996) (leading Black feminist legal scholar Professor Dorothy Roberts reviews two histories that describe the inception of welfare programs in the United States and eligibility expansion and then contraction as a result of the Civil Rights movement and introduction of Black women into public assistance programs)

⁷³ *See also* Hari Sreenivasan, Sam Weber, Connie Kargbo. The true story behind the ‘welfare queen’ stereotype. PBS News Hour (Jun. 1, 2019), <https://www.pbs.org/newshour/show/the-true-story-behind-the-welfare-queen-stereotype>.

⁷⁴ PBS News Hour, How algorithms intended to root out welfare fraud often punish the poor. February 17, 2020. <https://www.pbs.org/newshour/economy/column-how-algorithms-to-root-out-welfare-fraud-often-punish-the-poor>.

e. Intersecting Areas of Geographic Concern Require More Analytical Attention

Both Disadvantaged Communities (“DACs”), communities living in extreme weather zones, and high-disconnection zipcodes may merit special attention from the Commission when it comes to COVID-19 recovery. DACs have been disproportionately affected by the pandemic, as the increased air pollution in historically redlined areas renders residents more susceptible to COVID-19.⁷⁵ Additionally, as the Interim Rules acknowledge, disconnection is especially dangerous to health and safety during extreme weather events.⁷⁶ Unfortunately, extreme weather events are no longer an anomaly due to the climate crisis. In other proceedings that address extreme weather reliability,⁷⁷ the Commission has been taking steps to “keep the lights on” with this updated underlying assumption. At minimum, we know residents with high arrearages in these geographic areas susceptible to extreme weather will face significant health and safety challenges if they are disconnected. The current Interim Rules that only protect residents based on 3-day weather forecast lookouts is no longer sufficient. Last, zipcodes with high disconnections, which NCLC and CforAT described as “geographic pockets of crisis,”⁷⁸ emphasizes the importance of community level protections. This preexisting pattern also merits revisiting the disconnections zipcode disconnection cap of 30%. Ultimately, the economic need of the COVID-19 pandemic that has resulted in utility debt and places residents at risk of life-

⁷⁵ Wu, X., Nethery, R. C., Sabath, M. B., Braun, D. and Dominici, F., 2020. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis. *Science advances*, 6(45), p.eabd4049.

⁷⁶ D.20-06-003, p. 12 (“The Interim Rules required that energy IOUs not be allowed to disconnect customers when the 72-hour National Weather Service forecast predicts temperatures above 100 degrees or below 32 degrees. The 100-degree prohibition does not apply to gas utilities. Again, the IOUs generally supported the extreme weather protections.”)

⁷⁷ See e.g., R.20-11-003 Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in California in the Event of an Extreme Weather Event in 2021.

⁷⁸ D.20-06-003, p. 36.

threatening disconnection still exists at a scale that reaches beyond any one of these geographic parameters.

VIII. Interim Rulemaking Should Pause Payment Plan Requirements for Pre-COVID-19 Debt

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. The Commission should adopt an interim automatic “pause” on pre-COVID-19 debt, including debt in payment plans. The implementation challenges raised by investor-owned utilities highlight the importance of releasing interim measures to “pause” any repayment requirements, including debt accrued prior to the disconnection moratorium. The Commission and the utilities must take the time to address the technological and design challenges that might affect their ability to implement an updated payment plan program that reflects the complex economic impact of COVID-19 on the ability of customers to participate consistently in a payment plan.

This emergency measure would mirror 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 zero percent interest rate. The DOE retroactively extended this relief as well as other remedial protections to students who had previously defaulted on certain privately-held loans so they could “focus on meeting basic needs.” The DOE “pause” has an opt-out option.

AMP was not designed for these times. The limited grace period and the prospect of a “broken” plan are unrealistic constraints on households with disproportionately high energy burdens. Residents should only need to make a good faith payment after receiving direct

outreach from the utility after a missed payment and should not be locked out from the program.⁷⁹ When the economic circumstances are this dire, requiring consecutive payments is not “incentivizing” utility bill payment or “encouraging customer behavior.” The requirement to consistently pay each month 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 June 2020 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-19, people prioritize food and shelter.⁸⁰ According to more recent data from the U.S. Census’ Household Pulse Survey, these bill triage spending practices are still ongoing. An average of 89.2% of low-income people having difficulties paying their expenses in California were behind on their rent.⁸¹ The same survey indicated 91% of low-income people in California having difficulties paying their expenses were selling off property or using savings to pay off debt, and 82.2% were using credit cards and loans while to pay off debts.⁸² When presented with an influx of cash, an overwhelming majority of low-income Californians having difficulty paying their expenses tried to pay off utility debt. An average of 90.3% low-income

⁷⁹ NCLC and NCforAT *Post Workshop Comments*, p. 11.

⁸⁰ 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>.

⁸¹ US Census’ Household Pulse Survey, California, Weeks 22 - 25. (The following statistics come from the California subset of the US Census’ Household Pulse Survey Public Use Files (PUF) where disaggregated survey responses were used to find spending related responses. This subset falls during the period of August 2020 - March 15, 2021 or Weeks 13 - 26 or phase 2 and 3 of the survey.) <https://www.census.gov/programs-surveys/household-pulse-survey/datasets.html> (Accessed, Apr. 21, 2021); Low-income means someone earning less than \$35,000 as in line with the California Poverty Measure from the Public Policy Institute of California, https://inequality.stanford.edu/sites/default/files/CPM-2014_technical-appendix.pdf. [California Poverty Measure](https://inequality.stanford.edu/sites/default/files/CPM-2014_technical-appendix.pdf) (Accessed Apr. 22, 2021).

⁸² US Census’ Household Pulse Survey, California, Weeks 13 - 25.

Californians used their stimulus check to pay their utilities⁸³ even during the disconnection moratorium. Carrots and sticks are only appropriate policy design solutions when potential beneficiaries are presented with a meaningful choice. Given what we know about how households impacted by COVID-19 are spending their limited means, pre-pandemic AMP provisions are only state-sanctioned barriers to families being able to triage survival funds.

IX. Conclusion

CEJA, LCJA and Greenlining urge the Commission to demonstrate the bold leadership required to protect the health, safety and well-being of Californians during the COVID-19 crisis. The NAACP Environmental and Climate Justice Program offers a reflection on the destabilization and death that arises from disconnections:

“Too often these tragedies are chalked up to the inevitable consequences of poverty and implicitly relegated to being sad, but acceptable losses, with an unspoken notion that ‘We can’t save them all!’ However, every one of these losses was preventable and we cannot, in good conscience, stand by and watch more when we have the means to ensure access for all.”⁸⁴

The Commission must act now to prohibit preventable losses and protect Environmental and Social Justice Communities. To that end, the Commission must eliminate pandemic debt and extend disconnections protections in order to meet this grave and historic moment.

⁸³ US Census' Household Pulse Survey, California, Weeks 22 - 25.

⁸⁴ NAACP Environmental and Climate Justice Program, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as If Humans Rights Matter*, p. vii.
Available at: https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold_NAACP.pdf.

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