

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Authorization and Order Directing Utilities to Extend Emergency Customer Protections to Support California Customers Through June 30, 2021 and to File Transition Plans for the Expiration of the Emergency Customer Protections.

Draft Resolution M-4849
(Filed February 11, 2021)

**COMMENTS OF THE UTILITY REFORM NETWORK, NATIONAL CONSUMER
LAW CENTER, AND CENTER FOR ACCESSIBLE TECHNOLOGY ON DRAFT
RESOLUTION M-4849**

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TABLE OF CONTENTS

I.	Introduction	1
II.	Discussion.....	2
	A. The Draft Resolution Should More Clearly Address the Activities of Communication Service Providers.....	2
	B. The Draft Resolution Should More Clearly Highlight the Importance of Enrolling Customers in Other Programs	5
	C. The Draft Resolution Should be Modified to Make Clear that Any Fees That Would Have Been Assessed During the Emergency Customer Protections Period Should Be Waived or Forgiven.....	7
	D. The Draft Resolution Should Clarify its Reference to Protections for Water Customers with Medical Needs	8
	E. The Draft Resolution Should Reflect the Outcome of the Meet and Confer Process Between Energy and Water Utilities regarding Data Exchanges	8
	F. The Draft Resolution Should be Modified to Include a Modified Monthly Disconnection Cap for the Large Energy IOUs.....	9
	G. The Draft Resolution Should Provide Greater Clarity About the Implementation of SB 998	11
	H. The Draft Resolution’s Discussion of the Use of Memorandum Accounts Should be Clarified.....	12
III.	Conclusion.....	13

I. INTRODUCTION

On January 15, 2021, the Commission issued Draft Resolution M-4849 on its own motion. The Draft Resolution would extend emergency customer protections for energy, water and communications customers based on the ongoing COVID emergency in California, and it would further direct regulated energy and water utilities to develop transition plans for when the emergency protections are eventually discontinued. Pursuant to the expedited comment schedule set for the Draft Resolution, The Utility Reform Network, Center for Accessible Technology and National Consumer Law Center (hereinafter referred to as “Joint Consumers”) file these opening comments.

Joint Consumers support the Draft Resolution as a critical part of the Commission’s work to protect and support California consumers during this pandemic crisis. We appreciate the effort to ensure that adopted protections continue for the duration of the ongoing crisis, and that planning begins for the eventual conclusion of the protections so that customers are well prepared and that they have access to ongoing support to remain connected to essential utility service. As part of this, Joint Consumers specifically appreciate that that the utilities are broadly directed to address “the appropriate method of customer communication, including non-English languages and forms for communication to reach people with disabilities and other access and functional needs”¹ as part of their Transition Plans.

¹ Draft Resolution at p. 13. The provisions regarding Transition Plans apply to energy and water utilities, but not communications providers. Joint Consumers urge the Commission to direct communications providers to also consider effective communication requirements in all customer communications regarding emergency protections.

Generally, the relief proposed in the Draft Resolution would provide ongoing, appropriate and meaningful consumer protections that will help residential and small business customers for the remaining duration of the COVID-19 pandemic crisis and will help prepare a pathway for the eventual conclusion of the emergency protections. With just a few clarifications, as set out below, Joint Consumers urge the Commission to adopt this Draft Resolution.

II. DISCUSSION

While Joint Consumers generally support adoption of the Draft Resolution, we recommend various clarifications and modifications to its provisions as follows:

A. The Draft Resolution Should More Clearly Address the Activities of Communication Service Providers

The Draft Resolution states that it is extending various COVID-19 consumer protections previously required by energy, water, and communications corporations, “to ensure continued continuity and consistency between all utility actions resulting from the ongoing COVID-19 pandemic.”² This includes a requirement across all industries for each provider to file “a Tier 1 Advice Letter describing all reasonable and necessary actions to extend the Emergency Customer Protections contained in this Resolution.”³ For energy and water utilities, but not communications providers, it also includes a requirement to file “a Tier 2 Advice Letter containing their transition plans associated with discontinuance of the Emergency Consumer Protections” after the end of the extended period.⁴

In the discussion of the transition plans, the Draft Resolution references the adoption of Resolution M-4848, which established a 90-day moratorium on disconnections for nonpayment for communications customers, as the reason why no further extension is needed for this

² Draft Resolution at p. 3.

³ Draft Resolution at p. 1.

⁴ Draft Resolution at p. 1.

industry, but it does not discuss why the communications moratorium is on a different timeline (subject to expiration as soon as April 18, 2021) than the other industries, whose disconnection moratoria would be extended to June 30, 2021.⁵ Joint Consumers urge the Commission to include an extension of the communications disconnection moratorium as part of the Draft Resolution's otherwise-comprehensive package of utility consumer protections, as this would support the Commission's goal of ensuring continuity and consistency between all utility actions.

This Draft Resolution, and the prior Resolution M-4842, mirror the consumer protections for communications customers adopted by the Commission in D.19-08-025.⁶ While useful, the consumer protections for communications customers adopted in D.19-08-025 are limited and do not include any type of communications disconnections moratorium.⁷ Therefore, by merely extending the relief granted in M-4843, the Draft Resolution does not go far enough to ensure that California's most vulnerable consumers remain connected to their communications services during these difficult and unusual times.

Resolution M-4842 relied on the assumption that many California service providers were voluntarily complying with the FCC's Keep America Connected Pledge and, therefore, the Commission did not need to put additional protections in place for communications customers beyond those set forth several months earlier in D.19-08-025.⁸ Most recently, however, the Commission found that with the expiration of the FCC's pledge, communications customers are now at risk of being disconnected.⁹ Building on its comprehensive approach to consumer protections for pandemic relief for electricity, gas and water customers, the Commission thus

⁵ Draft Resolution at p. 10.

⁶ Draft Resolution at pp. 1, 4.

⁷ D.19-08-025 at pp. 31-35.

⁸ Resolution M-4842 at p. 3, Finding 5; Resolution M-4842, at p. 9, also notes that the Commission adopted separate consumer protections for LifeLine program participants.

⁹ Resolution M-4848 at pp. 3-4, 7.

found it necessary to adopt additional consumer protections for customers facing disconnection for nonpayment of communications services.¹⁰

The Commission adopted this Communications disconnections moratorium in Resolution M-4848 prohibiting wireline and wireless carriers from disconnecting voice services for non-payment.¹¹ The communications moratorium is in place until at least April 18, 2021 and provides authority for the Executive Director to authorize “one or more extensions not to exceed an additional 90 days.”¹² The Commission found that this moratorium is necessary because, “having access to essential utility services is critical to maintaining Californians’ health and safety during the COVID-19 pandemic,” and that employee layoffs and other economic hardships caused by the COVID-19 pandemic have created a risk that “residential customers may fall behind on utility payments through no fault of their own.”¹³

Joint Consumers note that the current Draft Resolution relies on many of the same public policy concerns, including the goal to provide continuity and consistency among utility services, to extend the electric, gas and water utility moratorium to June 30, 2021, yet, without intervention by the Executive Director, the communications disconnection moratorium under Resolution M-4848 would expire almost 90 days sooner.¹⁴ Therefore, Joint Consumers urge the Commission to include the communications disconnections moratorium, as described in M-4848, as part of the comprehensive package of consumer protections proposed to be extended to June 30, 2021 in this Draft Resolution. This change will provide carriers notice and regulatory

¹⁰ Resolution M-4848 at p. 3, 7 (Reference to specific steps taken by the Commission in Resolution M-4843 and noting that disconnections moratorium should supplement, not replace, consumer protections adopted in D.19-08-025.)

¹¹ Resolution M-4848 at Ordering Paragraphs 1, 2.

¹² Resolution M-4848 at Ordering Paragraph 5.

¹³ Resolution M-4848 at Findings 5 and 10.

¹⁴ Draft Resolution at pp. 3-4, Findings 7, 10, 13.

certainty regarding the length of the communications moratorium, and it will allow for clear and consistent messaging through marketing, education, and outreach (“ME&O”) efforts to California consumers that they will stay connected with all essential utility services during this difficult time. Communications providers should also be required to file supplemental Tier 2 Advice Letters confirming this change of date within 15 days of approval of this Resolution. No other changes to the providers’ current moratorium plans should be required.

B. The Draft Resolution Should More Clearly Highlight the Importance of Enrolling Customers in Other Programs

The Draft Resolution requires the development of a transition plan process for customers of energy and water utilities that is designed to soften the transition off of the existing suite of emergency consumer protections that are in place to support these customers during the COVID-19 pandemic.¹⁵ Joint Consumers strongly support the need for such a transition plan, including the requirement to assist customers with enrolling in other ongoing support programs that will help them manage and afford their bills and inform them of any changes to programs in which they are already enrolled.¹⁶ This process is critical to protect consumers and necessary to mitigate the potential disruption in access to essential utility service that will come with the end of the COVID protections.

It is vital that the utilities develop thoughtful transition plans. Customers will be at risk of losing utility service with the end of existing protections due to circumstances such as increased arrearages during the pandemic and associated record-setting job losses, combined with the increased time at home by more members of a household to mitigate the spread of COVID-19.¹⁷ After the emergency protections end, struggling households will be at great risk

¹⁵ Draft Resolution at p.10.

¹⁶ Draft Resolution at p. 10.

¹⁷ Draft Resolution at pp. 2-3 and p. 10.

of disconnection due to non-payment and sizable growth in arrearages. Plans that maximize eligible household enrollment into ongoing programs to help make bills more affordable for low-income households such as CARE, FERA, and medical baseline for energy customers and CAP for water customers, will help customers maintain service after the transition.

Even customers enrolled in programs such as CARE, FERA and CAP are at risk of bill shock and potential loss of service if the resumption of activities such as program verification rules and certification of eligibility¹⁸ for these important support programs are not clearly explained in solid customer outreach and education. Eligible households could inadvertently be de-enrolled from these important affordability programs. Additionally, all customers are at risk of bill shock with the resumption of late-payment, reconnection and other fees that will be permitted at the end of the emergency protections, and they need to be made aware that these charges are on the horizon.

For low-income customers of the large energy IOUs, the new Arrearage Management Programs adopted by the Commission during the pandemic period can help address the problem of accumulated arrearages by providing households with an opportunity to chip away at that back debt with each timely payment. For other customers, the ability to enter into long-term (12-month) payment arrangements may help limit the risk of overly burdensome monthly payment obligations, but these households may still need additional assistance, particularly if they are experiencing a severe drop in income or increase in expenses due to the public health and economic harm from this pandemic.

To better provide as much assistance as possible, the Draft Resolution should be modified to require the utility transition plans to also include information and promote the availability of

¹⁸ See Draft Resolution at p 11.

any additional utility assistance programs to the extent these resources become available, such as the federal Low Income Home Energy Assistance Program,¹⁹ the new federal Emergency Rental Assistance Program that can be used to pay for utility arrearages (including both energy and water) and current payment obligations,²⁰ and the new \$638 million federal Low-Income Drinking Water and Waste Water Assistance Program to help low-income households with water arrearages and current water bills.²¹

C. **The Draft Resolution Should be Modified to Make Clear that Any Fees That Would Have Been Assessed During the Emergency Customer Protections Period Should Be Waived or Forgiven**

The Draft Resolution requires each water and energy utility to create an “Activities Timeline” as part of its transition plan, discussing how it will resume various activities.²² One of the IOUs’ authorized resumed activities is “[a]pplications of late-payment, reconnection, and other fees to a customer,” as long as the fees were not eliminated with the intent that they not be resumed after the Emergency Customer Protections period.²³ The Joint Consumers recommend that the Commission further clarify that any fees that would have been assessed (but not charged) during the Emergency Customer Protections period will not be accumulated and charged after the period. That is, the IOUs should not be back-billing fees that could potentially have been assessed but were not charged during the Emergency Customer Protections period – instead,

¹⁹ For information on California’s LIHEAP program see <https://www.csd.ca.gov/Pages/LIHEAPProgram.aspx>.

²⁰ California’s allocation from this new program may be over \$2.6 billion. For more information see <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> and https://home.treasury.gov/system/files/136/ERA-Frequently-Asked-Questions_Pub-1-19-21.pdf.

²¹ See Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), P.L. 116-260, div. H, tit. V, §533.

²² Draft Resolution at p. 11.

²³ Draft Resolution at p. 11.

these fees should be canceled or eliminated, especially since there is no public policy purpose or desired customer behavior reason to back-bill these fees.

D. The Draft Resolution Should Clarify its Reference to Protections for Water Customers with Medical Needs

The Draft Resolution references outreach for water customers who may qualify for disconnection protections due to medical needs.²⁴ While no citations are provided, Joint Consumers understand this to refer to protections adopted via SB 998, the California Safe Drinking Water Act, and codified at Section 116910(a)(1) of the California Health & Safety Code.²⁵ This should be clarified and customers should be informed on how they can obtain the required certification and thus take advantage of the available protections. The other protections adopted as part of SB 998 are discussed in Section G, below.

E. The Draft Resolution Should Reflect the Outcome of the Meet and Confer Process Between Energy and Water Utilities regarding Data Exchanges

Joint Consumers note that the Draft Resolution recommends that the utilities consider “increasing the frequency of energy and water IOUs exchange data on accounts enrolled in income-eligible programs so that customers can be targeted for enrollment.”²⁶ While Joint Consumers are in full support of this recommendation as a good practice, we think it is important to note that in R.17-06-024, the Class A water utilities and their energy utility counterparts held meet and confer sessions on the low-income data exchange process and reported back to the

²⁴ Draft Resolution at p. 12.

²⁵ This statutory provision states that: “An urban and community water system shall not discontinue residential service for nonpayment if all of the following conditions are met:
(1) The customer, or a tenant of the customer, submits to the urban and community water system the certification of a primary care provider, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 14088 of the Welfare and Institutions Code, that discontinuation of residential service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided.”

²⁶ Draft Resolution at p. 13 (citing the outcome of a May 22, 2020 CARE All-Party Meeting).

Commission that these water and energy utilities could accommodate more frequent data exchanges with a maximum frequency of once a quarter.²⁷ This agreement should be reflected in the Draft Resolution and the water and energy IOUs should be directed to implement it at this time as part of these Transition Plans.

F. The Draft Resolution Should be Modified to Include a Modified Monthly Disconnection Cap for the Large Energy IOUs

The Draft Resolution would require each large energy IOUs' transition plan to include projected disconnections as compared to the monthly disconnection cap previously adopted by the Commission.²⁸ The monthly disconnection cap, as explained by D.20-06-003 and reaffirmed by Resolution UEB-006,²⁹ is a monthly cap calculated on a rolling basis using the number of disconnections in the past 11 months. However, since the IOUs have been prohibited from conducting disconnections since March of 2020, the IOUs have disconnected zero customers each month for ten or more months. If the rolling cap methodology were to be applied following the end of the disconnection moratorium, the formula would allow the IOUs to conduct nearly a year's worth of disconnections within a single month without exceeding the cap.³⁰ Hence, it is crucial that the monthly disconnection cap be modified during the initial months after the end of the Emergency Customer Protections period until such time as the IOUs have sufficient non-zero disconnection data points to be used for the rolling cap methodology. The Joint Consumers propose two potential options to address the issue:

²⁷ See Report of the California Water Association on Meet and Confers Regarding Low-Income Data Exchange Process, filed on December 1, 2020 in R.17-06-024, at pp. 3-4.

²⁸ Draft Resolution at p. 14.

²⁹ D.20-06-003, Appendix 1; Resolution UEB-006, pp. 6-7.

³⁰ It is the Joint Consumers' understanding that the IOUs will first begin the disconnection process by issuing mandated disconnection notices, and that this will not take place until the Emergency Customer Protection period ends. Thus, the disconnections could occur either during the first or second month after the end of the moratorium, depending on the respective IOU's collection timelines.

Option A – When calculating the rolling monthly disconnection cap, the months with zero disconnections during the Emergency Customer Protections period would be excluded from the calculation. For example, if an IOU did not perform disconnections from April 2020 through June 2021, then those 16 months of zero disconnections would not be considered as part of the rolling methodology. When determining the monthly cap allowance for July 2021 using the rolling cap methodology, the IOU would use 11 months of data starting from March 2020 and prior, instead of using 11 months starting from June 2021 and prior.

Option B – When calculating the rolling monthly disconnection cap, the months with zero disconnections during the Emergency Customer Protections period would be counted as if the IOU had conducted 1/12 of the number of disconnections authorized under its disconnection cap for each month using the then current annual cap rate. For example, if the annual cap rate for an IOU was 8% between April 2020 and July 2020, then each month during that period would be counted as if the IOU had conducted disconnections equivalent to 1/12 of 8%. Then, if the annual cap rate for that IOU changed to 7% from August 2020 to June 2021, then each of those months would be counted as if the IOU conducted disconnections equivalent to 1/12 of 7%. This calculated figures would be used in place of the zero values, and then the rolling monthly methodology would be applied to determine the IOU's monthly cap allowance for July 2021.

Either of these options would prevent the IOUs from conducting a large number of disconnections immediately after the Emergency Customer Protections are lifted. The Joint Consumers would also be open to other alternatives for modifying the disconnection cap, as long as the alternatives would reasonably avoid an immediate flood of disconnections at the end of the Emergency Customer Protections period. By modifying the cap, the Commission could help ensure a smoother and less painful transition out of the Emergency Customer Protections period

and into a “normal” period as envisioned when the monthly disconnection caps were adopted by the Commission in D.20-06-003.

G. The Draft Resolution Should Provide Greater Clarity About the Implementation of SB 998

The Draft Resolution states that each water IOUs’ transition plan shall include “a schedule that complies with SB 998 requirements” for any customer disconnections.³¹ SB 998, otherwise known as the California Safe Drinking Water Act, was adopted in 2018 and incorporated into the California Health & Safety Code beginning with Section 116900.³² However, SB 998 included various consumer protection provisions that were not scheduled to go into effect until February 1, 2020,³³ including a requirement to develop policies for service disconnection with deferred payment plans and alternative payment schedules, and that a prohibition on service disconnections until payment is delinquent for at least 60 days.³⁴ Because these requirements did not become effective until February 1, 2020, as the COVID pandemic was emerging, and because the water utilities first voluntarily stopped disconnecting customers for nonpayment and then were ordered to implement a disconnection moratorium,³⁵ shortly after the effective date, the requirements of SB 998 have never been fully implemented. Thus, the transition plan required by the Draft Resolution for each water utility will be the first opportunity

³¹ Draft Resolution at p. 14.

³² See https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB998.

³³ Cal. Health & Safety Code § 116904.

³⁴ Cal. Health & Safety Code §§ 116908-116910. The Draft Resolution references a 79-day period after payment is due before a customer may be disconnected. Draft Resolution at p. 14. Joint Consumers understand that water customers have 19 days after a bill is due before a payment is considered “delinquent,” which makes up the remainder of the referenced 79-day period.

³⁵ See Executive Order N-42-20 issued by Governor Gavin Newsom on April 2, 2020.

for the utilities to explain how they intend to meet their obligations under the statute.³⁶ Because there is no established schedule or other system for implementing the provisions of SB 998, the Commission will have to review the relevant provisions of the water utility transition plans with care to ensure that they provide the mandated protections.

H. The Draft Resolution’s Discussion of the Use of Memorandum Accounts Should be Clarified

The Draft Resolution indicates that that the IOUs should use existing ME&O budgets “to the greatest extent practicable” without incurring or recording additional costs in conducting outreach activity as required by their Transition Plans.³⁷ Joint Consumers strongly agree. During the Emergency Customer Protections period, the IOUs have suspended numerous activities, and therefore the IOUs have not needed to conduct MEO&O associated with those activities for an extended period of time. Thus, there should be more than sufficient existing ME&O budget to cover the mandates contained in the Draft Resolution and other Commission decisions.

While the IOUs are urged to keep their outreach costs within their existing budgets, however, the Draft Resolution would authorize them to record and track incremental costs in their existing memorandum accounts.³⁸ The Draft Resolution should clarify that in the event an IOU records incremental ME&O costs to the memorandum account, the IOU should have the burden of proof to demonstrate why it cannot meet its mandates using existing authorized

³⁶ The California Water Board provides best practices for water systems to address non-payment and reduced payment including 12-month payment plans, waiver of late fees and waiver of reconnection fees. See California Water Boards, Implementation of Executive Order N-42-20: Guidelines and Best Practices for Water and Waste Water Systems (April 30, 2020). Available at https://www.waterboards.ca.gov/resources/covid-19_updates/docs/eo_implementation_guidelines_04302020.pdf.

³⁷ Draft Resolution at p. 16.

³⁸ Draft Resolution at p. 16.

ME&O budgets, notwithstanding clear guidance by the Commission to use existing budgets to the greatest extent practicable.

III. CONCLUSION

Joint Consumers fully support the relief efforts proposed in this Draft Resolution and urge the Commission to adopt the Resolution with the modifications recommended above. These protections are necessary to ensure California consumers retain access to essential utility service for the remainder of the pandemic emergency and while consumers experience the lingering economic and public safety impacts during the transition out of this emergency.

Respectfully submitted,
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