June 8, 2021

VIA EMAIL
regulations@dfpi.ca.gov

Department of Financial Protection and Innovation
Attn: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Re: Debt Collection Regulation: License Application and Requirements – PRO 02/20

Dear Ms. Sandoval:

Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E") (collectively, the "Utilities") submit this comment in response to the proposal of the Commissioner of Financial Protection and Innovation ("Commissioner") to adopt new regulations concerning the licensing requirements under the Debt Collection Licensing Act (contained in Division 25 of the California Financial Code, commencing with § 100000 et seq.) (the "DCLA"). The Utilities respectfully request that the Commissioner amend the proposed rulemaking to clarify that public utilities regulated by the Public Utilities Commission of the State of California ("CPUC") are not "engaged in the business of debt collection" when billing and receiving payments from their residential customers, and are therefore not required to be licensed pursuant to the DCLA.

The DCLA's Licensing Requirements

The DCLA generally requires a license to "engage in the business of debt collection" in California. Cal. Fin. Code § 100001(a). However, the California State Legislature limited this requirement in several ways. The DCLA applies only to the collection of consumer debt, which is defined as "money, property, or their equivalent, due or owing, or alleged to be due or owing, from *a natural person* by reason of a consumer credit transaction." Cal. Fin. Code § 100002(f) (emphasis added). The Legislature further limited the scope of the DCLA by defining "debt collector" as "any person who, *in the ordinary course of business, regularly*, on the person's own behalf or on behalf of others, engages in debt collection." Cal. Fin. Code § 100002(j) (emphasis added). The Senate Committee on Banking and Financial Institutions Bill Analysis report states that this text was included to limit the DCLA's licensing requirement to "only persons and businesses who spend a considerable portion of their business collecting on credit debt held by natural persons… *the bill will exclude from licensure, e.g., persons who attempt to collect on*

debts owed between businesses and persons who only incidentally engage in debt collection activities." (Sen. Com. on Banking and Financial Institutions, Analysis of Sen. Bill No. 908 (2019-2020 Reg. Sess.) as amended April 15, 2020, p.8.) (emphasis added).[1]

The DCLA adopted definitions in the Rosenthal Fair Debt Collection Practices Act (California Civil Code Section 1788 *et seq*.) ("Rosenthal Act"), which the California State Legislature originally enacted in 1977. The Rosenthal Act is itself modeled on the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) ("FDCPA"). Like the Rosenthal Act and the FDCPA, the DCLA applies to the collection of consumer debt that is "due or owing, or alleged to be due or owing… by reason of a consumer credit transaction." Cal. Fin. Code § 100002(f). The DCLA further defines "consumer credit transaction" as "a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes." Cal. Fin. Code § 100002(e). A 2002 opinion of the Office of the Attorney General interpreting the Rosenthal Act found that debts are due or owing when they "have become delinquent, making them subject to collection" and concluded that "current" credit obligations are not subject to the Rosenthal Act's requirements. 85 Ops.Cal.Atty.Gen. 215, 217 (2002). Therefore, the collection of consumer obligations that are not delinquent should not require licensing under the DCLA.

The Commissioner's Final Regulations Should Clarify that the DCLA's Licensing Requirements Do Not Apply to the Utilities

The Commissioner should amend the proposed regulations to clarify that public utilities are not engaged in the business of debt collection, and therefore not required to obtain a license pursuant to the DCLA, when billing and receiving payments for their own energy services or for third party financing programs authorized by the CPUC.

<u>The Utilities' Billing Activities are Incidental to their Core Business of Providing Energy Service to their Customers and Therefore Not Subject to the DCLA's Licensing Requirements</u>

PG&E, a public utility serving Northern and Central California, SCE, a public utility serving central, coastal and Southern California, SoCalGas, a public gas utility serving Southern California, and SDG&E, a public utility serving San Diego and southern Orange counties, operate under the California Public Utilities Code and are regulated by the CPUC. The Utilities primary business is the transmission and delivery of energy service to their customers through programs that are required, approved and supervised by the CPUC, including residential energy services for which the Utilities bill and receive payment from natural persons. PG&E also administers a third-party on-bill financing program offered by a community choice aggregator to residential customers to finance energy efficiency installations, as authorized by the CPUC

[1] The Senate Committee on Banking and Financial Institutions Bill Analysis is available online at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB908.

("CCA Residential Program"). PG&E may also be required to add additional third-party residential loans on its bills for an energy efficiency program that is required by and supervised by the CPUC. Although the Utilities do bill and receive payments from natural persons in connection with those programs, such activities are incidental to the Utilities' core energy transmission and delivery business. The Senate Committee on Banking and Financial Institutions Bill Analysis makes clear that the DCLA's licensing requirements are not intended to apply to entities that only incidentally engage in collection activities. In addition, as described in further detail below, the Commissioner has previously found that activities that could be construed as requiring a license from the Commissioner do not require a license when the activities are merely ancillary to a public utility's primary business. The Commissioner should clarify that public utilities are not engaged in the business of debt collection when performing the incidental activity of billing and receiving payment from residential customers, and that the DCLA's licensing requirements do not apply to public utilities.

The Utilities' Energy Service Billing Activities Are Not Covered by the DCLA's Definition of Debt Collection

No California court has opined on whether a public utility subject to CPUC oversight is engaged in the business of debt collection when collecting on its own utility bills. Courts in other jurisdictions are split on the issue of whether the FDCPA applies to delinquent utility payments under any circumstances.[2] One California court has held that the Rosenthal Act's definition of consumer debt is narrower than the FDCPA's and therefore determined that certain fees were not subject to the Rosenthal Act. Jachimiec v. Regent Asset Mgmt. Solutions, 2011 WL 2160661 (S.D. Cal. May 26, 2011). Because any activities that could be construed as meeting the DCLA's definition of debt collection are merely incidental to the Utilities' core business and are subject to the CPUC's regulatory oversight, we respectfully submit that the Commissioner should not adopt the novel interpretation that the DCLA and the Rosenthal Act apply to public utilities' billing activities.

PG&E's Billing Activities for the CCA Residential Program Are Not Covered by the DCLA's Definition of Debt Collection

PG&E includes charges for the CCA Residential Program as a line item on a customer's PG&E bill. The CCA Residential Program offers financing provided by a third party to qualified residential service customers to offset the cost of purchasing and installing eligible energy efficiency technologies. Qualified residential service customers can receive zero percent interest, no-fee, unsecured financing for certain energy efficiency technologies. If a customer becomes delinquent pursuant to the CCA Residential Program, the third party becomes

---

[2] In *Boyd v. J.E. Robert Co., Inc*. 765 F3d 123, 126 (2nd Cir. 2014), the Second Circuit held that certain utility charges were not debt under the FDCPA. The Third Circuit has held that certain utility charges are debt subject to the FDCPA. See, e.g., *Piper v. Portnoff L. Assocs., Ltd.*, 396 F.3d 227, 233 n.8 (3d Cir. 2005).

responsible for any collection efforts. PG&E has no role in collecting on delinquencies on financing pursuant to the CCA Residential Program, and the inclusion of a line item for current financing provided pursuant to the CCA Residential Program does not meet the definition of engaging in the business of debt collection.

The Commissioner Has Recognized That Generally Applicable Licensing Requirements Do Not Apply to Public Utilities Engaged in Activities Subject to CPUC Oversight

The Commissioner has found that public utilities regulated by the CPUC are not required to obtain a license under the California Financing Law (contained in Division 9 of the California Financial Code, commencing with § 22000 *et seq.*) (the "CFL") when they make certain commercial loans pursuant to financing programs subject to oversight by the CPUC. The Commissioner's prior analyses under the CFL are directly relevant to the application of the DCLA's licensing requirements to public utilities and should be extended to these circumstances.

In 2006, the Commissioner issued Commissioner's Release FS-60, "*Public Utility Commercial Loan Programs for Energy Efficiency Approved by the Public Utilities Commission*" ("Release FS-60").[3] Release FS-60 was issued to address questions from public utilities concerning whether they were "engaged in the business" of a finance lender within the meaning of the CFL when implementing financing programs designed to increase energy efficiency at the direction of the CPUC. In 2020, the Commissioner issued Interpretive Opinion OP 7725 in response to PG&E's request concerning whether PG&E could continue to rely on Release FS-60 when expanding its energy efficiency financing program ("OP 7725"). In both instances, the Commissioner found that public utilities meeting a series of requirements were not "engaged in the business" of a finance lender and were therefore not required to obtain a license pursuant to the CFL.

The Utilities' activities that could be characterized as debt collection under the DCLA and proposed regulations fit squarely within the framework established in FS-60 and OP 7725 to exempt public utilities from licensing under the CFL. Both prior decisions of the Commissioner found that a license was not required for lenders that met the following conditions: (1) they include only public utilities; (2) they operate under the California Public Utilities Code, subject to CPUC regulation; (3) they make loans in accordance with financing programs approved by the CPUC; (4) they administer financing programs in a manner that is merely ancillary to their business of providing energy; and (5) they comply with all applicable federal and state laws with respect to any loans made under the financing programs. The Utilities are public utilities subject to CPUC regulation and operating under the California Public Utilities Code; their billing services are provided in accordance with the CPUC's requirements; those billing and collection services are merely ancillary to the Utilities' core business of transmitting and delivering energy

[3] Release FS-60 was released on July 16, 2006 is available at this link: https://dfpi.ca.gov/commissioners-release-60-fs/

service to Californians; and the Utilities comply with all applicable state and federal laws in providing these billing and collection services.

In finding that public utilities are not required to obtain a license for loans that would otherwise fall within the definition of a commercial loan under the CFL, the Commissioner stated that "the public does not benefit by the Department of Financial Protection and Innovation's oversight of a lending program already subject to oversight by the CPUC." (Department of Financial Protection and Innovation OP 775, October 13, 2020, p. 5.). The activities of public utilities that could be construed as engaging in the business of debt collection under the DCLA and proposed regulations are also subject to oversight by the CPUC, and the CPUC has demonstrated that it is well equipped to address public utilities' billing practices and protect consumers from unlicensed activity.

The CPUC's Oversight of Public Utilities Fulfills the DCLA's Primary Purpose of Ensuring Regulatory Oversight

The California State Legislature enacted the DCLA for the primary purpose of establishing regulatory oversight of debt collectors and debt buyers, groups that were not previously subject to licensing or oversight in California. (Sen. Com. on Banking and Financial Institutions, Analysis of Sen. Bill No. 908 (2019-2020 Reg. Sess.) as amended April 15, 2020, pp. 3-4.) The Commissioner's Notice of Rulemaking Action also emphasizes that the DCLA and proposed rulemaking are intended primarily to protect consumers from unlicensed activity by requiring previously unregulated individuals and entities responsible for debt collection to be investigated and meet certain standards to engage in debt collection in California. (Cal. Dept. of Financial Protection and Innovation, Notice of Proposed Rulemaking Action, PRO 02/20, April 8, 2021.)[4]

Unlike the previously unregulated persons and entities intended to be covered by the DCLA, public utilities have long been subject to strict regulatory oversight by the CPUC—including for the billing activities that could be construed as falling within the scope of the DCLA. Subjecting public utilities to a separate and additional regulatory scheme would be duplicative and burdensome, and the public interest would not be served by the Commissioner exercising concurrent oversight of public utilities' billing and collection activities.

The CPUC must approve all rates that each public utility charges its customers, which are set in formal public CPUC ratemaking proceedings.[5] These ratemaking proceedings determine the amount consumers pay for energy services and form the foundation of public utilities' billing practices.

---

[4] The Notice of Rulemaking Action, available at https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/04/DC-FINAL-Notice-Filed-with-OAL-04-08-2021.pdf

[5] See California Public Utilities Code § 451, which requires that the CPUC determine whether a utility's proposed rates, services, and charges are just and reasonable.

The CPUC actively regulates the billing practices of public utilities. For example, in response to the COVID pandemic, the CPUC issued a resolution that required public utilities to take a number of actions to provide payment relief measures for residential customers, including implementing payment plans, suspending disconnection of gas and electric services for non-payment and associated fees, waiving deposit and late fee requirements, and requiring outreach to make customers aware of these measures. (Public Utilities Commission of the State of California, Resolution M-4842: Emergency Authorization and Order Directing Utilities to Implement Emergency Customer Protections to Support California Customers During the COVID-19 Pandemic, April 16, 2020.)[6] The CPUC recently extended these measures through June 30, 2021, and directed public utilities to develop transition plans to ease customers off the emergency payment relief measures through proactive outreach to consumers to enroll them in programs to manage their utility bills. (Public Utilities Commission of the State of California, Resolution M-4849: 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, April 16, 2020.)[7] These actions demonstrate that public utilities' billing practices are already subject to strict oversight. Moreover, because the CPUC exercises regulatory oversight of public utilities' primary energy business, the CPUC is the regulatory body best equipped to exercise oversight of public utilities' ancillary billing and collection activities.

Finally, the CPUC has established both an informal and a formal dispute process for customer complaints, which enable public utility customers to seek resolution of any dispute with public utilities, including their billing and collection practices.[8] These complaint processes ensure that consumers have access to dispute mechanisms and further demonstrate that the CPUC's oversight fulfills the purposes of the DCLA which, in addition to requiring previously unregulated debt collectors to obtain licenses, empowers the Commissioner to establish a new complaint process for licensees.

* * * * *

In summary, we respectfully request that the Commissioner amend the proposed rulemaking to clarify that public utilities are not subject to the DCLA's licensing requirements when billing and collecting for their own utility services or for third-party on-bill financing programs approved by the CPUC.

---

[6] Resolution M-4842 is available at https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/Final%20Resolution%20M-4842.pdf.

[7] Resolution M-4849 is available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M366/K625/366625011.PDF.

[8] A description of the CPUC's informal complaint process is available at https://consumers.cpuc.ca.gov/CABUtilityComplaint.aspx. A description of the CPUC's formal complaint process is available at https://www.cpuc.ca.gov/formalcomplaintinfo/

We thank you in advance for your assistance with this matter. Please do not hesitate to contact me by telephone at (510) 316-3566 or by email at Mary.Gandesbery@pge.com should you have any questions or need additional information.

Very truly yours,

/s/ Mary Gandesbery
Mary Gandesbery
Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (510) 316-3566
Email: mary.gandesbery@pge.com

/s/ David A Gomez
David A. Gomez
Southern California Edison
2244 Walnut Grove Avenue
Rosemead, CA 91770
Telephone: (626) 302-7903
Email: david.gomez@sce.com

/s/ Ismael Bautista, Jr.
Ismael Bautista, Jr.
Southern California Gas Company
555 W 5th Street
Los Angeles, CA 90013
Telephone: (213) 231-5978
Email: ibautista@socalgas.com

/s/ Paul A. Szymanski
Paul A. Szymanski
San Diego Gas & Electric Company
8330 Century Park Ct
San Diego, CA 92123
Telephone: (858) 654-1732
E-mail: pszymanski@sdge.com