October 5, 2021

VIA EMAIL

regulations@dfpi.ca.gov

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

Re: Comments on Proposed Second Rulemaking Under the Debt Collection Licensing Act – PRO 05-21

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 invitation of the Commissioner of Financial Protection and Innovation ("Commissioner") to submit comments on a proposed second rulemaking under the Debt Collection Licensing Act (contained in Division 25 of the California Financial Code, commencing with § 100000 et seq.) (the "DCLA"). The Department of Financial Protection and Innovation (the "Department") has identified several areas where it is considering rulemaking, including clarifying the scope of the DCLA, and formulated several questions to assist interested parties in providing input. In particular, the Department has asked whether terms in the DCLA including "consumer credit transaction," "debt collection," and "engage in the business of debt collection" should be further defined, and whether the Department should further clarify which entities and transactions are exempt from the DCLA. The Department has also asked interested parties to provide example language for potential regulations. The Utilities respectfully request that the Commissioner promulgate regulations 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 the

scope of the DCLA in several ways. First, the DCLA limits the definition of "debt collector" to persons "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). In addition, 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). Further, the DCLA adopted definitions in the Rosenthal Fair Debt Collection Practices Act (California Civil Code § 1788 *et seq*.) ("Rosenthal Act"), which the California State Legislature originally enacted in 1977. The Rosenthal Act itself adopted certain definitions from 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 only to the collection of consumer debt that is "due or owing, or alleged to be due or owing." Cal. Fin. Code § 100002(f).

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

The Utilities respectfully request that the Commissioner promulgate regulations to clarify that investor-owned utilities are not engaged in the business of debt collection, and therefore are not required to obtain a license pursuant to the DCLA, when billing and receiving payment for their own energy services and products, financing programs, and third party services including but not limited to financing programs and bill remittance 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, SoCal Gas, a public utility serving central and 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 third-party on-bill financing programs offered by community choice aggregators to residential customers to finance energy efficiency installations, as authorized by the CPUC ("CCA Residential Programs"). PG&E may also add additional third-party residential loans on its bills for an energy efficiency or other energy-related programs or services as required and/or authorized by the CPUC. Although the Utilities do bill and receive payments from natural persons in connection with those programs, such activities are merely incidental to the Utilities' core energy transmission and delivery business.

As described above, the DCLA applies only to persons who "in the ordinary course of business, regularly" engage in the business of debt collection. 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… 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] Even assuming that the Utilities' billing and receipt of payment for energy services meets the DCLA's definition of debt collection—which, as described in more detail below, it does not—we respectfully submit that the Commissioner should promulgate regulations that clarify that the DCLA's licensing requirements do not apply to public utilities because any debt collection activities are incidental to public utilities' primary business. Such a regulation would be consistent with previous circumstances, also discussed in more detail below, in which the Commissioner has found that activities that could be construed as requiring a license do not require a license when the activities are merely ancillary to a public utility's primary energy transmission and delivery business.

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

The DCLA requires a license for persons who "engage in the business of debt collection" in California. Cal. Fin. Code § 100001(a). "Debt collection" is defined as "any act or practice in connection with the collection of *consumer debt*." Cal. Fin. Code § 100002(i) (emphasis added). "Consumer debt or consumer credit" is in turn 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(i) (emphasis added). "Consumer credit transaction" is defined 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).[2] Therefore, billing and receiving payment for services that do not constitute consumer credit transactions are not subject to the DCLA.

Payments in exchange for public utility services are not credit transactions. Regulation Z, which implements the Truth in Lending Act, specifically excludes payments for public utility services from its scope "if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit." 12 C.F.R. § 1026.3(c). The Consumer Financial Protection Bureau's Official Interpretation of Section 1026.3(c) states that this exemption applies to both gas and electrical services. 12 C.F.R. Part 1026, Supplement I. The Utilities' charges for gas and electrical services are filed with and regulated by the CPUC and are therefore not credit products under the Truth in Lending Act and Regulation Z, and should not be subject to the DCLA.

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[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.

[2] "Credit" is not further defined the DCLA.

Because the Utilities' charges for services authorized by the CPUC are not consumer credit transactions, such charges are not covered by the DCLA even if the Utilities bill for and receive delinquent payments for those services. Several courts have recognized that an amount that is due and owing is not subject to the Rosenthal Act unless it originally arose from a consumer credit transaction; money that is owed does not become subject to the Rosenthal Act simply because it is delinquent. See, e.g., *Abels v. JBC Legal Group, P.C.,* 428 F. Supp. 2d 1023, 1026 (N.D. Cal. 2005) (amount owed for dishonored check not subject to Rosenthal Act because it was not a consumer credit transaction); *Jachimiec v. Regent Asset Mgmt. Solutions,* 2011 WL 2160661 at 6 (S.D. Cal. 2011) (amount owed from continuous overdraft fee on checking account not a credit transaction and therefore not subject to the Rosenthal Act); *Udo v. Kelkris Assocs., Inc.*, 2012 U.S. Dist. LEXIS 169940 at 6 (S.D. Cal. 2012) (unpaid fees and storage costs arising from the towing and storage of vehicle did involve any credit transaction and were not subject to Rosenthal Act). The DCLA adopted the Rosenthal Act's definitions, and debt is only subject to those statutes if the debt arises from a consumer credit transaction. Because the Utilities' charges for gas and electrical services are not consumer credit transactions, we respectfully submit that the Commissioner should promulgate regulations clarifying that public utilities are not subject to the DCLA's licensing requirements when billing and receiving payment for their energy transmission services.

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

PG&E includes charges for the CCA Residential Programs as a line item on a customer's PG&E bill. The CCA Residential Programs offer 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 unsecured financing from the third party for certain energy technologies. If a customer becomes delinquent pursuant to the CCA Residential Programs, the third party becomes responsible for any collection efforts. PG&E has no role in collecting on delinquencies on financing pursuant to the CCA Residential Programs.

The DCLA and Rosenthal Act apply only to the collection of debt that is "due or owing." Cal. Fin. Code § 100002(f); Cal. Civ. Code § 1788.2(d). 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). Because the DCLA adopted the Rosenthal Act's definitions, the collection of consumer obligations that are not delinquent should likewise not be subject to the DCLA and its licensing requirements. We respectfully request that the Commissioner promulgate a rule codifying the 2002 Opinion of the Office of the Attorney General and clarifying that PG&E's limited role in the CCA Residential Programs, which is authorized by the CPUC, does not require a license under the DCLA.

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 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

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

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 could potentially create conflicting obligations, 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.

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

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[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.

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.) The CPUC extended relief measures through September 30, 2021. (Decision 21-06-036: *Decision Addressing Energy Utility Customer Bill Debt Via Automatic Enrollment in Long Term Payment Plans*, June 30, 2021.)[6] 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.[7] 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.

Proposed Language for Regulations

We respectfully suggest the following example language that the Commissioner could adopt to clarify that the DCLA's licensing requirements do not apply to the Utilities.

> The Debt Collection Licensing Act shall not apply to public utilities regulated by the Public Utilities Commission of the State of California.
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> "Consumer credit transaction" shall not include charges for public utility services, including but not limited to gas or electrical services, provided by public utilities and third-party charges regulated by the Public Utilities Commission of the State of California.
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> "Due or owing" shall mean delinquent and subject to collection.
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> "Engage in the business of debt collection" shall not include the billing for or collection of payment for public utility services, including but not limited to gas or electrical

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[6] Decision 21-06-036 is available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K611/389611968.PDF .

[7] 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/

services, provided by public utilities regulated by the Public Utilities Commission of the State of California.

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In summary, we respectfully request that the Commissioner promulgate regulations 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.

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

Very truly yours,

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