BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations	Rulemaking 12-06-013 (Filed June 21, 2012)

MOTION OF THE GREENLINING INSTITUTE AND THE CENTER FOR ACCESSIBLE TECHNOLOGY TO STRIKE PORTIONS OF THE ASSIGNED COMMISSIONER'S RULING INVITING UTILITIES TO SUBMIT INTERIM RATE CHANGE APPLICATIONS

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I. Introduction

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("the Commission") Rules of Practice and Procedure, the Greenlining Institute (Greenlining) and the Center for Accessible Technology (CforAT) respectfully request that the Commission strike certain portions of the Assigned Commissioner's Ruling Inviting Utilities to Submit Interim Rate Change Applications ("Phase 2 Ruling"), as set forth in detail below.

Greenlining/CforAT appreciate that the Phase 2 Ruling advises investor owned utilities (IOUs) that "[r]ate design changes proposed for 2014 should be modest, easy to evaluate, and consistent with AB 327."[1] In some places, the Phase 2 Ruling seems to contemplate that the applications it invites will be very limited. Unfortunately, the Phase 2 Ruling also includes language that indicates that it has prejudged the substance of the applications, and that this prejudgment has fundamental implications for this rate design rulemaking.

Greenlining/CforAT object to the inclusion of several sentences in the Phase 2 Ruling on this basis and requests that these phrases be stricken. These indicated sentences impermissibly direct and prejudge the outcome of the applications and potentially the policy issues under review in the overall rulemaking. The sentences favor certain rate design choices, even though

[1] Phase 2 Ruling, p. 4.

Phase 1 of this proceeding, the purpose of which is to provide a model rate structure, is not yet complete.

These portions of the ruling essentially act as Conclusions of Law, prematurely provided at the very onset of the ratemaking applications and before the record is complete in the rulemaking. As will be shown below, the inclusion of these directions in the Phase 2 Ruling is not supported by any of the procedural documents in this proceeding (including the Scoping Memo), which have always sought to provide a neutral foundation to the review of rate design.

Nor are the sentences at issue in any way mandated by AB 327, the bill recently passed by the state legislature and signed into law, which modified statutory language regarding residential electric rates. AB 327 removes some restrictions on certain elements of rate design. However, the statutory changes result in greater discretion for the Commission; the bill does not set out any new mandate for the Commission or utilities to institute any particular changes in rate design structure. Any such changes should only be adopted after a complete review and a full record, as originally contemplated in the main phase of this proceeding.

In particular, the following sentences in the Phase 2 Ruling inappropriately direct particular outcomes prior to a full review by the Commission:

> In the meantime, Phase 2 will endeavor to implement interim rate changes that will better align residential electricity prices with the Commission's cost to serve and other policy objectives, and that will reduce the size of rate changes required to implement future rate structures.[2]

[and, proposing guidelines for the Interim Rate Applications]:

> To prevent further disparity in lower and upper tiers, any rate increase resulting from increased revenue requirements should be applied first to the lower tiers.
>
> ....

[2] Phase 2 Ruling, p. 4.

> To prevent future rate shock, Tier 1 and Tier 2 rates changes should begin to increase in 2014. [3]

These sentences prejudge the applications, directing them to apply for certain rate design changes and favoring these rate designs.[4] Moreover, the first cited sentence suggests that the rate design changes contained in the interim applications, as guided by the Phase 2 Ruling, will be an interim step towards the "future rate structures" which will be ordered at the conclusion of Phase 1 of the this rulemaking. This direction impermissibly prejudges the substance of the rate design model, without having completed the required due process.

II. Relief Sought.

The Phase 2 Ruling impermissibly incorporates conclusions of law and orders as to the interim rate design changes that it prefers, and states that such interim changes are intended to serve as a step towards the final Commission-approved rate design model that has yet to be determined. Thus the Phase 2 Ruling does not provide appropriate due process for a rulemaking as required by Commission Rules of Practice and Procedure 14.2 *et seq*. Greenlining/CforAT move the Commission to strike the above sentences from the Phase 2 Ruling and issue an amended ruling that does not contain such premature determinations.

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[3] Phase 2 Ruling, p. 5.

[4] The Phase 2 Ruling contains additional language that more subtly prejudges what rate changes the ruling seeks, including:

> Following the enactment of SB 695, residential rates in Tiers 1 and 2 were increased modestly for non-CARE customers. Despite these changes, residential rates still are not consistent with the Commission's cost of service principle and these rates impede the Commission's ability to implement many other policy objectives. (p. 3).
>
> In the meantime, Phase 2 will allow some interim changes to be made to stabilize and rebalance tiered rates. (p. 3).

As with the sentences that are the focus of this motion, these additional guidelines and suggestions for rate changes are not mandated by the Scoping Memo or by AB 327.

III. Procedural Background – An Open, Unrestricted Examination of Rate Design.

On June 28, 2012, the Commission issued its Order Instituting Rulemaking 12-06-013 (OIR). From its inception, this proceeding has expressly been designed to be an open and unrestricted examination of residential rate design:

> The Commission hereby institutes this rulemaking on its own motion to examine current residential electric rate design, including the tier structure in effect for residential customers, the state of time variant and dynamic pricing, potential pathways from tiers to time variant and dynamic pricing, and preferable residential rate design to be implemented when statutory restrictions are lifted.[5]

The rulemaking was intended to examine rate design with a blank slate. The open and unrestricted nature of the rulemaking's examination is made clear through the foundational nature of the examination suggested by the Order Instituting Rulemaking (OIR) and by the subsequent Assigned Commissioner and Administrative Law Judge's Joint Ruling Inviting Comments and Scheduling a Prehearing Conference ("Joint Ruling"), issued on September 20, 2013.

As evidence that the Commission sought a free consideration of rate design in this rulemaking, without any preconceptions to restrict the analysis, the Joint Ruling asked parties to provide rate design proposals and "for purposes of this exercise, assume that there are no legislative restrictions."[6]

The Joint Ruling also proposed ten very broad, neutrally expressed rate design goals as well as a list of questions designed to examine how any proposed rate designs would meet those goals.[7] In order to establish neutral, unbiased general rate design goals, the Joint Ruling sought comments from parties regarding these broad goals. Following the comment cycle, the Scoping

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[5] OIR, p. 1.
[6] Joint Ruling, p. 8.
[7] *See* Joint Ruling, p. 7.

Memo and Ruling of Assigned Commissioner ("Scoping Memo"), filed Nov. 26, 2102, issued a final version of the rate design goals (although they are now referred to as "principles") to guide this rulemaking.[8] These rate design principles remained very general in nature.

In October 2013, AB 327 was passed into law, removing certain constraints and providing greater discretion to the Commission on how to shape residential electric rates. "AB 327 makes significant changes to the types of residential rate structures that are permitted. AB 327 also contains limits designed to protect certain classes of vulnerable customers."[9] However, in regard to traditional residential rate design elements, AB 327 contains no directives or requirements for any changes at all, aside from a requirement to gradually bring the California Alternate Rates for Energy (CARE) discount to an average effective discount of between 30% and 35%.[10] No other specific result is required.

This Phase 2 Ruling was issued on October 25, 2013.

IV. A Model Rate Design Has Not Been Decided; It Is Improper to Issue Rate Design Guidelines at this Stage.

This rulemaking was designed to "ensure that the Commission develops a rate design consistent with long-standing legislative and policy goals."[11] This rulemaking was designed to be a fundamental examination of rate design, looking at the issue on a blank slate. At the conclusion of the rulemaking, following the due process required by Rule 14.2 et seq. of the Commission's Rules of Practice and Procedure, the Commission will provide a model rate design structure. The understanding was that IOUs would then move to implement the model rate design structure in subsequent applications. However, we have not reached that stage yet.

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[8] *See* Scoping Memo, pp. 5-7.
[9] Phase 2 Ruling, p. 3.
[10] *See* Cal. Pub. Util Code § 739.1(c).
[11] *See* Joint Ruling, p. 7.

There are currently no rate design guidelines to govern utilities' rate design applications; to suggest such guidelines now is premature and arbitrary.

The Commission and parties to this proceeding went through a systematic process to establish general principles for rate design and to guide the review of rate design proposals. These principles were deliberately described in a very neutral manner, so that the rulemaking could examine rate design options in a fair and open process. However, the Phase 2 Ruling supersedes this process and introduces its specific rate design guidelines, which are unsupported by the principles finalized in the Scoping Memo.

For example, as noted above, the Phase 2 Ruling suggests as a guideline for the IOUs in preparing interim rate design applications: "To prevent further disparity in lower and upper tiers, any rate increase resulting from increased revenue requirements should be applied first to the lower tiers."[12] This guideline is not supported by any of the agreed-upon principles finalized in the Scoping Memo,[13] nor is it required in any way by AB 327. Rather, this guideline is essentially a Conclusion of Law, prematurely provided at the inception of ratemaking phase of the proceeding.

V. AB 327 Does Not Provide Any Directive or Mandate for Rate Design Changes, Aside from Changes to the CARE Discount.

AB 327 does not in any way mandate or direct the Commission to present the rate design guidelines in the Phase 2 Ruling. The statutory changes adopted in the bill do not in any way require the Commission to ensure that rate increases resulting from increased revenue requirements should be applied first to the lower tiers. While AB 327 removed prior restrictions

[12] Phase 2 Ruling, p. 5.
[13] *See* Scoping Memo, pp. 5-7.

on rate increases for lower tiers,[14] the result of these statutory changes is to *permit* rate increases on lower tiers, but not to require them. The only mandate requiring a particular rate design result is the requirement to transition to an average effective CARE discount of between 30% and 35%.[15]

VI. The Phase 2 Ruling Should Not Make Unilateral, Premature Decisions Regarding the Commission's Model Rate Design.

The Phase 2 Ruling suggests that the interim rate applications will serve as a step towards the final Commission approved model rate design:

> In the meantime, Phase 2 will endeavor to implement interim rate changes that will better align residential electricity prices with the Commission's cost to serve and other policy objectives, and *that will reduce the size of rate changes required to implement future rate structures*.[16]

With this language, the ruling suggests that the interim rate applications are intended to move towards the "future rate structures," presumably those that will be ordered at the conclusion of Phase 1 of this rulemaking. However, no such model rate structure has been adopted yet. Thus, it is inappropriate to presume that the interim applications will serve as a transition to the final rate design model. By supplying its own suggestions regarding interim rate changes, the Phase 2 Ruling reaches conclusions about a future model rate design prematurely. These conclusions, as set out in the sentences at issues, are inappropriate; any conclusions regarding the appropriate model for residential electric rates should be issued by the full Commission after the due process of this rulemaking.

The disputed guideline, as set out above, also identifies efforts to align residential rates with "the Commission's cost to serve" and "other policy objectives" as the objectives of Phase 2.

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[14] Such changes were adopted by amending portions of Cal. Pub. Util. Code § 739.1(b) and repealing and replacing Cal. Pub. Util. Code § 739.9.
[15] *See* Cal. Pub. Util. Code § 739.1(c).
[16] Phase 2 Ruling, p. 4.

By using this language, the guideline emphasizes the principle of cost-causation over other policy objectives identified in the Scoping Memo. As noted above, the cost-causation principle is only one of ten rate design principles set forth in the Scoping Memo – none of which is described as being paramount than any other. The Phase 2 Ruling should not highlight one rate design principle as having greater importance than any other rate design principle.[17]

VII. Other Language in the Ruling May Impermissibly Suggest a Mandate for Change of the Tier Structure.

The Phase 2 Ruling contains the following language:

> Specific residential rate structure *changes* that are permitted beginning January 1, 2014 include the following:
>
> - Residential rate structures are only required to have two tiers.
> - CARE rates can be restructured but should have an average effective discount of 30 – 35 percent. [18]

The Phase 2 Ruling does not clearly communicate the provisions of AB 327 governing the number of tiers. AB 327 establishes a minimum of two tiers for residential rates, but in no way changes the Commission's current discretion to approve rate structures that include more than two tiers. Although it is not clear, the language in the Phase 2 Ruling implies that there may be an absolute requirement for two tiers – no more, no less. This incorrect implication can easily be corrected by conveying that residential rate structures are required to have "at least" two tiers, rather than that they are "only" required to have two tiers. This would be a more accurate representation of the language of AB 327:

> Except as provided in subdivision (c) of Section 745 [once the Commission may order time-of-use pricing in 2018], the commission shall require each electrical corporation to offer default rates to residential customers with at least two usage tiers.[19]

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[17] Other sentences in the Phase 2 Ruling also highlight the cost-causation principle, while no other rate design principles are specifically mentioned. *See* n.3 above.
[18] Phase 2 Ruling, p. 4. (emphasis added).
[19] *See* Cal. Pub. Util. Code § 739.9(c).

The Phase 2 Ruling also incorrectly implies that AB 327 somehow directs the Commission or utilities to revisit the number of tiers in their rate structure. As long as a rate structure has at least two tiers, AB 327 provides no impetus for the Commission to seek any changes. The *only change* ordained by the bill in the Commission's discretion to determine the appropriate number of tiers was in the absolute requirement of at least two tiers, which is currently the case for every IOU. Thus, there is no need to address the non-existent situation of a rate structure that has fewer than two tiers. Before the adoption of AB 327, the relevant statutory language did not include any specific mandate on the number of tiers. AB 327 merely added language explicitly requiring at least two tiers, but it did not change the Commission's discretion to include more than two.

The language of the Phase 2 Ruling stating that residential rate structures are "only required" to have two tiers and implying that this is a *change permitted* by AB 327, is misleading at best. AB 327 would *require* a change in the number of tiers, *only if* a utility's rate structure had less than the minimum requirement of at least two tiers; that is not the case with any of the utilities in this rulemaking. Thus, in regards to the number of tiers in a rate structure, AB 327 provides no impetus for the Commission to seek any action in this rulemaking or for utilities to seek any changes.

VIII. Conclusion

The parties to this proceeding and the Commission have been engaged in an extensive and careful process, culminating in the Scoping Memo, to ensure that the final determination of the Commission approved rate design model is to be made on a neutral foundation. However, several sentences included in the Phase 2 Ruling unilaterally and arbitrarily override this process – by inserting unsupported conclusions on appropriate interim changes to rates. Further, the

Phase 2 Ruling suggests that the interim rate applications, presumably following the guidelines it suggests, will serve as an indication of the final rate design model.

The Phase 2 Ruling makes its unilateral determinations without any mandate or support from either the Scoping Memo or AB327. In order to preserve the due process in this rulemaking, the identified sentences should be stricken, and an amended ruling should be issued that does not contain premature directives or conclusory language.

Respectfully submitted,

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