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)

COMMENTS OF THE GREENLINING INSTITUTE AND THE CENTER FOR ACCESSIBLE TECHNOLOGY ON PROCEDURAL SCHEDULE AND NEED FOR EVIDENTIARY HEARING

CENTER FOR ACCESSIBLE TECHNOLOGY
MELISSA W. KASNITZ
STAFF COUNSEL
3075 ADELINE STREET, SUITE 220
BERKELEY, CA 94703
510/841-3224
service@cforat.org

THE GREENLINING INSTITUTE
ENRIQUE GALLARDO
LEGAL COUNSEL
1918 UNIVERSITY AVE
BERKELEY, CA 94704
510/926-4001
enriqueg@greenlining.org

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I. Introduction

As directed by the Assigned Commissioner's Ruling Inviting Utilities to Submit Interim Rate Change Applications ("Phase 2 Ruling"), the Greenlining Institute (Greenlining) and the Center for Accessible Technology (CforAT) provide these comments on the procedural schedule and the need for evidentiary hearings for the contemplated ratemaking phase of this proceeding (Phase 2).

II. Intervenors Cannot Comment on an Unknown; Thus, We Must Reserve the Right to a Full Procedural Schedule.

Neither Greenlining nor CforAT, both experienced intervenors in Commission proceedings, are aware of any precedent for intervenors to be asked to comment on a proposed schedule for applications that have not yet been filed, much less subject to a reasonable opportunity for review. Nevertheless, the Phase 2 Ruling asks intervenors to do exactly that with regard to upcoming Phase 2 rate design applications. Intervenors cannot properly determine how long it should take to examine and respond to proposed changes to the design of residential rates – and whether there is need for an evidentiary hearing – without knowing what those rate changes are.

Greenlining/CforAT submit that the Commission should not decide on a schedule for Phase 2 of this proceeding before the applications are filed and without *informed* input from

intervenors. In the absence of an informed response on the procedural schedule, to be developed based on adequate review of the upcoming applications, Greenlining/CforAT and other intervenors can only state that they must be able to preserve their rights to a full schedule, consistent with other rate design applications and including evidentiary hearings, to consider rate design changes.

A. Commission Practice Calls for an Informed Consideration of the Procedural Schedule at the Prehearing Conference, to Be Finalized in the Scoping Memo.

Greenlining/CforAT suggest that the Commission must delay any decision on the procedural schedule and the need for evidentiary hearings for Phase 2 until intervenors have an opportunity to review the upcoming applications and provide their informed input. Intervenors' first opportunity for informed input, under the proposed schedule, would be on December 23, 2013, when Protests to the Applications are filed.[1] The investor-owned utilities (IOUs) will be afforded an opportunity to reply to Intervenors on January 7, 2013.

The Jan 14, 2013 Prehearing Conference (PHC) will then provide parties an opportunity to discuss and finalize the procedural schedule. Rule 7.2(a) of the Commission's Rules of Practice and Procedure states that a PHC is the proper forum for discussion of the procedural schedule.[2] Following the PHC, the schedule for a proceeding is finalized in a Scoping Memo.

Commission Rule of Practice and Procedure 7.3(a) states:

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[1] This portion of the schedule, which allots 30 days between the date that applications are filed and the date that protests are due, is fairly consistent with the Commission's Rule of Practice and Procedure 2.6(a), which generally calls for Protests to be due within 30 days of the date the notice of the filing of the application first appears in the Daily Calendar.

[2] Rule 7.2(a) states:

> The ruling setting the prehearing conference may also set a date for filing and serving prehearing conference statements. Such statements may address *the schedule*, the issues to be considered, and any other matter specified in the ruling setting the prehearing conference. (emphasis added).

> At or after the prehearing conference (if one is held), the assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date) and issues to be addressed.

Thus, the PHC is where the schedule should be discussed, and the subsequent Scoping Memo is the proper document in which to finalize the procedural schedule. This is the Commission's long-standing practice, set out in the Rules that govern its Practice and Procedure.

There is no reason for the Commission to arbitrarily break from its standard practice in setting the procedural schedule for its proposed Phase 2 of this proceeding. AB 327 provides no mandate, nor even any impetus, for a streamlined rate design application (or for any rate design application at all) as demonstrated in the concurrently filed Motion of Greenlining/CforAT to Strike Portions of the Assigned Commissioner's Ruling Inviting Utilities to Submit Interim Rate Change Applications ("Motion to Strike"). AB 327 does not require any particular any changes to residential rate design, aside from direction to transition to an average effective California Alternate Rates for Energy (CARE) discount of between 30% and 35%.[3] However, AB 327 does not provide any timetable for even its required changes to the CARE discount, except to state that the transition must be gradual.[4] Neither AB 327, nor any other statutory considerations require Phase 2 to take place at all, much less provide any impetus for multiple, simultaneous, streamlined rate design applications.

B. The Utilities' Rate Design Applications Are an Unknown Quantity.

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."[5] We agree with the Phase 2 Ruling that "[d]esign and implementation

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[3] *See* Cal. Pub. Util. Code § 739.1(c).
[4] *See* Cal. Pub. Util. Code § 739.1(c)(2).
[5] Phase 2 Ruling, p. 4.

of new residential rate structures should not be rushed."[6] Thus, the Phase 2 Ruling advises that applications should not seek changes that are drastic or complex. We appreciate that the Phase 2 Ruling recognizes that a streamlined application process can be appropriate *only* if small, incremental changes are proposed.

However, the Phase 2 Ruling also recognizes that "the Commission cannot restrict investor owned utilities from applying for other, more complex, changes in residential rate design."[7] Because the applications have not yet been filed, there can be no guarantee that an IOU will not propose a change that requires a full-scale review, consistent with the standard proceeding schedule to address changes to rate design. At this stage of the proceeding, if intervenors are asked to comment on a procedural schedule, intervenors' response must be that a full procedural schedule, similar to those provided for Rate Design Window applications, is required.

C. A Significant Restructuring of the CARE Discount Should Not Be Considered in a Streamlined Application Process.

AB 327 allows changes in the structure of the CARE discount, and the IOUs are free to propose such changes as early as these interim applications.[8] In Phase 1 of this rulemaking, there have been several proposals suggesting fairly significant changes to the design of CARE (such a discount model that provides a greater discount amount at lower tiers or a discount structure that is staggered depending on the level of income of the customers), so that there has been some consideration of the issue. However, Greenlining/CforAT submit that such significant changes in the structure of the CARE discount should not be considered and decided in Phase 2. Significant changes to structure of the CARE discount would require a full, comprehensive

[6] Phase 2 Ruling, p. 4.
[7] Phase 2 Ruling, pp. 5-6.
[8] *See* Cal. Pub. Util. Code, § 739.1(c).

examination, and careful consideration by the Commission. Moreover, the customer notification procedures that would be necessary to prepare customers for a significant change would not allow for rapid implementation. We are hopeful that if the IOUs seek significant changes in the structure of the CARE discount, that they will not be made in Phase 2.

We are also hopeful that the CARE discount remains fairly harmonized across California. There is a benefit to having a fairly uniform CARE program structure across service territories. Customer familiarity of the CARE discount is one benefit, so that if a customer moves across service territories, they will not experience too great of a change in their CARE rates. More effective consideration and synergy of best practices by IOUs, intervenors and the Commission is another benefit. The Phase 1 rulemaking may provide guidance about a Commission favored CARE structure. If it were possible for IOUs to have some harmony in any applications to change the structure of the CARE discount, it could also lead to more efficient consideration. We recognize that this is not something that the Commission can order and their proposed CARE structures are fully within the discretion of the IOUs, governed by statute. However, we make the above suggestions in the interests of maintaining an effective CARE program and avoiding complexities in Phase 2.

III. In Any Case, the Proposed Schedule Does Not Allow for Proper Consideration of Even a Modest Rate Design Application.

The Phase 2 Ruling proposes a schedule allowing only ten weeks (which includes both the Thanksgiving and Winter holidays) before intervenors file Reply Testimony. Ten weeks is not nearly enough time for intervenors to adequately review a single rate design application, propound discovery, receive data responses, possibly formulate follow-up discovery questions,

possibly engage analysts and experts, and then draft Reply Testimony.[9] However, the Phase 2 Ruling contemplates that intervenors will perform this work for three simultaneous applications. Thus, ten weeks is simply inadequate for Intervenors' initial testimony, particularly for small intervenors who cannot apply additional resources for such simultaneous work.

The proposed schedule provides only one week after Intervenors' Reply Testimony for Rebuttal Testimony to be served. This too is inadequate. Should a party wish to examine or challenge something in another party's Reply Testimony, they may need to perform discovery and receive a response. One week is not enough time to complete even this process, much less perform additional necessary analysis and drafting.

Moreover, we note that San Diego Gas and Electric (SDG&E) and Pacific Gas and Electric (PG&E) have indicated that they intend to file additional rate design applications. SDG&E plans to file a Rate Design Window Application just a few weeks after the deadline for its Phase 2 application, no later than December 13, 2013.[10] Thus, intervenors may be asked to evaluate as many as five, or even six, separate rate design applications in the near term, including the coming holiday season. The proposed schedule simply does not allow for a realistic opportunity for intervenors to provide input on the three proposed rate design applications, and this situation would be worse if additional applications are also filed.

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[9] There may be additional activities not listed here required before Reply Testimony can be prepared.

[10] *See* Letter sent by SDG&E Vice President Lee Schavrien to Commission Executive Director Paul Clanon on Nov. 4, 2013, RE: Request of SDG&E for Extension of Time to File Rate Design Window Application and Supporting Testimony, served on parties in A.11-10-002 and A.10-12-005; *see also* electronic message from Gail Slocum, PG&E Law Department, dated Nov. 4, 2013, to ALJ Douglas M. Long, in response to ALJ's Long's electronic mail Ruling of Oct. 18, 2013, "Modified Scoping Memo - A 13-04-012 re PG&E's marginal costs, revenue allocation, and rate design."

IV. Evidentiary Hearings Are Very Likely to Be Necessary; the Proposed Schedule Does Not Provide any Opportunity for Them.

To our knowledge, the consideration of every rate design application has including an opportunity for an evidentiary hearing in the initial schedule. Just the examination of bill impacts from rate design changes requires such a hearing. Moreover, an evidentiary hearing is necessary to examine a party's contentions where there are disputed facts.

Changes in rate design, and the policy questions implicated by such changes, are complicated matters, especially when the Commission has not yet provided the policy direction on rate design that is the goal of Phase 1 of this rulemaking (*see* the Motion to Strike). Any rate changes made in the interim are subject to disagreements as to what are the proper policy goals to consider. And, as demonstrated in the Motion to Strike, AB 327 has only provided direction as to one rate change – a mandatory range for the CARE discount. AB 327 provides no other directions or requirements for any rate changes. Thus, the rate design principles that should govern the IOUs interim rate design are subject to debate and examination, which would necessitate an evidentiary hearing.

While the schedule set forth in the Phase 2 Ruling provides an opportunity for parties to request an evidentiary hearing, there is no reasonable time for such a hearing to be held based on the schedule proposed. Thus, the schedule will need to be revisited to provide a realistic plan to include evidentiary hearings.

V. Coordination of Rate Design Applications May Lead to Greater Efficiency.

Greenlining/CforAT agree with the thinking behind the Phase 2 Ruling that some coordination of upcoming rate design applications may lead to greater efficiency. This may also apply to the potential applications that, as noted above, SDG&E and PG&E have indicated that they will soon file. We note and appreciate that the Phase 2 Ruling has already suggested some

coordination among pending applications, such as requiring that IOUs provide information about rate impacts from their Phase 2 applications in a way that is coordinated with rate impacts from certain other pending proceedings.[11]

CforAT/Greenlining have repeatedly noted in various rate design proceedings the need to consider the cumulative impacts of rate changes on affordability of adequate supplies of electricity. The concern is that a series of changes, each of which may appear modest in isolation, may result in an overall rate structure that fails to provide adequate supplies of affordable electricity for residential customers. This risk increases when a series of changes to rate design are considered separately, as in multiple applications, and it is reduced when all changes under consideration are considered in a coordinated fashion.

Without compromising the need for adequate time on any such applications, further coordination in other procedural matters may lead to greater efficiency and may ease the burden on intervenors who must consider numerous rate design applications at once. Coordination on the *substance* of proposed rate design changes can also lead to greater efficiency, especially in the area of design of the CARE discount.

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[11] *See* Phase 2 Ruling, pp. 5-6.

VII. Conclusion

The Commission should not set a schedule for reviewing applications that have not yet been filed, nor should it set a schedule prior to receiving informed input from intervenors. Intervenors should be afforded the opportunity to review any upcoming rate design applications once they are filed, and then propose a procedural schedule. Commission practice, as codified in its Rules of Practice and Procedure establish the PHC as the appropriate forum for discussion of the schedule for considering upcoming rate design applications, and the Scoping Memo as the document that finalizes such schedule. This practice should not be arbitrarily broken here.

Respectfully submitted,

/s/ Melissa W. Kasnitz

MELISSA W. KASNITZ
Attorney for Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: 510-841-3224
Fax: 510-841-7936
Email: service@cforat.org

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/s/ Enrique Gallardo

ENRIQUE GALLARDO
Attorney for the Greenlining Institute
1918 University Ave.
Berkeley, CA 94704
Phone: 510-926-4017
Fax: 510-926-4010
Email: enriqueg@greenlining.org