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)

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U902M) TO 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

Thomas R. Brill
Attorney for:
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 Century Park Ct.
San Diego, CA 92123-1530
Telephone: (858) 654-1601
Facsimile: (858) 654-1586
E-mail: TBrill@semprautilities.com

Dated: November 25, 2013

#283338

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)

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U902M) TO 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

San Diego Gas & Electric Company ("SDG&E") respectfully submits the following Response to the Motion of the Greenlining Institute ("Greenlining") and The Center for Accessible Technology ("CforAT") to Strike Portions of the Assigned Commissioner's Ruling ("ACR") Inviting Utilities to Submit Interim Rate Change Applications. For the reasons set forth below, SDG&E respectfully submits the Motion to Strike of Greenling/CforAT ("Motion") should be rejected.

I. INTRODUCTION

In their Motion, Greenlining/CforAt argue that portions of the ACR should be stricken because, "[u]nfortunately, 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."[1] As is explained in detail below, rather than demonstrating any form of bias, the ACR merely sets forth guidelines that are entirely consistent with Assembly Bill ("AB") 327 as well as the Rate Design Principles that were adopted in Phase

[1] Motion of Greenlining/CforAt, at p. 1.

1 of this proceeding. The fact that Greenlining/CforAt have cherry picked only some of the guidelines for criticism serves as an implicit admission that guidelines of the sort criticized by Greenlining/CforAt are not legally objectionable, and Greenlining/CforAt have failed to present any evidence in support of a finding of bias.

II. The Guidelines Set Forth in the ACR are Consistent with AB 327 and Previously Adopted Rate Design Principles

The ACR appropriately provides parties with guidance regarding the way in which the Commission intends to implement portions of recently passed AB 327 in many respects, such as directing that, "Design and implementation of new residential rate structures should not be rushed," "Rate design changes proposed for 2014 should be modest, easy to evaluate, and consistent with AB 327," "Tier 1 and Tier 2 rates should not be increased by an excessive amount," and "If the effective CARE discount rate is already above 35%, CARE rates should be adjusted on a glidepath towards the 35% effective discount limit without reducing the discount more than a reasonable percentage annually."[2] However, rather than moving to strike all of the guidance that has been set forth in the ACR on the basis that the guidance prejudges the outcome in this proceeding, Greenling/CforAT have argued that only the following guidance should be stricken from the ACR:

> "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."[3]
>
> ". . . 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."[4]
>
> ". . . To prevent future rate shock, Tier 1 and Tier 2 rates changes should begin to increase in 2014."[5]

---

[2] ACR, at pp. 4-5.
[3] *Id.*, at p. 4.
[4] *Id.*, at p. 5.

In moving to strike these limited portions of the overall guidance provided in the ACR, Greenling/CforAT fail to acknowledge that, similar to the guidance that they have not moved to strike, this guidance is consistent with both the requirements of AB 327 as well as the Rate Design Principles that were previously adopted in this proceeding. Those Rate Design Principles were developed on the basis of input from all parties, including Greenlining/CforAT.[6]

The guidance that Greenlining/CforAt have moved to strike specifically references the need to comply with all of the Commission's policy directives. The guidance is also consistent with Rate Design Principles 2 ("Rates should be based on marginal cost"), 3 ("Rates should be based on cost-causation principles"), 7 ("Rates should generally avoid cross-subsidies, unless the cross-subsidies appropriately support explicit state policy goals"), 8 ("Incentives should be explicit and transparent"), 9 ("Rates should encourage economically efficient decision-making"), and 10 ("Transitions to the new rate structures should emphasize customer education and outreach that enhances customer understanding and acceptance of new rates, and minimizes and appropriately considers the bill impacts associated with such transitions").[7] Taken together with the portions of the ACR that Greenlining/CforAt would not have stricken, the guidance set forth in the ACR is consistent with all of the Rate Design Principles that have been adopted in this proceeding on the basis of input from all parties.

It is entirely appropriate and necessary for the Commission to provide parties with procedural guidance consistent with law and policy goals that were previously adopted on the basis of input from all parties.

---

[5] *Id.*
[6] Scoping Memo and Ruling Of Assigned Commissioner, issued November 26, 2012.
[7] Administrative Law Judge's Ruling Requesting Residential Rate Design Proposals, issued on March 19, 2013, Attachment A Principles of Rate Design.

III. Greenlining/CforAt Have Failed to Present Any Evidence that Could Support a Claim of Bias

In their motion, Greenlining/CfrAt argue that, "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."[8] In essence, the Greenlining/CforAT Motion argues that portions of the ACR should be stricken on the grounds that they demonstrate bias, or would bias the outcome of this proceeding. However, Greenlining/CforAt has failed to make any demonstration of bias, far short of the clear and convincing evidence standard that is required. In that regard, in Decision ("D.") 09-08-028, the Commission found that decisionmakers at administrative agencies, such as the Commission, are accorded a presumption of impartiality and that a demonstration of bias requires clear and convincing evidence:

> Decisionmakers at administrative agencies are accorded a presumption of impartiality—as recently reiterated by the Supreme Court of California in the Morongo decision. [Footnote omitted.] In ratesetting proceedings such as the instant case, a decisionmaker may be disqualified "only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding."59 A party seeking to disqualify a decisionmaker on this basis must meet the clear and convincing test in order to rebut the presumption of administrative regularity. As already discussed, Transphase does not even come close to meeting this standard. Transphase has failed to show any bias or prejudgment on any issue, much less an unalterably closed mind on the part of President Peevey with regard to its positions.

In its decision denying rehearing (D.10-05-023), the Commission further articulated the legal standard required to make a showing of bias:

> . . . In the Decision, we articulated the appropriate legal standards, including the presumption of impartiality and the requirement that a decisionmaker may be disqualified "only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding." (D.09-08-028, p. 51; see also Association of National Advertisers, Inc. v. Federal Trade Commission (hereafter "ANA") (D.C. Cir. 1979) 627 F.2d 1151, 1170.) Nothing alleged

[8] Motion of Greenlining/CforAt, at p. 1.

> in Transphase's original motion to disqualify or in its rehearing application comes close to meeting this standard.
>
> Rules of due process require an impartial decisionmaker in administrative proceedings. With limited exceptions, decisionmakers at administrative agencies are presumed to be impartial. [Footnote omitted.] In a ratesetting proceeding, which is considered a quasi-legislative proceeding for the purpose of due process analysis, the appropriate standard is articulated in ANA, supra. Any challenge to a decisionmaker's presumed impartiality must meet the "clear and convincing" test in order to rebut the presumption of administrative regularity. [Footnote omitted.]
>
> In ANA, the Court specifically noted that the disqualification of every decisionmaker who held opinions on the appropriate course of future action "would eviscerate the proper evolution of policymaking" and substantially interfere with the development of agency policy. [Footnote omitted.] In the present case, the fact that President Peevey was previously employed by SCE more than fifteen years ago, and the fact that he stated in a ruling that he "applaud[s]" SCE's movement to provide dynamic pricing options, [Footnote omitted] does not even approach the required legal standards for disqualification of a decisionmaker.
>
> There was no evidence whatsoever that President Peevey has an actual bias in favor of SCE or against Transphase. Similarly there was no evidence that President Peevey maintained an "unalterably closed mind" with respect to the issues presented by Transphase in the underlying Commission proceeding. Transphase's argument is based largely on unsubstantiated conjecture and innuendo, which does not in any material way approximate the evidentiary showing required to disqualify a decisionmaker. As such, we find no basis or merit to Transphase's arguments regarding disqualification. [Footnote omitted.]

Greenlining/CforAt have moved to strike portions of the Assigned Commissioner's procedural guidance that was clearly designed to further the objectives of AB 327 as well as the Rate Design Principles that were previously developed in this proceeding. The Motion makes no attempt to present any evidence that would justify striking portions of the ACR on the grounds of bias or that it could prejudge the outcome of this proceeding in any way, far short of the clear and convincing evidence that is required to overcome the presumption of impartiality that applies the rulings issued by the Assigned Commissioner in this proceeding.

IV. Greenlining/CforAt Have Misinterpreted the Provisions of AB327

Greenlining/CforAt argue that the following language from the ACR "does not clearly communicate the provisions of AB 327 governing the number of tiers"[9]:

- 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.[10]

In support of this contention, Greenlining/CforAT declare that, "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%,"[11] and argue that, "[t]he 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."[12]

The basis for the concern that Greenling/CforAt has regarding this language is not clear. In fact, consistent with the cited language from the ACR, the language of AB 327 explicitly provides that residential rates are only required to have two tiers ("the commission shall require each electrical corporation to offer default rates to residential customers with at least two usage tiers"[13]). This is exactly what the language in the ACR provides when it states that, "Residential rate structures are only required to have two tiers."[14] The ACR does not dictate that rates have two tiers, and does not conclude or imply that the Commission will adopt two tiers. It merely summarizes the provisions of AB327. Under these circumstances, it is difficult to ascertain the

---

[9] Motion, at p. 8.
[10] ACR, at p. 4.
[11] Motion, at p. 5.
[12] Motion, at p. 8.
[13] Public Utilities Code Section 739.9(c), as amended by AB 327.
[14] ACR, at p. 4.

basis for Greenlining/CforAt's concern. However, it is clear that this language is not indicative of bias or an attempt to prejudge the outcome of this proceeding.

V. CONCLUSION

For the forgoing reasons, SDG&E respectfully submits that the Motion of Greenling/CforAt should be denied.

DATED at San Diego, California, on this 25th day of November, 2013.

Respectfully submitted,

By: /s/ Thomas R. Brill

Thomas R. Brill
Attorney for:
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 Century Park Ct.
San Diego, CA 92123-1530
Telephone: (858) 654-1601
Facsimile: (858) 654-1586
E-mail: TBrill@semprautilities.com