**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)

CENTER FOR ACCESSIBLE TECHNOLOGY AND THE GREENLINING INSTITUTE'S PHASE 2 REPLY BRIEF

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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CENTER FOR ACCESSIBLE TECHNOLOGY AND

THE GREENLINING INSTITUTE'S PHASE 2 REPLY BRIEF

I. Introduction

In accordance with the schedule set forth in the Email Ruling of Administrative Law Judge Amending Phase 2 Procedural Schedule, issued on February 25, 2014, and following the evidentiary hearing that took place on March 25, 2014, the Greenlining Institute (Greenlining) and the Center for Accessible Technology (CforAT) hereby submit this reply brief on Phase 2 issues. This Reply Brief will focus on the issue of whether the California Climate Credit should be included in the calculation of the effective discount percentage for California Alternate Rate for Energy (CARE) rates, as raised in the March 26, 2014 email ruling of Administrative Law Judge McKinney.

Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Edison Company (SCE) (collectively "Joint Utilities") all argue that the California Climate Credit should be included in the calculation of the effective CARE discount. In addition to Greenlining/CforAT, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) argue that statutory authority and California Public Utilities Commission ("Commission") precedent establish that the Climate Credit cannot be allocated as part of the CARE discount.

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II. The Commission Should Establish that Evaluation of the Phase 1 Rate Proposals Should Not Include the California Climate Credit.

Many of the parties urge the Commission to defer decision on the issue of inclusion of the Climate Credit in the CARE discount until Phase 1 of this proceeding.[1] These parties argue that the legal issue presented regarding the Climate Credit and calculation of the CARE discount is not ripe for consideration and that its resolution is not required in order to resolve Phase 2 issues.[2] The parties point out that all three proposed Phase 2 settlements explicitly calculate the CARE discount without including the Climate Credit.[3] All of these parties express concern about whether resolution of the Climate Credit issue could delay resolution of the Phase 2 settlements.[4]

A. The Utilities Have Had Prior Notice of the Climate Dividend Issue.

Greenlining/CforAT recognize that formal briefing on the issue of the California Climate Credit and the CARE discount was ordered late in Phase 2 of this proceeding, initially at evidentiary hearings in which not all parties participated. Thus, Greenlining/CforAT recognize that some parties – especially parties not focused on the Phase 2 "interim" rate design proposals – may not have given proper attention to briefing the issue, a factor which might weigh in favor

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[1] *See* Limited Opening Brief of ORA on Climate Credit and CARE Discount Issue ("ORA Brief"), p. 1; Opening Brief of TURN Concerning the Calculation of the CARE Discount, pp. 1-3; Opening Phase 2 Brief of SDG&E on Whether the California Climate Credit Be Not Included in the Calculation of the Effective Discount Percentage for CARE Rates ("SDG&E Rates"), p. 3; Phase 2 Opening Brief of SCE Regarding the Impact of the California Climate Credit on the Average Effective CARE Discount ("SCE Brief"), p. 1, n.1; Opening Brief of PG&E, ORA and TURN in Support of Motion to Adopt Settlement ("PG&E Brief"), p. 17. Please note that the PG&E Brief was jointly filed with ORA and TURN in support of the settlement; however, the section of the brief dealing with the California Climate Credit (which is the only section of the brief which Greenlining/CforAT will reference in this Reply brief) was not joined by ORA and TURN, as they filed separate briefs on the issue. *See* PG&E Brief, p.1, n.1. Thus, calling the Climate Credit section of the brief the "PG&E Brief" is accurate.

[2] *See e.g.* SCE Brief, p. 1, n.1.

[3] *See e.g.* TURN Brief, p. 1.

[4] *See e.g.* ORA Brief, p. 1.

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of delaying the resolution of the Climate Dividend and CARE discount issue, to ensure that all parties have an opportunity to participate.

However, the utilities have had notice that the allocation of the Climate Credit in the CARE discount was a disputed issue since December 23, 2013 and most likely much earlier. PG&E and SCE included the Climate Credit in the calculation of the effective CARE discounts in their initial November 22, 2013 Phase 2 Applications.[5] Greenlining/CforAT objected to the inclusion of the Climate Credit in the CARE discount (in a section titled "Calculation of the Effective CARE Discount Should Not Consider the Climate Dividend") in our protest filed on December 23, 2013.[6] We also provided brief arguments as to why the Climate Credit is generally not a component of rates and should not be included in bill impact analyses or in calculating the CARE discount.[7]

On December 24, 2013, Administrative Law Judge McKinney issued an e-mail ruling regarding the Climate Credit and bill impacts, stating that:

> [T]he bill impact of the proposed rate changes should be evaluated without the Climate Dividend. The Climate Dividend is derived from the sale of GHG allowances allocated to ratepayers by the state. Thus, it is not appropriate to include this amount when calculating bill impacts.

The e-mail ruling did not specifically address the issue of the Climate Credit and the CARE discount.

In its Reply to Protests SDG&E stated:

> *CforAT/Greenlining states that the effective CARE discount should be calculated without consideration of the Climate Dividend*. (CforAT/Greenlining Protest, at p. 8) While SDG&E is happy to comply with the ALJ Ruling that requests this information, SDG&E

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[5] *See* PG&E Summer 2014 Residential Electric Rate Reform Proposal, Phase 2 Prepared Testimony, p. 2-1, n.2, pp. 2-15 to 2-16; Phase 2 Interim Residential Rate Design Proposal of SCE, p. 39

[6] *See* Protest of CforAT/Greenlining of the Utilities' Supplemental Filings Proposing Interim Rate Changes (Phase 2), p. 8, Section II.B,

[7] *See id*., pp. 7-8. Other parties' protests also advocated that the Climate Dividend be excluded from bill impact analyses.

> also notes that the Climate Dividend creates a unique opportunity for the Commission to implement rate reforms in residential rate design structure in a way that mitigates the bill impacts that would otherwise result from these reforms.[8] (emphasis added)

In its Reply to Protests SCE also argued that the Climate Credit was a bill reduction and that it should continue to be considered in bill impact analyses.[9] Thus, this issue was identified and the basic arguments set forth well before the ruling ordering formal briefing.

B. Important Considerations of Rate Design Are Already Being Disposed of in a Streamlined Manner.

Generally, Greenlining/CforAT believes that significant issues affecting rate design merit a full and considered analysis. This is especially true when deciding on issues which affect the CARE discount, which is a vital resource in providing for affordability of energy for low income customers. Thus, there are considerations for delaying a resolution on the Climate Credit issue.

However, much of this rulemaking has already been pushed into a streamlined, rushed manner. Despite repeated objections from Greenlining/CforAT,[10] as we stated in our Opening Brief, the schedule of the ratemaking phases of this proceeding and the timing of the proposed settlements have not allowed proper analysis of issues such as affordability, energy burden and bill impacts.[11] These are significant issues, and their analysis involves production of evidence and sometimes complicated factual analysis. The streamlined nature of the proceeding has pre-empted proper analysis of these important issues prior to a finding in Phase 2.

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[8] Reply of SDG&E to Protests on Supplemental Filing for Phase 2 Interim Rate Changes, filed Jan. 3, 2014, p. 13.

[9] *See* Reply of SCE to Protests of Various Parties to Its Phase 2 Supplemental Filing for Interim Residential Rate Design Changes, filed Jan. 3, 2014, p. 6.

[10] *See* Comments of CforAT/Greenlining on Procedural Schedule and Need for Evidentiary Hearing (filed Nov. 8, 2013), pp. 5-7; Protest of CforAT/Greenlining of the Utilities' Supplemental Filings Proposing Interim Rate Changes (Phase 2), pp. 15-16.

[11] *See* CforAT and Greenlining's Opening Phase 2 Brief ("CforAT/Greenlining Brief"), pp. 1-12.

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In contrast, the Climate Credit issue is largely a legal issue that does not require extensive factual determinations. Given its nature, the Climate Credit issue is much more suitable for expedited consideration than the Phase 2 proposals for changes in rate design.

C. The Commission May Provide a Ruling on the Climate Credit Issue without Delaying a Phase 2 Decision.

Greenlining/CforAT recognize that resolution of the Climate Credit and CARE issue may not be needed prior to making a decision in Phase 2 of this proceeding. We also recognize that the Commission has established an expedited schedule for this portion of the proceeding, with a view to having a final decision in place in time for summer 2014 rates. While we do not agree with this expedited schedule, we recognize it as a *fait accompli*. Greenlining/CforAT does not wish for the Climate Credit issue to delay the Phase 2 schedule.

However, there is value in resolving the Climate Credit issue prior to intervenor analysis of the utilities' Phase 1 rate proposals. The Phase 1 rate design proposals include the long–term treatment of the CARE discount, including maintaining (or transitioning) them within the statutory range of 30% to 35%. Analysis of the utilities' CARE programs would be complicated if each proposal required alternate analyses, one with consideration of the Climate Credit, another without. Moreover, intervenors and the Commission will not have a clear understanding of the utilities' proposed treatment of the CARE discount, unless we know whether or not the Climate Credit is included. Consideration of the Phase 1 proposals regarding CARE can be greatly simplified with a prior resolution of the role of the Climate Credit.

Greenlining/CforAT suggests that the Commission may provide a provisional ruling regarding the Climate Credit and CARE discount issue. The Administrative Law Judge's December 24, 2013 e-mail ruling simplified bill impact analyses of the Phase 2 proposals, by

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removing the need to consider the Climate Credit. A similar ruling, even if it is provisional in nature, can greatly simplify intervenors' upcoming consideration of the Phase 1 proposals.

D. The Commission May Decide the Climate Credit Issue at an Early Stage of Phase 1.

Alternatively, the Commission can issue a final decision in Phase 2 of this proceeding, without addressing the Climate Credit issue, and then take up the issue of the Climate Credit in Phase 1 of the proceeding. However, Greenlining/CforAT urges the Commission to decide this issue early within Phase 1, so that intervenors will have a clear understanding of the utilities proposals regarding the CARE discount.

As stated above, this is largely a legal issue and is much more suitable for expedited consideration than the substantive rate design issues. The Climate Credit issue can be resolved prior to the deadline for intervenor testimony, so that analysis of the utilities' proposals has one fewer complicated issue involved.[12]

III. The Climate Credit Belongs to Customers and Is Used to Pay Customers' Bill.

SDG&E's description of the Climate Credit, in its Advice Letter implementing the payment of the Climate Credit states:

> The discount for customers qualifying for California Alternate Rates for Energy (CARE) will be calculated before the CA Climate Credit is applied to ensure no impact to the benefits of the CARE program.[13]

This is the proper view of the Climate Credit. However, in opening briefs, the utilities contradict this view.

[12] Intervenor Opening Testimony on the Phase 1 Proposals is currently due September 15, 2014, which provides sufficient time to resolve the Climate Credit issue. *See* Third Amended Scoping Memo and Ruling of Commissioner (filed Apr. 15, 2014), p. 10.
[13] Advice Letter 2581-E-A (filed Mar. 26, 2014), Cal. P.U.C. Sheet No. 24669-E, SCHEDULE GHG-ARR.

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Both PG&E and SCE argue that the Climate Credit should be included in the CARE discount. Both utilities cite Cal. Pub. Util. Code § 739.1(c)(1):

> The average effective CARE discount shall not be less than 30 percent or more than 35 percent of the revenues that would have been produced for the same billed usage by non-CARE customers.

PG&E and SCE claim that the Climate Credit is not included in "the amount of revenues produced by a [CARE] customer."[14] By this view, the Climate Credit never belongs to ratepayers. Essentially, PG&E and SCE claim that the Climate Credit is a rate reduction.

However, as the Commission made abundantly clear, the Climate Credit is not a rate reduction.[15] The Climate Credit belongs to ratepayers, as it is a return of money that they invest in the system of Greenhouse Gas (GHG) reduction:

> The revenues created will come *directly from the pockets of California ratepayers*, many of whom will bear increased retail electricity costs as a result of rising wholesale electricity prices that include the price of carbon.[16] (emphasis added)

The Climate Credit belongs to the customer, and the utilities are charged with using these funds not to *reduce* a customer's bills, but to *pay* a customer's bills:

> As a credit, the allowance value will be used *directly to pay for electricity*, but in doing so it will free up the money the customer would otherwise use to pay that bill to use for other purposes.[17] (emphasis added)

A. The Climate Credit Cannot Be Understood as a "Charge Not Paid by CARE Customers."

SCE and SDG&E specifically cite the following language of Cal. Pub. Util. Code § 739.1(c)(1) to support their view that the Climate Credit should be included in the CARE discount:

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[14] *See* PG&E Brief, pp. 17-18; SCE Brief, pp. 3-4.
[15] *See e.g.* D.12-12-033 at p. 120.
[16] D.12-12-033, p. 133.
[17] D.12-12-033, p. 122.

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> The average effective discount determined by the commission *shall reflect any charges not paid by CARE customers*, including payments for the California Solar Initiative, payments for the self-generation incentive program made pursuant to Section 379.6, payment of the separate rate component to fund the CARE program made pursuant to subdivision (a) of Section 381, payments made to the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code, and any discount in a fixed charge. (emphasis added)

According to SCE and SDG&E, the Climate Credit should be considered a "charge not paid by CARE customers."[18] This is inaccurate. The Climate Credit is not a charge that some customers are not required to pay. The Climate Credit is not a "charge" at all. In fact, as demonstrated above, it is an asset that a customer uses to pay their bill.

Moreover, the list of "charges not paid by CARE customers" provided in the second half of the sentence cited above are all charges paid by non-CARE customers, but which are exempted for CARE customers. The Climate Credit does not belong with the list of CARE-exempted charges, because (1) it is not a "charge" and (2) it is provided for both CARE customers and non-CARE customers, so it not something that CARE customers are exempt from.[19]

The only way that the Climate Credit could be understood to be a "charge *not* paid by CARE customers" is if the Climate Credit was a "charge paid by non-CARE customers." The Climate Credit does not fit this description.

B. The Climate Credit Is Not a Component of Rates.

SCE claims that the Commission decided to return GHG revenues customers within rates:

> Because the Commission has already determined that it is appropriate *to include GHG costs in rates and to offset those costs with GHG allowance revenues*, it would be inconsistent with that decision to then *ignore* the CCC bill credit (which is just another form of the GHG allowance revenues) in determining the average effective CARE

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[18] *See* SCE Brief, pp. 3-4; SDG&E Brief, p. 6.
[19] *See* TURN Brief, p 7.

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> discount off of bills paid by non-CARE customers for the same usage, as required by Section 739.1(c)(1).[20] (emphasis added)

However, SCE does not differentiate between the GHG revenue returned to customers within rates on the one hand, and the Climate Credit on the other, despite the fact that the Commission explicitly stated that "[w]e take a bifurcated approach in allocating these revenues to residential customers…"[21]

Some GHG revenue is included in rates, as the Commission explicitly chose to use this revenue to offset "the Cap-and-Trade-related program costs *that are embedded in the applicable residential rates*."[22] (emphasis added) These revenues were returned to customers volumetrically, and were only returned to residential customers in the upper tiers, as these were the only *rates* that reflected the increased the costs of complying with Cap-and-Trade.[23] Unlike the California Climate Credit, the offsetting of costs here is made before the customer is billed for their usage.

In contrast, the purpose of the Climate Credit is to offset the increased costs of *non-energy expenses* driven by Cap-and-Trade.[24] The Climate Credit is a:

> method of revenue distribution [that is] a reasonable means of ensuring that residential customers (especially lower-income residential customers) are compensated for the likely increase in the price of goods and services as a result of GHG costs being reflected in electricity rates.[25]

Thus, the Climate Credit was explicitly created by the Commission as a *separate* methodology from the return of GHG revenue to offset increased costs of Cap-and-Trade compliance found within rates, and for a different purpose. As the Climate Credit is designed to offset the

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[20] SCE Brief, p. 5.
[21] D.12-12-033, p. 108.
[22] D.12-12-033, p. 108; *see also* Conclusion of Law 33; Order 8.
[23] *See* D.12-12-033 at p. 109; *see also* Findings of Fact 104-106; Conclusions of Law 4, 33; Order 8.
[24] *See* D.12-12-033, p. 110; *see also* Finding of Fact 115; Conclusions of Law 37.
[25] D.12-12-033, p. 117.

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increased costs *of non-energy expenses*, its revenue return is made separately from electricity rates. Thus, the Climate Credit is returned to customers on a "per household" basis.

C. The Climate Credit Is to Be Returned to Customers Completely Separate from Rates, on a Per Household Basis.

SCE describes the Climate Credit "as a credit, or offset, to customers' bills."[26] However, as demonstrated above, the Climate Credit is not an "offset" of rates or bills. It is a payment to customers. The Commission only chose the expedient mechanism of using the Climate Credit as a payment of bills, to lower administrative costs and to ensure the Climate Credit was not lost to some customers.[27]

It is clear that the Climate Credit is separate from rates, as the Commission's intent in creating the credit is to return it on a per household basis, rather than on a per service account basis. As PG&E, SDG&E and SCE stated in their filing to the Commission describing their implementation of GHG revenue return:

> However, identifying which customers are eligible to receive a Climate Dividend is complicated by the requirement that the Climate Dividend be returned semi-annually and on a "per household" basis, rather than on a service account basis.[28]

The Commission's intent is to provide the Climate Dividend to each *household*, completely separate from energy rates; however, the Commission recognized that utilizing service accounts was the best means of achieving this:

> In pursuing this approach, our intent is to provide revenues on an equal basis, per household, where the number of residential accounts appears to be a reasonable proxy for the number of households.[29]

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[26] SCE Brief, p. 2.
[27] *See* D.12-12-033 at pp. 121-22; *see also* Findings of Fact 118-120.
[28] Amended Joint Investor-Owned Utility Cap-and-Trade Greenhouse Gas Revenue Allowance Return Implementation Plan ("Joint Utilities' GHG Return Implementation Plan"), Sec. 3.1, p. 15 (filed with the Commission on June 19, 2013 in Rulemaking 11-03-012), citing D.12-12-033 at 119, 182 (Finding of Fact 125), and 197 (Conclusion of Law 40).
[29] D.12-12-033, p. 119.

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In circumstances where households do not correspond exactly with service accounts, the Commission (and the Joint Utilities in implementing the Climate Credit) holds true to the intent that each household (not each service account) must receive an equal Climate Credit.

Thus, in the case of a master-metered account with ten sub-metered units, the Joint Utilities describe how the master-metered account holder will receive a Climate Dividend payment of ten times the per-household amount and distribute the appropriate per-household Climate Dividend payment to each of the ten sub-metered households.[30]

Likewise the Commission ordered the utilities to develop a methodology for the Climate Credit return that held true to the per household intent in circumstances where "some households may have more than one account owing to, for example, multiple meters on a single residential premises."[31]

It is clear that the Climate Credit is not a rate reduction or a bill "offset," given that the Commission's intent was to return the credit outside of rates, on a per household basis, not on a per account basis.

D. The Climate Credit Has Cash Value; Every Customer May Receive the Climate Credit as a "Cash-Out," Completely Separate from their Bills.

The Commission reserved the right to send the Climate Credit off-bill, in the form of a separate check sent to customers – "a cash-equivalent payment."[32] The Commission also ordered the utilities to allow net-metering customers to receive the Climate Credit as a separate check, completely independent of bills, if the Climate Credit had not been completely exhausted

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[30] *See* Joint Utilities' GHG Return Implementation Plan, Sec. 5.4.2, pp. 24-25, implementing D.12-12-033, at 197 (Conclusion of Law 40) ("residential customers receiving service under a master-meter configuration should receive an equitable portion of GHG allowance revenues.")
[31] D.12-12-033, p. 153.
[32] *See* D.12-12-033 at pp. 119, 122-23.

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in paying bills after twelve months.[33] It is telling that the Commission consistently refers to this Climate Credit payment as a "cash-out," "cash payment," or "cash value."[34]

Thus, under this process, the Commission orders utilities to "return the excess *cash value* of the climate dividend" to net metering customers.[35] (emphasis added) The Commission does not intend the Climate Credit to be a reduction of the bill. The Climate Credit belongs to customers, and it's value is the same as cash.

Moreover, in implementing the Climate Credit return, the Joint Utilities describe their "General Cash-Out Option," through which *any* customer (not just net metering customers) may request the Climate Credit as a separate check, completely independent of bills:

> Each IOU billing system is currently structured to allow any customer to request a check that includes a payout of its credited bill amount at any time. The same policy should apply for the Climate Dividend.[36]

Any customer, including CARE customers, may receive the Climate Credit completely separate from their bills.

Thus, the utilities view that the Climate Credit should be included in the CARE discount, because it is not part of "the amount of revenues produced by a [CARE] customer," is administratively infeasible. For a given month, the utilities could never be sure how many CARE customers – or how many non-CARE customers – choose to (or are required to) cash-out the Climate Credit, thus precluding the possibility of the Climate Credit being part of the "amount of revenues produced by" the customer. Thus, both the numerator and the denominator in the equation that must result in a 30% to 35% discount would be uncertain factors, depending on how many customers cash-out their Climate Credit.

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[33] *See* D.12-12-033, p. 126, Conclusion of Law 41.
[34] *See* D.12-12-033, pp. 126, 154; Finding of Fact 130; Conclusion of Law 41; Order 10; *see also* D.13-12-003, p. 10.
[35] *See* D.12-12-033, Order 10.
[36] Joint Utilities' GHG Return Implementation Plan, Sec. 5.4.5, p. 26.

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E. Including the Climate Credit in the CARE Discount Would Violate the Statutory Requirements that CARE Costs Be Allocated on an Equal Cents Per Kilowatt-hour Basis to All Classes of Customers.

Cal. Pub. Util. Code § 327(a)(7) requires that utilities allocate the costs of the CARE program on an equal cents per kilowatt-hour basis to all classes of customers. Including the Climate Credit in the CARE discount would violate the requirements of § 327(a)(7). As TURN points out, if the Climate Credit is included in the CARE discount, the Climate Credit essentially becomes a source of funding for the CARE program.[37] Thus, the statute would require that the costs of the Climate Credit – a source of funding for the CARE program – be allocated on an equal cents per kilowatt-hour basis to all classes of customers. However, the costs of the Climate Credit are not allocated to all customers on an equal cents per kilowatt-hour basis – and could not be without a complicated revision to existing methodologies.[38] Thus, using the Climate Credit to fund a portion of the CARE discount would violate Cal. Pub. Util. Code § 327(a)(7).

IV. Conclusion

The Climate Credit belongs to customers. It is designed to be a cash equivalent payment to customers, who use this asset to pay their bills.

If the utilities' view of the Climate Credit were to be adopted, it would mean that the Climate Credit does not belong to customers. The Climate Credit would be understood as only a rate reduction. Moreover, the Climate Credit would vanish for CARE customers, subsumed into an already required discount.

The Commission can decide on the issue of the Climate Credit and the CARE discount in an expeditious manner. Resolution of this issue prior to the deadline to intervenor testimony on the Phase 1 rate proposals would simplify analysis of the proposals.

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[37] *See* TURN Brief, p. 8.
[38] *See* TURN Brief, p. 8.

Respectfully submitted,

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/s/ Melissa W. Kasnitz
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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

/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

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