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)

REPLY BRIEF OF THE UTILITY REFORM NETWORK CONCERNING THE CALCULATION OF THE CARE DISCOUNT

Lower bills. Livable planet.

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REPLY BRIEF OF THE UTILITY REFORM NETWORK
CONCERNING THE CALCULATION OF THE CARE DISCOUNT

I. REPLY TO SCE CONCERNING THE CARE DISCOUNT CALCULATION

Section 739.1(c) requires that the calculation of the CARE discount "shall reflect any charges not paid by CARE customers." TURN explained in our opening brief why this language is not dispositive of how to treat the Climate Credit, which is not a "charge" not paid by CARE customers, but instead is a credit provided on the utility bill in exactly the same amount to all CARE and non-CARE customers.[1] The Center for Appropriate Technology and Greenlining (CforAT/GL) provided an extensive discussion of Commission policy showing that the Climate Credit is not intended to be part of the utility bill or a component of electric rates, and that in fact the Commission had preferred to provide the credit as a stand-alone refund to the customer, but determined that a bill credit was a safer alternative to ensure customers did not lose out on this credit by, for example, failing to cash a check.[2]

SCE on the other hand claims that the "plain language" of § 739.1(c) "cannot be read to exempt CCC credits from the general rule that the discount is be to calculated by comparing *revenues* from CARE customers with *revenues* from non-CARE customers for the same billed usage."

SCE's plain language analysis is incorrect as a matter of law. The plain meaning standard means that words should be given their plain, ordinary everyday meaning.[3] But SCE's tortured explanation of why the Climate Credit must be

[1] TURN Opening Brief, p. 7.
[2] CforAT/Greenlining Opening Brief, p. 17-22.
[3] See, for example, D.97-03-067, p. 11 (citing *IT Corp. v. Solano County Bd. Of Supervisors*, 1 Cal. 4th 81, 98 (1991)). See, also, D.12-05-035, p. 14-15.

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included in the CARE calculation disproves the very notion that it is a "plain" reading of the statute. SCE describes the differential impact of the Climate Credit on both CARE and non-CARE customers; and then concludes that "the very language of Section 739.1(c)(1) requires the discount calculation to reflect *all* the differences in bill paid by CARE customers relative to non-CARE customers for the same usage."[4] SCE has accomplished a sleight of hand. The statutory language requires that "**charges not paid** by CARE customers" be included in calculating the CARE discount, but SCE now claims that this means "**all the differences**" in bills paid by CARE and non-CARE customers must be reflected in the CARE discounted.

Equating "charges not paid" with "all the differences" does not at all comport with the "plain language" standard. These words do not have the same ordinary meaning. The words "charges" and "credits" do not have the same ordinary meaning. Indeed, their ordinary meaning is exactly opposite. TURN and CforAT/GL explained why the notion of a "bill credit" is fundamentally different from the notion of a "bill charge" in the calculation of "the revenues that would have been produced for the same bill usage." The Legislature would not have needed to separately list certain specific charges (currently not paid by CARE customers) if it had simply intended that any and all differences on a bill must be reflected in the discount.

Indeed, CforAT/GL explain cogently why the Climate Dividend should not even be considered as part of the bill, and thus as any portion of the billed revenues, since it reflects a payment to all residential customers from the State of California.

TURN explained in our opening brief that the actual statutory language should be interpreted to mean that "there is no basis to conclude that § 739(c)(1) requires

[4] SCE Opening Brief, p. 4 (emphasis in original).

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the CARE discount to include additional credits that may be provided outside of the CARE program" in the calculation of revenues that would have been produced by the same usage.[5] At the very least, SCE must admit that the statutory language is susceptible to more than one reasonable interpretation, and thus a resolution of this issue needs to consider relevant extrinsic evidence. As summarized in TURN's opening brief, the statutory and policy goals of the Climate Credit, which results from the cap-and-trade program adopted pursuant to AB 32, fully support TURN's position that the Climate Credit should not be included in calculating the CARE discount.

Indeed, SDG&E approvingly explains that the public policy goal of the Climate Credit was "to provide low income customers with additional benefits."[6] SDG&E then reaches the illogical conclusion that this goal warrants including the Climate Credit in the CARE discount calculation. Given that including the Climate Credit in the calculation of revenues would reduce the amount of the CARE discount, it is impossible to see how this would provide low income customers with "additional benefits," since it would reduce their rate discount benefits.

II. REPLY TO CforAT AND GREENLINING CONCERNING AFFORDABILITY

The Center for Accessible Technology (CforAT) and Greenlining appropriately emphasize that any adopted rates must meet the just and reasonable standard of § 451 and the affordability requirements of § 382(b). CforAT and Greenlining document that the proposed settlement rates would still result in substantial percentage rate increases for a significant number of both CARE and non-CARE customers when compared to the rates in effect on October 13, 2013.[7] CforAT and Greenlining conclude that the settling parties failed "to adequately consider the

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[5] TURN Opening Brief, p. 7.
[6] SDG&E Opening Brief, p. 4.
[7] See, for example, CforAT/Greenlining Opening Brief, p. 10-11.

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impacts on affordability" and did not provide sufficient evidence that the settlement rates meet the statutory requirements.

TURN agrees strongly with CforAT and Greenling that the principles of affordability should always be considered in setting rates. TURN notes, however, that the CforAT and Greenlining analysis, comparing settlement rates to October 13, 2013 rates, is incomplete. The bill impacts of the settlement rates reflect both the very large revenue requirement increases, as well as the changes in rate design. Revenue requirement increases will increase rates and bills absent any changes to rate design. Moreover, it is axiomatic that the AB 327 elimination of rate protections for Tiers 1 and 2, together with disproportionate increases to Tier 1 and 2 rates as directed by the Scoping Rulings in this proceeding,[8] would result in bill increases for the significant amount of usage in Tiers 1 and 2. Since low-usage customers have had relatively lower bills as compared to customers with significant upper tier usage, the increases to those bills are higher on a percentage basis, even if the changes are lower or the same in absolute dollars.[9]

For precisely these reasons, TURN has long supported the restrictions on increasing lower tier rates. However, TURN recognizes that the specific directives from the Assigned Commissioner in this proceeding were to implement the AB 327 changes by disproportionately increasing Tier 1 and 2 rates. Thus, in agreeing to the settlement outcomes, TURN explicitly considered affordability issues by considering the relative bill impacts of the settlement rates

[8] Assigned Commissioner's Ruling, October 25, 2013, p. 5; Assigned Commissioner's Ruling, January 24, 2014, p. 2-3.
[9] See, PG&E – 07. For example, CforAT/GL note that the 1,260,256 non-CARE customers (with usage between 40 and 450 kwh/mo) would see bill increases above 10% (compared to Oct. 2013, 50% Rev Req). The absolute magnitude of the bill increases for this group ranges from $1.12 to $6.59 per month. In contrast, the 705,918 non-CARE customers with usage between 600 and 1000 kWh/mo would see bill increases less than 5%, but the range of bill increases is similarly from $2.76 to $5.95 per month.

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as compared to the utilities' proposed rates, as well as to potential litigation outcomes, based on similar revenue requirements and a range of realistic outcomes.[10]

III. CONCLUSION

TURN recommends that the Commission adopt the proposed settlements to implement residential rates for 2014 and beyond, and defer consideration of whether to include the Climate Credit in the calculation of the CARE discount.

Should the Commission seek to resolve the Climate Credit issue at this point, TURN's analysis shows that the language of AB 327 does not dictate a particular outcome. Even the utility's own policy analysis demonstrates that the goals of AB 327 and AB 32 can best be harmonized by treating the Climate Credit as a separate bill credit that should not be incorporated in the calculation of the CARE discount.

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Respectfully submitted,

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[10] For example, those same 1,260,256 non-CARE PG&E customers (with usage between 50-450 kWh/mo) would pay on average about $2.80 less per month under the settlement rates than under PG&E's original proposed rates. The difference is likely greater for SDG&E and SCE, since those settlements had larger differences from proposed lower tier rates.

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