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 BRIEF

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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 Center for Accessible Technology (CforAT) and the Greenlining Institute (Greenlining) hereby submit this timely brief on Phase 2 issues. This brief addresses issues concerning the way in which Phase 2 has been conducted broadly, the proposals made by the IOUs[1] and the subsequent proposed settlements entered into by various parties in response to the proposals, and the specific question raised for briefing by the Administrative Law Judge at hearing regarding whether the California Climate Credit should be included in the calculation of CARE rates.[2]

II. OVERVIEW

In its effort to modify rates in advance of the 2014 summer season, the Commission has established such a streamlined schedule for Phase 2 of this proceeding that it has been unable to give adequate consideration to key concerns regarding changes to rates, including the impact of proposed changes to rates on the affordability of electricity.

CforAT and Greenlining appreciate that the scope of Phase 2 was drawn in a relatively narrow fashion with the issuance of the Second Amended Scoping Memo, and that the initial attempts of the utilities to make far-reaching changes to rate design in an expedited fashion were disallowed.[3] At the same time, even the changes under review based on the IOUs' simplified proposals and the subsequent proposed settlements fail to

[1] Except in passing, this brief does not address the broad proposals first issued by the IOUs on November 22, 2013, but rather the revised and simplified proposals, issued in response to the Second Amended Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge (Second Amended Scoping Memo), issued on January 24, 2014; the simplified proposals were served on January 28, 2014.

[2] This question was included in an email ruling issued on March 26, 2014.

[3] Second Amended Scoping Memo at p. 2.

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adequately address the requirement that "all residents in the state should be able to afford essential electricity and gas supplies," and the Commission's obligation "to ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures."[4] Until these obligations are met, the Commission cannot adequately determine that proposed rates are "just and reasonable."[5] Thus the entire streamlined process for adopting changes to rates for all three IOUs before the upcoming summer season has been deeply flawed and cannot result in a just outcome.

Additionally, the IOUs' proposals to include the California Climate Credit in their calculations of bill impacts and CARE discounts violates the requirements of the California cap and trade program for greenhouse gases as well as the structural obligations for the CARE program. Adoption of the utilities' proposals regarding the Climate Credit would also result in an outcome that is not just and reasonable.

III. AFFORDABILITY

IOUs are obligated to propose rates that are in compliance with all applicable laws, and the burden is on the utility to justify any changes to rates in order to show that such changes result in rates that are just and reasonable, and that otherwise meet statutory requirements including the requirement of affordability. The Commission, likewise, is obligated to set rates in compliance with applicable laws. Intervenors are not separately obligated to make rate proposals; it is sufficient for them to point to concerns about the proposals made by a utility without attempting to solve the identified problems.

With regard to affordability the utility proposals and the proposed settlements fail to adequately consider the impacts on affordability that would result from the changes to

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[4] Cal. Pub. Util. Code § 382(b). Affordability is also one of the rate design principles developed earlier in this proceeding.

[5] *See* Cal. Pub. Util. Code § 451.

rates that are now under consideration.[6] Information about impacts on energy burden, for example, were not included in the initial proposals and were only provided (in a limited manner) upon direct request of the ALJ following the evidentiary hearing held on March 25, 2014.[7] No party other than CforAT and Greenlining attempted to evaluate either the initial proposals or the settlements in light of the new data recently issued in the Commission's Low Income Needs Assessment (LINA), or in light of the economic context of the state facing low-income customers in particular.[8]

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[6] Without expressly using the word "affordability," the Second Amended Scoping Memo described the issues to be considered when evaluating whether to adopt the utility proposals (and, presumably, to be used to evaluate the proposed settlements) as follows:

> Considerations for resolving these issues include: (a) is the rate change proposal consistent with AB 327?, (b) is the rate change proposal consistent with the ten rate design principles developed in this proceeding?, (c) are the assumptions on which the IOU based its calculations reasonable?, (d) do the proposed non-CARE rates avoid rate shock and rate volatility?, (e) do the proposed rates for CARE, FERA and medical baseline avoid rate shock and rate volatility?, (f) do the proposed rate changes maintain revenue neutrality?; and (g) are any other rates impacted by the rate change proposal, and, if so, to what extent should such impacts be addressed in this proceeding.
>
> Second Amended Scoping Memo at p. 4.

Neither the proposals nor the settlements take on these issues squarely, providing bill impacts but no contextual evaluation of whether the proposed rates are affordable (one of the rate design principles) or whether the proposed rates avoid rate shock for customers. None of the relevant documents, including the Second Amended Scoping Memo, addresses compliance with Section 382(b) of the Public Utilities Code.

[7] *See* emailed ruling issued on March 26, 2014, describing additional data to be provided by the utilities. While the IOUs may argue that intervenors should have requested information earlier through discovery, this does not change either the burden of proof or the fact that the condensed schedule of this phase of the proceeding has presented a substantial burden on small intervenors such as CforAT and Greenlining, a fact which CforAT and Greenlining have noted on multiple occasions.

[8] *See generally* CforAT-01 (Revised Prepared Testimony of Henry J. Contreras Addressing Affordability Issues for Vulnerable Consumers for Summer 2014); *see also* Greenlining-01(Prepared Testimony of Enrique Gallardo in Phase 2 Interim Rate Application, R.12-06-013 of the Southern California Edison Company) and Greenlining-02 (Prepared Testimony of Enrique Gallardo Regarding Phase 2 Interim Rate Changes of San Diego Gas & Electric Company).

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All of these flaws prevent a proper review of the proposals before the Commission, which is cause for concern on its own and even greater cause for concern to the extent that any rates adopted in Phase 2 are seen as an initial step along a pre-determined path to additional changes as this proceeding moves forward.

A. Energy Burdens Show That Proposals Do Not Protect Affordability

A customer's energy burden represents the portion of the customer's household income that is used to pay for energy (electricity and natural gas). A customer with an energy burden of over 5% (combined gas and electricity) is identified as having a "high" energy burden, and faces high risks based on energy insecurity.[9]

The utility data on energy burden, produced after hearing, shows that the level of burden under the proposed settlement rates causes the proposals to run afoul of Section 382(b) of the Public Utilities Code for significant segments of the population.[10] While the IOUs will undoubtedly point to the relatively low overall rates of "high energy burden" in their territories, the disaggregated data they provide shows extreme results among certain vulnerable populations.

For SDG&E, general data regarding the proposed settlement indicates that only 2% of the non-CARE population faces high levels of energy burden.[11] However, this aggregate data hides extreme differentials. The 2% average holds among coastal

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[9] *See* Needs Assessment for the Energy Savings Assistance and the California Alternate Rates for Energy Programs Report (LINA), issued in December, 2013 at Vol.2, at pp. 5-84 – 5-85. The LINA is discussed in greater detail below.

[10] Below, CforAT/Greenlining address specific examples from the data produced by SDG&E and PG&E. While no examples are given regarding SCE, this does not mean that SCE's proposal is superior to those of the other IOUs regarding affordability/energy burden; rather, it reflects only the limited time available to review the data and the difficulty in addressing the data in the format provided by SCE. CforAT/Greenlining have requested that SCE's data be provided in an easier to use format, and reserve the right to address such data on reply.

[11] SDG&E-10, consisting of SDG&E's Estimated "Energy Burden" for Proposed Settlement Rates, provided as Attachment E to SDG&E's filing entitled Additional Data to be Supplied by Utilities as Evidentiary Exhibits of San Diego Gas and Electric Company (U902E), on April 1, 2014, at p. 1. There is no meaningful difference in the percentage of customers with a high energy burden between basic service customers and all-electric service customers in the aggregate.

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customers (who are least likely to rely on air conditioning for comfort and safety); in contrast, however, SDG&E's data shows that a very substantial group (between 18-28%) of all customers in its desert zone, including CARE and non-CARE, basic and all-electric, will face a high energy burden under its proposed settlement rates.

SDG&E Customers with High Energy Burden under Proposed Settlement Rates[12]

Zone	CARE Basic	Non-CARE Basic	CARE All-Electric	Non-CARE All-Electric
Desert	18%	24%	28%	22%
Mountain	5%	4%	3%	6%
Inland	0%	11%	0%	11%
Coastal	0%	2%	0%	0%

For PG&E, segregated data from different climate zones was not provided in its materials provided following the evidentiary hearing. However, the PG&E data that was provided shows that high energy burden customers are found through a broad range of usage levels; this is not an issue solely of concern for the highest-usage customers. Thus, any attempt to argue that the problem of energy burden is one of conservation, or to argue that CARE customers with high energy burdens are likely not to be eligible for the program,[13] do not engage with large portions of the heavily-burdened population.

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[12] Data taken directly from SDGE-10.

[13] An example of this type of argument was made by PG&E witness Dennis Keane at the evidentiary hearing. Tr. 33:9-33:12 (asserting that the greatest burden will fall on the highest usage customers and referring to the program adopted in D.12-08-044 to evaluate the eligibility of the highest usage CARE customers, resulting in removal of many (but not all) such customers from the program).

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PG&E Customers with High Energy Burden under Proposed Settlement Rates[14]

Customer Segment	Usage Level (kWh/month) where average burden is high	% of customers w/ High Energy Burden	Average Burden at 50% RRQ Increase	Average Burden at 100% RRQ Increase
CARE, All-Electric	All	32.82%	5%	Unchanged (see note)
	500-550	4.41%	7.2%	
	650-700	1.32%	6.0%	
	750-800	4.76%	11.7%[15]	
	850-900	1.14%	8.4%	
	Above 1000	21.19%	From 5.1%-15.8%	
Non-CARE, All-Electric	All	4.63%-8.1%	2.3%	2.3
	900-1000	3.47%	[Below 5%]	5.0%
	Above 1500	4.63%	5.4%-17.1%	5.7-17.9%
CARE, Basic and All-Electric	All	8.64%		Unchanged (see note)
	750-800	2.29%		
	1000-1200	2.59%		
	Above 1300	3.76%		
Non-CARE, Basic and All-Electric	All	3.73%	2.1%	2.1%
	1200-1300	1.1%	5.3%	5.5%
	1300-1400	1.04%	[Below 5%]	5.1%
	1500-2000	0.94%	[Below 5%]	5.1%
	Above 2000	0.65	5.8-11%	6.1-11.6%

The impact of a high energy burden on customers, and the way in which a high energy burden jeopardizes or overburdens customers, is discussed in the context of the Low Income Needs Assessment, below.

[14] Data taken from PGE-09. For CARE customers, the settlement would hold rates steady in July, resulting in identical energy burdens regardless of the portion of the pending requested revenue requirement that is awarded. However, for any future increases to rates that may be granted while the settlement is pending, but prior to a decision in Phase 1 of this proceeding, CARE and non-CARE rates would all increase on an equal-cents-per-kWh basis with a cap on CARE Tiers 1 and 2 and on non-CARE Tier 1. Proposed PG&E Phase 2 Settlement at §IV.D.4.

[15] This group of customers has an average energy burden of 11.7%, higher than all but the very highest-usage customers despite consuming at a much more moderate level.

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B. The Recent Low Income Needs Assessment Provides a Context for Considering Energy Burden and Affordability

In December of 2013, as directed by the Commission in D.12-08-044, a Low Income Needs Assessment (LINA) was produced by Evergreen Economics;[16] this follows a prior assessment which was issued in 2007, known as the KEMA Report.[17]

According to the data collected for the LINA, the mean energy burden for low income households prior to any rate increase permitted by the IOU proposals or the proposed settlements was 8%, meaning that $8 of every $100 that flows into such households over the course of a year is spent on energy (electricity and natural gas). This level of burden is noted as being statistically unchanged from the data provided in the earlier KEMA Report, which was published in 2007.[18] This means that the situation for low-income customers has remained problematic through the recent severe economic downturn, and that recent improvements to the overall state economy have not resulted in benefits for those who were most disadvantaged during the downturn.

According to the LINA, the mean energy burden for the low-income population is estimated at 1.8 times the general population's energy burden. Some populations (by geography or population segment) face energy burden levels that are yet higher, including low-income households in the Central Valley (11.2%), African-American households (10.7%) and households in which a resident has a disability (9.3%), among others.[19]

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[16] The full name of the LINA is "Needs Assessment for the Energy Savings Assistance and the California Alternate Rates for Energy Programs." The LINA is available online (in three volumes) at http://energydataweb.com/cpuc/search.aspx. All data from the LINA cited in this brief was also included in CforAT-01.

[17] The full name of the KEMA Report is "Final Report on Phase 2 Low Income Needs Assessment," prepared by KEMA, Inc. for the California Public Utilities Commission, September 7, 2007. The KEMA Report is available online at http://docs.cpuc.ca.gov/published//GRAPHICS/73106.PDF

[18] LINA Vol. 2 at pp. 5-93-5-97.

[19] LINA Vol. 1 at p. 3-22; *see also* LINA Vol. 2 at pp. 5-88-5-89, noting, among other points, that "households that report members are often sick due to home conditions have the second highest

Many households experiencing this level of burden experience energy insecurity, leading them to cut back on other necessities (such as food and medicine), take actions that are unsafe (such as using heat or cooling less than needed or using unsafe methods to heat their home), or be faced with risked or actual loss of service.[20] Some particularly vulnerable customers, including homes in which a medical condition or disability affects costs or income, have a greater level of financial distress, even relative to other low-income households.[21]

More specifically, the LINA finds that 37% of low-income households experience a level of energy insecurity, even before any rate increase goes into effect as part of this proceeding, which forces them to make problematic decisions that compromise their comfort and safety, including cutting back on food or medicine to pay a utility bill, borrowing money to pay a utility bill, receiving a disconnection notice for utility service, having utility service shut off, using heat or cooling less than needed to keep utility bills lower, and/or using a kitchen stove or oven to heat their home.[22] The most common hardship among these households is cutting back on needed heating or cooling, with 28% of the low-income households studied reporting that they do this "a lot" and 45% reporting that they do it "sometimes."[23] With regard to one of the most dangerous factors, 10% of households report that they cut back on food or medicine to pay their utility bills "a lot" and 43% report doing this "sometimes."[24] An additional 6% of the low-income population, or one out of every 16 low-income households who are identified

customer burden, 13.6%, and comprise 11 percent of the LI [low income] population. The high burden observed in this sector is related to the use of electrically powered medical equipment."

[20] LINA Vol. 1 at p. 3-23.

[21] LINA Vol. 2 at p. 5-84.

[22] LINA Vol. 1 at p. 23.

[23] LINA Vol. 2 at 5-78.

[24] LINA Vol. 1 at p. 23.

as having the highest levels of energy insecurity, already take at least two of these unsafe actions frequently.

Any increase in energy burden for these households will increase this already-problematic situation, putting the comfort and safety of low-income customers at greater risk. Yet, the impacts of the proposals and/or proposed settlements on energy burden were not given consideration by the utilities or the settling parties. The Commission cannot accept the proposals without evaluating the effect of increased energy burdens as this would fail to comport with the Commission's obligation to "ensure that low-income ratepayers are not jeopardized or overburdened by monthly expenditures."[25] It also fails to recognize Commission precedent which recognizes that rate design proceedings must address affordability in the context of the actual economic conditions of affected consumers.[26]

C. <u>The Proposed Settlements Produce Large Bill Impacts for Many Customers.</u>

CforAT/Greenlining provide a very broad overview of the bill impacts of the three proposed settlements made for rates beginning in the summer of 2014, analyzing only the most general population groupings within each utility service territory – non-CARE customers as a whole and CARE customers as a whole. More granular population groupings – such as customers within certain climate zones, are likely to experience more pronounced bill impacts. However, given the expedited nature of this proceeding and the

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[25] While this provision refers specifically to low-income customers, the overall mandate to ensure that essential supplies of electricity are affordable to all customers also requires a review of the burden on customers who may not meet the criteria to be identified as low-income, but who face high levels of energy burden even at relatively modest usage levels.

[26] *See* D.11-05-047 at pp. 15-16 (Decision in residential rate design proceeding for PG&E recognizing need to balance affordability with other goals such as cost of service in order to produce "just and reasonable" rates consistent with Section 451 of the Public Utilities Code, and specifically recognizing that the Commission's "obligation to maintain affordable rates must be addressed in the context of California's ongoing economic crisis, high unemployment rates, and rising income inequality.")

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timing of the production of data available regarding the settlements, CforAT/Greenlining did not make these more granular analyses.

CforAT/Greenlining report on bill impacts for the rates proposed in the settlements compared to the rates existing before the most recent rate increases to Tiers 1 and 2 pursuant to SB 695. As these rate increases were made within months of the proposed rate increases, it is appropriate to view then cumulatively. CforAT/Greenlining also report on rate impacts without consideration of the California Climate Credit, for reasons explained in detail below.

Regarding the proposed settlement of SDG&E's rates, if SDG&E were to receive 100% of its requested revenue requirement, 372,660 of its non-CARE customers would experience bill impacts exceeding 15%.[27] These 372,660 customers are the 44% of non-CARE with the lowest amount of usage (thus increases to their bill will be unlikely to result in substantial additional conservation, since they already use less energy than other customers). A total of 581,960 non-CARE customers would experience bill impacts exceeding 10%.

For CARE customers, if 100% of SDG&E's revenue requirement were granted, the bill increases would average 16% for the entire CARE population.

Even if only 50% of SDG&E's requested revenue requirement were granted, the bill impacts would still be significant: 307,443 non-CARE customers would experience bill increases exceeding 10%.[28] For CARE customers, bill increases would average 8% if 50% of SDG&E's requested revenue requirement were granted.

[27] *See* SDG&E-09, filed as Additional Data to Be Supplied as Evidentiary Exhibits of SDG&E, Attachment A.1, filed on April 1, 2014.

[28] *See id.*, Attachment B.1.

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SCE's settlement also produces high bill impacts if SCE were to receive 100% of its requested revenue requirement. Almost one million (992,614) non-CARE customers would experience bill increases exceeding 14%,[29] with the 35% of SCE's non-CARE customers with the lowest usage bearing the brunt of the bill impacts. Even more non-CARE customers (1,757,448) would experience bill increases exceeding 10%.

For CARE customers, if 100% of SCE's revenue requirement were granted, more than half of CARE customers (a total of 726,394) would experience bill increases exceeding 10%.

Even if only 50% of SCE's requested revenue requirement were granted, the bill impacts would still be significant: 835,599 non-CARE customers would experience bill increases exceeding 14% and 1,267,780 non-CARE customers would experience bill impacts exceeding 10%.[30] If 50% of SCE's revenue requirement were granted, 609,530 CARE customers would experience bill increases exceeding 10%.

PG&E's settlement also produces high bill impacts if PG&E were to receive 100% of its requested revenue requirement: 1,603,582 non-CARE customers would experience bill increases exceeding 10%,[31] and 99% of PG&E's CARE customers (totaling 1,145,251 households) would experience bill increases exceeding 10%.

Even if only 50% of PG&E's requested revenue requirement were granted, the bill impacts would still be significant: 1,260,256 non-CARE customers would experience

[29] *See* SCE-07, Response to Assigned Administrative Law Judges' March 26, 2014 Request For Additional Post-Hearing Information (Phase 2), Attachment B-1, filed on April 1, 2014.

[30] *See id.*, Attachment D-1.

[31] *See* PG&E-07, PG&E Summer 2014 Residential Electric Rate Reform Proposal (Assuming 100% of Revenue Requirement Comparing Settlement Rates to Oct. 2013 rates), filed on April 1, 2014.

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bill increases exceeding 10%,[32] and 99% of CARE customers (totaling 1,145,251) would still experience bill impacts exceeding 10%.

None of the settling parties offered any evidence that the Commission can meet its mandate to provide affordable energy despite these bill impacts, nor do they specify how these rates avoid bill shock for customers. Simple statements of opinion that these rate impacts are modest, as was offered in favor of each proposed settlement, do not constitute adequate evidence.

IV. CALIFORNIA CLIMATE CREDIT

A. The California Climate Credit Is Not a Component of Rates and Should Not Be Considered when Determining the Effective CARE Discount.

In a March 26, 2014 email ruling, Administrative Law Judge McKinney directed parties to respond to the following question:

> Should the CALIFORNIA CLIMATE CREDIT be included in the calculation of the effective discount percentage for CARE rates when determining if the effective discount is within the statutory range of 30-35%? Please cite legal authority supporting your position.

Greenlining has a particular interest and authority on this subject, as Greenlining, along with the Natural Resources Defense Council (NRDC), Sierra Club California, and other parties (collectively "Joint Parties"), were integral in the creation of the "Climate Dividend." [33] The Climate Dividend was the initial name adopted by the Commission for the California Climate Credit. The use of the term "dividend" was adopted in order to clearly identify the payment as a return on investment to "shareholders" – in this case the

[32] *See id.* (assuming 50% of Revenue Requirement Comparing Settlement Rates to Oct. 2013 rates).

[33] While CforAT was not a member of the Joint Parties in the proceeding which resulted in the creation of the Climate Dividend, CforAT fully endorses all portions of the analysis discussed herein.

investment that all ratepayers made into California's GHG reduction processes. The two names – California Climate Credit and Climate Dividend – refer to the same thing and will be used interchangeably. The Joint Parties conceived of the Climate Dividend as a payment to ratepayers, to be used exclusively for the ratepayers' benefit. The Joint Parties especially wanted the Climate Dividend to benefit low-income ratepayers. However, if the Climate Dividend is included in the calculation of the effective CARE discount, the Climate Dividend will essentially be denied to low-income customers.

As will be demonstrated below, the Commission adopted the Joint Parties' view of the California Climate Credit. Further, all statutory and Commission authority regarding the California Climate Credit and the CARE discount program irrefutably establish that the California Climate Credit cannot be included in the calculation of the effective discount percentage for CARE rates.

B. Background of Cap-and-Trade and the California Climate Credit.

The California Climate Credit is a component of the State of California's Cap-and-Trade process of regulating greenhouse gas (GHG) emissions. The Global Warming Solutions Act of 2006, Assembly Bill (AB) 32,[34] granted the California Air Resources Board (ARB) the authority to regulate and reduce GHG emissions. In response to AB 32, ARB established a California economy-wide cap on major sources of GHG emissions and created a market-based mechanism to encourage organizations and individuals to reduce emissions. ARB adopted regulations, called the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Cap-and-Trade Program or

[34] Statutes of 2006, Chapter 488.

Program),[35] in December 2011. Electrical distribution utilities are included in these regulations.

Under Cap-and-Trade, covered entities including electrical distribution utilities may generate revenues by auctioning GHG allowances on the market. Electrical distribution utilities have generated such revenues. The Commission instituted Rulemaking 11-03-012 (Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions), among other purposes, in order to decide what to do with the revenues generated from Cap-and-Trade. On December 28, 2013, the Commission issued Decision 12-12-033 in this rulemaking.

Following the ARB regulations regarding the electrical distribution utilities,[36] the Commission decided to use part of the Cap-and-Trade revenues to offset the costs to ratepayers of complying with the GHG regulations (this is not the California Climate Credit, but another component of the Commission's return of Cap-and Trade revenues to ratepayers).[37] Of note, in offsetting the cost of complying with GHG regulations for residential customers, the Commission decided to return revenues on a *volumetric* basis, even though this violated the fundamental principle of preserving the carbon price signal of GHG regulation.[38] The Commission chose this option while noting the disproportionate GHG cost burden upper tier customers bore at the time, due to then-existing statutory limitations against raising the rates of lower tier customers to account

[35] Title 17, California Code of Regulations, Sections 95800-96022.

[36] 17 CCR § 95892.

[37] *See* D.12-12-033 at pp. 49-51; *see also* Order 1.A-C.

[38] *See* D.12-12-033 at p. 108; *see also* Conclusion of Law 33; Order 8.

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for GHG costs.[39] Unlike the California Climate Credit, the offsetting of costs is made before the customer is billed for their usage.

C. The California Climate Credit Is Returned to Customers from the State of California: It is Not Attributable to Any Utility.

The Commission decided to return the revenues remaining (after offsetting GHG costs of various customer classes) to residential customers through what it initially called the "Climate Dividend." Subsequently, for educational and outreach purposes, the name used to identify the payment was changed to the "California Climate Credit." The mechanism that the Commission instituted for returning the California Climate Credit to residential customers is discussed further below. The Commission's general treatment of the Climate Dividend makes clear that it cannot be considered an element of the CARE discount.

In creating the California Climate Credit, the Commission expressly recognized that the funds involved were never "owned" or attributable to any utility. In fact, the entire Cap-and Trade program, including the revenue return of the California Climate Credit, is attributable to the State of California: "The Cap-and-Trade program is a program of the State of California, not the investor-owned utilities."[40] The Commission took specific steps to ensure that all educational materials for the California Climate Credit would correctly describe the source of the revenue:

> All customer outreach and education materials addressing the distribution of GHG allowance revenues should attribute the distribution of revenues to the State of California or California's Cap-and-Trade program.[41]

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[39] *See* D.12-12-033 at p. 109; *see also* Findings of Fact 104-106; Conclusions of Law 4, 33; Order 8.

[40] *See* D.12-12-033, *see also* Finding of Fact 144.

[41] *See* D.12-12-033, Conclusion of Law 49; *see also* p. 138; Finding of Fact 8; Order 11.

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The Commission even allowed for communication about the California Climate Credit to be issued without any imprint of utility attribution:

> The utilities will, upon request from the Director of the Energy Division, distribute to their customers communications from the Commission providing information about the Cap-and-Trade program. These communications must be absent any utility logo.[42]

The absence of the utility logo is designed to ensure that customers do not think the California Climate Credit comes from or is a benefit received from the utility. As an example, on April 2, 2014, PG&E sent out an e-mail to residential ratepayers, with the subject line "A Message from the California Public Utilities Commission." The message's heading stated "Look for a Climate Credit *from the State of California* on Your April Utility Bill" (emphasis added). The message had the logo of the Commission, but did not include any mention of PG&E or any utility at all. Clearly, the goal is for the public to understand that the California Climate Credit is not coming from any utility, but rather from the State of California.

Even after the order that outreach materials should attribute the California Climate Credit to the state rather than any utility, the Commission found it necessary to correct the initial educational and outreach plans proposed by the large investor-owned utilities, to ensure that customers would know that the California Climate Credit was attributable to the State of California – not to a utility. In Resolution E-4611, the Commission found that the 2013 customer outreach and education plans filed by the each of the three large utilities were out of compliance with D.12-12-033.[43] The Commission again clearly stated that "[t]he return of greenhouse gas revenues to ratepayers is a

[42] *See* D.12-12-033 at pp. 138-39; *see also* Conclusion of Law 50; Order 27.

[43] *See* Res. E-4611 (dated Oct. 17, 2013, issued Oct. 21, 2013) at p. 1.

statewide program that is not local in scope and is not particular to individual utilities."[44] To clearly delineate that the California Climate Credit was not attributable to the utilities, the Commission disapproved of proposals "directing customers to utility websites and social media outlets to learn more information about the climate dividend" because "customers will natural[ly] associate the utilities with the revenue return, regardless of the content of the messages found there."[45] Thus, the goal was to make clear that customers should not associate the California Climate Credit with a utility.

Through the initial proceeding and the subsequent resolution process, the Commission has repeatedly made crystal clear that the California Climate Credit is not owned or attributable to any utility, and any attempt to conflate the credit with utility services is to be avoided.

D. **The California Climate Credit Is Not a Rate Reduction.**

As developed by the Commission, the utilities' role in handling the California Climate Credit is one of a cashier paying out the return of the state's GHG allowance revenue. As described above, the California Climate Credit is a return of revenues from the State of California to residential ratepayers. The utilities are simply the most expedient agent for facilitating administration of this revenue return.

In D.12-12-033, after reviewing several options, the Commission decided that the California Climate Credit should be returned to customers on their utility bill. The Commission had concerns about returning the California Climate Credit to customers via an on-bill credit against each customer's bill, because "customers may [mistakenly]

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[44] *See* Res. E-4611 at p. 25, Finding 7.

[45] *See* Res. E-4611 at pp. 10-11.

perceive the GHG allowance revenue return ... as a rate reduction."[46] The Commission found that in terms of customer understanding, returning the revenue to ratepayers separate from the energy bill would be preferable in that:

> customers would essentially receive the revenues as cash or a cash equivalent, *wholly independent of their electricity bills*; thus, there would be no risk that customers would interpret the refund as a reduction in electricity rates.[47] (emphasis added)

Thus, in authorizing the California Climate Credit, the Commission had a significant concern to avoid having the credit perceived as a reduction in electricity rates; as discussed in detail below, it attempted to assuage this concern through other elements of the revenue return, in order to make clear that the California Climate Credit does not reduce the amount a customer is billed, or the amount of the bill that is fully paid.

E. The California Climate Credit Belongs to the Customer.

As demonstrated above, the Commission determined that there would have been benefits to returning the California Climate Credit by providing a check separate from a customer's bill – especially the benefit of making it transparent that the credit did not constitute a rate reduction.

However, the Commission chose to return the California Climate Credit to customers as an on-bill credit against each customer's bill. This method was chosen for important reasons – in order to reduce administrative costs and, most especially to ensure that customers would not lose their credit by losing the check or failing to cash it.[48] The Commission was extremely concerned that sending the credit as a separate check could

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[46] *See* D.12-12-033 at p. 120.

[47] *See* D.12-12-033 at p. 120.

[48] *See* D.12-12-033 at pp. 121-22; *see also* Findings of Fact 118-120.

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result in it being lost to customers; ultimately, this concern overrode the benefit that a separate check would have in terms of customer understanding of the credit:

> ...we find that all residential customers are entitled to their share of GHG allowance revenues, and we are concerned about hastily selecting any process that diminishes the ability of some customers to receive that revenue (for example, through the loss of a check), without further analysis.[49]

Thus, the California Climate Credit is provided in the form of a credit against a customer's bill. As the Commission made clear in D.12-12-033, it is not a reduction of the customer's rates or a reduction of the customer's bill. It is money that is to be paid from the State of California to residential ratepayers. The California Climate Credit thus belongs to a ratepayer, as a "dividend" on the ratepayer's investment (not the utility's investment) in the GHG reduction market. As the Commission found:

> 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.[50] (emphasis added)

Thus, the California Climate Credit is a return of money that already belongs to the ratepayer.

1. The California Climate Credit is applied to pay the customer's bill.

Although the California Climate Credit belongs to the ratepayer, the ratepayer may never actually *possess* the credit, as the Commission found it administratively expedient to simply use it to pay the customer's bill. Thus, the utility receives a full payment of the total billed amount, part of it paid by the customer's California Climate Credit, and part of it paid by the customer once the customer sends in their payment:

[49] *See* D.12-12-033 at p. 122; *see also* Findings of Fact 119.

[50] D.12-12-033, Finding of Fact 133.

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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.[51] (emphasis added)

Take the example of a SCE customer whose April 2014 bill includes total charges of $100. If the customer's semi-annual California Climate Credit payment in April 2014 is $32.50, that amount will be applied to pay the bill. The customer will then send in the remaining payment of $67.50. Thus, SCE has received a total of $100 in revenues from this customer.

It would be incorrect to view this situation as a bill of only $67.50 charged to the customer, and only $67.40 received in revenue by SCE. Rather, the $100 bill in the example above has been *paid in full by the customer*, using the California Climate Credit to pay for some of it. If SCE were to account for only $67.50 in revenue received from the customer, then the customer would have an arrearage of $32.50. Clearly this is not the case.

This review makes evident that the California Climate Credit is not a reduction in a customer's bill – it is a *payment of a customer's bill with funds that belong to that customer*. The utility receives full payment of the bill. The utility must account for all of the revenues it receives in payment – both in the form of the California Climate Credit and in the form of money otherwise received from a customer.

2. The Commission has reserved the right to send the California Climate Credit off-bill, in the form of a separate check sent to ratepayers.

The Commission made clear that it could have ordered utilities to return the California Climate Credit off-bill and that it may revisit the issue and do so in the future:

If, at a later date, it is found that an off-bill approach achieves substantially greater customer understanding of the Cap-and-Trade program or administrative

[51] D.12-12-033 at p. 122.

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> costs can be substantially reduced, we may reconsider whether an off-bill return is appropriate.[52]

The fact that the California Climate Credit could be returned to a customer off-bill via a separate check makes clear that it should be considered wholly independent of customers' bills and rates.

Even now, the Commission has recognized specific circumstances in which a customer will receive the California Climate Credit in the form of a separate check or otherwise independent of the customer's utility bill. For example, in the case of net-metering customers, the Commission directed that they must receive a payment separate from their bills if the California Climate Credit has not been exhausted after 12 months.[53] The Commission also ordered the utilities to develop processes to provide a payment of the California Climate Credit, separate from the bill, in the case of a customer who moves out of the utility's service territory or if the semi-annual climate dividend exceeds a customer's bill for the entire semi-annual period before receipt of the next climate dividend.[54]

The Commission even recognized circumstances where individuals who did not actually have a customer account with a utility should receive the California Climate Credit. The Commission stated: "[i]t is our intent that residential master-meter customers receive their proportional share of the climate dividend."[55] Even master-metered customers who do not actually have an electrical service account are entitled to receive the California Climate Credit.

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[52] *See* D.12-12-033 at pp. 122-23.

[53] *See* D.12-12-033 at pp. 126, 154; *see also* Finding of Fact 130.

[54] *See* D.12-12-033 at p. 126.

[55] *See* D.12-12-033 at p. 126; see also Findings of Fact 128, 129; Conclusion of Law 40.

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The many examples of ratepayers who may receive the California Climate Credit separate from their bill further demonstrate that the credit is a payment to ratepayer, independent of the ratepayers' bills; it is not a rate reduction or a reduction of the bill.

F. The California Climate Credit May Only Be Used to Benefit Ratepayers; Use of the Credit to Account for the CARE Discount Would Eradicate the Credit for Low Income Customers.

The Commission created the California Climate Credit so that only residential ratepayers would benefit directly from the funds. This is evident from the manner in which it was created and from the Commission's description of it in D.12-12-033 and Res. E-4611. In ensuring that only residential ratepayers would directly benefit from the California Climate Credit, the Commission was following the clear direction of ARB as found in regulations:

> Auction proceeds and allowance value obtained by an electrical distribution utility shall be used exclusively for the benefit of retail ratepayers of the electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers;
> . . .
> Prohibited Use of Allocated Allowance Value. Use of the value of any allowance allocated to an electrical distribution utility, other than for the benefit of retail ratepayers consistent with the goals of AB 32, is prohibited including use of such allowances to meet compliance obligations for electricity sold into the California Independent System Operator markets.[56]

G. Use of the Credit to Account for the CARE Discount Would Effectively Eradicate the Credit for Low Income Customers.

If the California Climate Credit were used to fulfill part of the CARE discount, it would no longer benefit low-income residential ratepayers. California law requires that residential ratepayers on the CARE program pay rates that average between 30% and 35% of non-CARE rates. This requirement is completely independent of the California Climate Credit. If the California Climate Credit did not exist, CARE customers would still be required to receive the appropriate CARE discount.

If the California Climate Credit were to be counted as partial payment of the CARE discount, the effect would be to deny payment of the California Climate Credit to CARE customers. The California Climate Credit would effectively vanish from CARE customers, lost in the already existing (and mandated) CARE discount price. Under this scenario, all residential ratepayers would receive the California Climate Credit – except for CARE ratepayers; such a scenario is untenable. It is especially untenable given that the California Climate Credit was specifically designed to provide an amplified benefit to low-income ratepayers, as discussed below.

H. One Purpose of the California Climate Credit Is to Offset the Impacts of GHG Costs on Low Income Ratepayers.

The Commission decided to return the revenues remaining from the auction of GHG allowances (after offsetting GHG costs of various customer classes) to residential customers through the California Climate Credit. Unlike the offsetting of GHG costs discussed above, the California Climate Credit is returned to customers not on a volumetric basis, but rather on an equal, per-account basis.[57]

The purpose the Commission cites for this per-account return is to provide a greater return as a share of income to low-income households; this amplified benefit to low-income households was instituted in order to offset the greater burden of the non-energy price increases resulting from the Cap-and-Trade program, which will fall more heavily on low-income households, as a percent of household income.[58] The objective of offsetting the greater burden of the non-energy price increases resulting from the Cap-

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[56] *See* D.12-12-033 at p.21 (*see also* Conclusion of Law 1), citing 17 CCR 95892(d)(2), (5).

[57] *See* D.12-12-033 at p. 117; *see also* Findings of Fact 104-106; Conclusions of Law 37; Orders 1.D, 9.

[58] *See* D.12-12-033 at pp. 67, 117; *see also* Finding of Fact 115; Conclusions of Law 37.

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and-Trade program on low-income households is a *high priority* for the Commission.[59] The Commission should be especially concerned with any utility proposal that would result in the failure to ensure that low-income ratepayers receive the California Climate Credit.

This method of allocating the California Climate Credit follows a general principle of the entire GHG regulation program, instituted by AB 32, "that activities undertaken to comply with the regulations do not disproportionately impact low-income communities."[60] Thus, the objective of the California Climate Credit to offset the disproportionate impact of GHG regulation on low-income ratepayers is not only a high Commission priority, but it is also driven by a policy goal of ARB's GHG regulatory regime.

If the California Climate Credit is subsumed within the CARE discount, the effect would be to eradicate the credit for low-income ratepayers. The Commission cannot contradict the high priority recently set in D.12-12-033. Nor can the Commission contradict the policy goals established by ARB, following AB 32, established for the entire GHG regulatory structure.

I. The Climate Dividend Is Used to Pay a Customer's Bill; It Is Included in Revenues Produced by a Customer.

For electrical corporations with 100,000 or more customer accounts in California, the CARE discount is set by a formula set out in Cal. Pub. Util. Code § 739.1(c)(1):

[59] *See* D.12-12-033 at pp. 66: "The objective of reducing adverse outcomes to low-income households is consistent with general Commission policy and is particularly relevant in the current economic climate of high unemployment and state budget shortfalls. Therefore, we consider this objective to be a *high priority*." (emphasis added)

[60] *See* Calif. Health and Safety Code § 38562(b)(2).

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> 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.
>
> ...
>
> The average effective CARE discount shall be calculated as a weighted average of the CARE discounts provided to individual customers.[61]

Thus, in determining the proper CARE discount, the pertinent calculation is that the revenues produced from CARE customers should not be less than 30 percent or more than 35 percent of the revenues that would have been produced for the same billed usage had the customers been non-CARE customers.

The calculation of "the amount of revenue produced from a customer" cannot be reduced by the amount of the California Climate Credit. This is because (as demonstrated in Sec.II.D.1 above) the California Climate Credit is used to *pay* the customer's bill. A utility bill is paid in full, with part of the amount due paid by the California Climate Credit. The Commission made authoritatively clear that the California Climate Credit is not a rate reduction and it is not a bill reduction.

If the "amount of revenue produced from a customer" were reduced by the amount of the California Climate Credit, this means that the ratepayer never had title to the credit; this view is clearly in contravention to ARB Cap-and-Trade and Commission policy.

Thus, the California Climate Credit cannot be included in the calculation of the CARE discount. As it belongs to ratepayers, it must be included in the revenues paid by ratepayers in fulfillment of their bills.

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[61] This discount range was recently adopted as part of AB 327, and the Commission is considering how best to bring all utilities into compliance with this provision.

J. Bill Impacts and Considerations of Energy Burden Should Not Consider the California Climate Credit.

As demonstrated above, the California Climate Credit is not a component of rates. It is not a rate reduction. It would be improper for the Commission to consider bill impacts or energy burden with the California Climate Credit included. If bill impacts are reported with the inclusion of the California Climate Credit as a rate element, it improperly ameliorates the bill impacts of the IOUs' actual rate proposals. The California Climate Credit is to be available for the customer for whatever use they require.[62] If the credit is included as a reduction of energy burden, the effect is to deny customers the free use of the credit.

Bill impacts reported with the California Climate Credit included are inaccurate, as the credit is effectively separate from a customer's bill. Moreover, as a practical matter, customers do not receive the California Climate Credit on a monthly basis, so to characterize "monthly bill impacts" while including the California Climate Credit simply does not match reality. Thus, the Commission should only consider bill impacts independent of the credit. These same considerations apply to the consideration of energy burden.

V. CONCLUSION

For the reasons set forth above, the Commission should acknowledge that affordability has not been given sufficient consideration in this phase of this proceeding. The Commission should also reiterate its past clear statements that the California Climate Dividend/Climate Credit is not a part of a customer's bill and is not a component of

[62] *See* D.12-12-033 at p. 122, see also Finding of Fact 121.

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electricity rates, and thus it should not be considered in calculations of bill impacts or CARE discount levels.

Respectfully submitted,

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