**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

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| 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<br>(Filed June 21, 2012) |

# OPENING BRIEF OF THE UTILITY REFORM NETWORK CONCERNING THE CALCULATION OF THE CARE DISCOUNT

TURN
THE UTILITY REFORM NETWORK

Lower bills. Livable planet.


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**OPENING BRIEF OF THE UTILITY REFORM NETWORK CONCERNING THE CALCULATION OF THE CARE DISCOUNT**

## I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure and the Administrative Law Judges' (ALJs) March 26, 2014 email ruling, the Utility Reform Network ("TURN") hereby submits its opening brief on the issue of whether or not the Climate Credit should be considered in the effective California Alternative Energy Rates (CARE) discount.

TURN is a signatory to the three settlement agreements with the Investor Owned Utilities (IOUs) proposing new residential electric non-CARE and CARE rates for 2014. The rates proposed in the settlement, and the associated CARE discounts, are not dependent upon the level of the Climate Credit. Therefore, this issue does not affect the Phase 2 Settlements proposed by the Settling Parties. TURN urges that the Commission defer this issue to Phase 1 of this proceeding. It is an important legal and policy issue that is not ripe for consideration and requires additional legal and policy briefing. However, TURN provides limited legal and policy briefing on this issue based on the express direction of ALJ McKinney.

## II. THE COMMISSION SHOULD NOT DECIDE THE RELATIONSHIP OF THE CLIMATE CREDIT TO THE CARE DISCOUNT IN PHASE 2, BECAUSE THE ISSUE IS NOT NECESSARY FOR ADOPTION OF 2014 RATES AND SHOULD BE ADDRESSED IN GREATER DEPTH IN PHASE 1

As a threshold matter, TURN urges the Commission not to decide the relationship of the Climate Credit to the CARE discount in Phase 2. Phase 2 of this Rulemaking addresses limited rate changes for 2014 on an expedited basis. The three proposed settlements explicitly calculate the CARE discount without including the Climate Credit, but do not attempt to resolve the underlying legal issue. Thus, the legal question posed by the ALJs has not been addressed by the parties, is not ripe for resolution and is more suitable for resolution on a more extended schedule in Phase 1.

The Second Amended Scoping Memo of January 24, 2014 instructed the utilities to resubmit their rate design proposals for 2014. The Assigned Commissioner and Administrative Law Judge specified that the utilities should maintain a four-tiered rate structure, make no major adjustments to the CARE or FERA programs, and reduce the effective CARE discount while avoiding rate shock.[1] No mention was made of the calculation of the CARE discount. The Assigned Commissioner's Ruling concerning Phase 1 proposals indicated that the majority of CARE-related issues, including "any restructuring of CARE rates," would be addressed in a separate later phase of this proceeding.[2] The issue did not appear in the Rate Element Inventory released by Ruling on March 10, 2014.

The issue of the Climate Credit arose only with respect to the calculation of bill impacts. The utilities initially included the Climate Credit in their calculation of aggregate annual bill impacts. The Assigned Administrative Law Judge stated that "it is not appropriate to include this amount when calculating bill impacts" and directed the utilities to "not include the Climate Dividend when calculating bill impacts going forward."[3] During the January 8, 2014 prehearing conference, President Peevey's advisor indicated that the scope would exclude consideration of the climate dividend in rates "so that it's not another issue that complicates the Phase 2 topics."[4]

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[1] Second Amended Scoping Memo, R.12-06-013, January 24, 2014, p. 2-3.
[2] ACR, R.12-06-013, February 13, 2014, p. 5-6.
[3] Email from ALJ McKinney, December 24, 2013.
[4] RT, January 8, 2014, p. 117. The Climate Credit was formerly called the Climate Dividend.

To date, it appears that no party has raised the question of whether the Climate Credit should be considered for purposes of calculating the "average effective CARE discount" as defined in Public Utilities Code §739.1(c)(1). Although the Climate Credit is excluded for purposes of calculating bill impact analyses, the three rate design settlements do not propose any resolution of the legal and policy issues related to whether the climate credit should be included in the calculation of the average effective CARE discount.[5] Because the settling parties disagree as to the treatment of the climate credit and seek rapid approval of summer 2014 rate changes, no proposed resolution of this issue was included in the settlements.

Including the Climate Credit in the calculation of the average effective CARE discount would have significant impacts on low-income CARE customers. Yet to date, this issue has not been explicitly raised by any party, or scoped in any Ruling. The schedule for briefings in this proceeding is designed to achieve an expeditious outcome in time for the IOUs to change rates by this coming summer. The ALJs requested briefing of this issue at the end of evidentiary hearings, on March 26, 2014.

Given the importance of the underlying legal and policy issue, TURN thus requests that the Commission not address this issue in Phase 2 and instead allow for additional briefing in either Phase 1 or a later phase of this proceeding. However, because the ALJ denied requests from ORA and the utilities to move this issue into Phase 1, TURN provides the following legal and policy arguments for excluding the Climate Credit from the CARE discount calculation.

## III. THE CLIMATE CREDIT SHOULD NOT BE INCLUDED IN THE CALCULATION OF THE CARE DISCOUNT

[5] For example, the SCE settlement sets the CARE Tier 3 rate so as to achieve a 32.5% CARE discount without considering the Climate Dividend.

The Climate Credit will be included twice annually as a separate fixed credit on all residential customer energy bills. For purposes of determining the "average effective CARE discount", as defined by §739.1(c)(1), the credit should be excluded from the calculation of the CARE discount. This result ensures that the Climate Credit does not substitute for some portion of the CARE discount. If the Climate Credit were included in this calculation, the average effective CARE discount would increase and CARE tier rates would need to be *raised* to maintain the same average effective discount. Such an outcome would be contrary to the Commission's goal of reducing the adverse impacts of cap-and-trade on low-income households through the Climate Credit. Moreover, using the Climate Credit to essentially offset the CARE discount violates the requirement that the costs of the CARE discount be allocated to all customer classes on an equal cents per kilowatt-hour basis.

There is no legal requirement that the Climate Credit be included in the calculation of the CARE discount, unlike the statutory requirement to include certain fixed charges in the calculation. Moreover, even if the Commission ultimately rejects TURN's legal interpretation, there is still no bar to authorizing 2014 rates as proposed in the settlements since AB 327 explicitly allows for the average effective CARE discount to exceed the 35% ceiling until reasonable annual decreases allow the discount to reach the 30-35% range at some point in the future.

### A. Including the Climate Credit In the CARE Discount Would Contradict the Commission's Goal Of Reducing Adverse Impacts Of Cap-And-Trade On Low-Income Households

Including the Climate Credit in the CARE discount would be contrary to the express direction and policy guidance provided in D.12-12-033, the Decision implementing § 748.5 of the Public Utilities Code. If the Commission wishes to ensure that the full value of this credit is available to address the economic impacts of cap-and-trade on low-income households, it would be counterproductive to effectively reduce the otherwise applicable CARE discount.

In D.12-12-033, the Commission directed the IOUs to return GHG allowance revenues to residential customers using a two-step process. First, GHG revenues should be used to eliminate the amount of Cap-and-Trade related program costs "embedded in the applicable residential rates."[6] Second, remaining allowance revenues are "returned equally on a per residential account basis (a non-volumetric return) to help defray the indirect costs of the Cap-and-Trade program that will ultimately be borne by residential customers."[7]

The Commission explained that the per account credit to low-income customers is intended to address "the potentially disproportionate impacts on low income households and communities resulting from climate change itself" and to "achieve our policy objective of reducing adverse impacts to low-income households."[8] The Decision explained that:

> "low-income households' non-energy expenses will likely increase as a result of the Cap-and-Trade program as medium and large businesses pass through their own Cap-and-Trade-related costs in the price of their goods and services. The impact of these price increases will likely be proportionally greater on lower income households, as these households tend to spend a greater proportion of their incomes on basic goods and services. This reasoning is supported by TURN, among others, which states: "to focus narrowly, at least on the residential side, on the costs solely borne by customers with upper tier usage is to miss the point of greenhouse gas regulation and to ignore…[that] lower-income households will face larger cost increases due to the overall impact of AB 32 regulations as a percentage of their incomes than upper-income households."[9]

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[6] D.12-12-033, p. 108.
[7] D.12-12-033, p. 109.
[8] D.12-12-033, pp. 52 and 110. See, also, D.12-12-033, p. 67.
[9] D.12-12-033, p. 110.

In contrast, the CARE discount is intended to alleviate the burden of "monthly energy expenditures" subject to the needs assessment conducted by the Commission.[10] The CARE discount is not intended to provide specific assistance related to the impacts of climate change or to address increases in non-energy costs due to the cap-and-trade program. Since including the Climate Credit in the calculation of the CARE discount would make the discount appear larger (on a percentage basis), the CARE *rate discount* would have to be decreased in order to maintain the same effective percentage bill discount. This outcome would prevent CARE customers from receiving any additional financial assistance and thereby defeat the Commission's stated goal of using the Climate Credit to mitigate the non-energy cost impacts on low-income households associated with cap-and-trade.

Furthermore, the Commission stated that the Climate Credit should not be understood as a "rate reduction" for recipients and expressed strong interest in providing this credit via an off-bill approach in the event that administrative costs can be reduced.[11] Including the Credit as a component of the CARE discount would lead to the exact result that the Commission was seeking to avoid in D.12-12-033.

### B. The Statutory Authorization For the CARE Discount Does Not Include Any Indication That the Climate Credit Should Be Included In the Calculation

In enacting AB 327 (Perea, 2013), the Legislature provided additional guidance regarding the acceptable level of the overall CARE discount. Public Utilities Code §739.1(c)(1) states that 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

[10] Cal. Pub. Util. Code § 739.1(b).
[11] D.12-12-033, p. 122-123.

statutory language specifies that the discount includes "any charges <u>not paid</u> by CARE customers" including "any discount in a fixed charge."

Under § 739.1(c)(1), the CARE discount must include any charges from which CARE customers are specifically exempted. For example, any discounts relating to the fixed customer charge are explicitly included in the discount calculation. However, this language does not apply to the provision of bill credits. CARE customers do not receive a different Climate Credit than non-CARE customers and the Climate Credit does not result in CARE customers being exempted from any charges applied to non-CARE customers. Therefore, the Climate *Credit* does not fall under the statutory provisions governing the treatment of certain *charges* that are not paid by CARE customers.

There is no basis to conclude that §739.1(c)(1) requires the CARE discount to include additional <u>credits</u> that may be provided outside of the CARE program. A determination that any other bill <u>credit</u> must also be included in the calculation of the average effective CARE discount could undermine the Commission's ability to authorize an array of other credits and incentives that may be received by CARE customers (i.e. PTR rebates, Demand Response rebates). It would be illogical to include any and all credits or incentives in the calculation of the CARE discount.

Finally, the Climate Credit does not change the billed revenues that "would have been produced" for the same usage by a non-CARE customer. The Climate Credit is an equal semi-annual bill credit for each residential customer that allocates the expected proceeds from the sale of emission allowances. There would be no change in revenues paid by the customer whether the customer was eligible for CARE or not.

### C. Including the Climate Credit in the CARE Discount Would Violate the Statutory Requirements for Allocating CARE Discount Costs

Public Utilities Code §327(a)(7), adopted in 2009 by SB 695, requires that the costs of the CARE discount be allocated on an equal cents per kilowatt-hour basis to all classes of customers.[12] The Commission recently confirmed TURN's interpretation of this code section and required SDG&E to allocate the entire CARE rate discount to all customer classes on an equal cents per kilowatt-hour basis.[13] Including the Climate Credit in the CARE discount would violate this requirement.

As discussed previously, including the Climate Credit as a reduction to total revenues to calculate the CARE discount means that the CARE rate discount is reduced, because the percentage calculation is applied to a smaller bill. Essentially, a portion of the CARE discount is offset by the Climate Credit. As a result, the Climate Credit becomes a source of funding for the CARE discount.

The costs of the Climate Credit are not allocated to all customers on an equal cents per kilowatt-hour basis. Rather, the Climate Credit reflects amounts collected from the sale of GHG allowances. The underlying costs of GHG allowances are included in generation costs and collected from customers via generation revenue requirements. Those generation costs are allocated pursuant to the relevant generation allocators.

Any decision to include the Climate Credit in the CARE discount must therefore be accompanied by a revision to the existing allocation methodologies for GHG allowance costs incurred by all three utilities to comport with the equal cents per kilowatt-hour requirement. Absent this very significant and complex change to a

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[12] This allocation excludes sales associated with CARE customers.
[13] D.14-01-002, p. 49.

portion of generation costs, using the Climate Credit to fund a portion of the CARE discount would violate the statutory requirement that all CARE discount costs be allocated on an equal cents per kilowatt-hour basis.

## IV. EVEN IF THE COMMISSION DETERMINES AT SOME FUTURE DATE THAT THE CLIMATE CREDIT SHOULD BE INCLUDED IN CALCULATING THE CARE DISCOUNT, APPROVING THE PROPOSED 2014 RATES IS CONSISTENT WITH THE LAW DUE TO THE REASONABLE REDUCTION PROVISION OF § 739.1(C)(2)

TURN appreciates the need for the ALJs to ensure that the settlements are consistent with the law. However, even if the Commission were to find that the Climate Credit should be included in calculating the CARE discount, the proposed 2014 settlement rates do not conflict with the statutory requirements concerning the CARE discount level.

Section 739.1(c)(1) requires the CARE discount to be in the range of 30-35% less than the otherwise applicable bill. However, while the 30% floor is a mandatory minimum, Section 739.1(c)(2) specifies that if the CARE discount is "in excess of the maximum percentage," the utility should not reduce the discount "by more than a reasonable percentage decrease." In other words, the Legislature authorized a CARE discount above 35% so as to prevent an unreasonably large annual decrease in the existing CARE discounts.

The settlements provide for CARE tier rate reductions triggered by formulae relative to non-CARE rates or residential average rates. Due to the existing level of the CARE discount, only the SCE settlement forecasts a 2014 CARE discount in the 30-35% range, while the discounts for PG&E and SDG&E are forecast to exceed the 35% range target.[14] The settlements all reduce the CARE discount in comparison to what it would be absent the proposed changes.

If the Climate Credit were included in the calculation of the CARE discount, the aggregate impact would result in a larger CARE discount than calculated in the settlements. Thus, there is no mathematical possibility that the proposed settlements violate the minimum 30% requirement for the CARE discount, irrespective of how the Climate Credit is treated. The only difference would be that including the Climate Credit in the calculation would allow for even greater reductions in CARE rates so as to result in the same percentage discount. Essentially, the CARE rate discount would be offset by the Climate Credit. Not only would such offsetting be inconsistent with Commission policy, as discussed above, but also any such reductions would be inconsistent with the negotiated terms of the proposed settlements.

## V. CONCLUSION

TURN appreciates the importance of the issue of the calculation of the CARE discount raised in the ALJ Ruling. However, it is not necessary to resolve this issue in order to find that all three of the proposed settlements are consistent with the law, since all three propose CARE rates that result in a discount above the 30% minimum. The issue of the calculation of the CARE discount should not be resolved in this Phase 2, since it was not an issue in dispute, and thus did not receive any significant attention from the parties.

However, if the Commission does seek to resolve this issue, TURN's arguments presented above demonstrate that to be consistent with the goals of the biannual

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[14] The SCE settlement sets CARE Tier 3 rates so as to achieve a 32.5% discount. PG&E forecasts a CARE discount of between 44.9% and 46.5% (depending on revenue requirements), and SDG&E forecasts a CARE discount of between 37.8% and 40.4% (depending on revenue requirements). See, Exhibits PG&E-07, SCE-08, Appendix 3; and SDG&E-09, Attachment D.

climate credit, the Commission should **not** include the credit in the calculation of the CARE discount. Such an outcome is consistent with the existing legal requirements of SB 695 and the newly-enacted requirements of AB 327.

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Respectfully submitted,

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