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 SAN DIEGO GAS & ELECTRIC COMPANY (U902E)

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REPLY BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U902E)

I. BACKGROUND

On April 4, 2014, San Diego Gas & Electric Company ("SDG&E"), The Office Of Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), The Utility Consumers' Action Network ("UCAN"), The San Diego Consumers' Action Network ("SDCAN"), and The Coalition Of California Utility Employees ("CUE") (hereinafter collectively referred to as "Settling Parties") filed a Settlement Agreement and Motion for Approval of Settlement Agreement in this proceeding. On March 25, the terms of the Settlement Agreement were presented by a panel of witnesses representing SDG&E, ORA and TURN at transcribed evidentiary hearings that were held in Rulemaking ("R.") 12-06-013, Administrative Law Judges ("ALJs") McKinney and Halligan presiding. During the hearings, these witnesses summarized the Settlement Agreement, explained why the Settlement Agreement is in the public interest, and responded to questions posed by the ALJ McKinney as well as cross-examination on the impact of the Settlement Agreement on affordability. The Settling Parties subsequently filed a Joint

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Brief in support of the Settlement Agreement. Through their Phase 2 Opening Brief, the Center for Accessible Technology and the Greenlining Institute ("CforAT/Greenlining") raised certain concerns about whether the Settlement Agreement would result in affordable rates.

In the Ruling that was served electronically by ALJ McKinney on March 26, 2014, parties were instructed to submit briefs on whether the residential California Climate Credit should be included in the calculation of the effective discount percentage for California Alternate Rates for Energy ("CARE") rates when determining if the effective discount is within the statutory range of 30-35% herein. SDG&E and other parties submitted opening briefs on this subject on April 7, 2014. SDG&E hereby replies to the briefs that have been submitted by other parties herein. SDG&E also replies to the Phase 2 Opening Brief on the issue of affordable rates that has been submitted on behalf of CforAt/Greenling herein.

II. WHETHER THE CALIFORNIA CLIMATE CREDIT SHOULD BE INCLUDED IN THE CALCULATION OF THE EFFECTIVE CARE DISCOUNT SHOULD BE CONSIDERED IN PHASE 1 OF THIS PROCEEDING

Several parties, including ORA[1] and TURN[2] have argued that the issue of whether the Climate Credit should be included in calculation of the effective CARE discount should be considered in Phase 1 of this proceeding. ORA correctly points out that:

> "… several parties (including ORA) have reached settlement agreements with the three Investor Owned Utilities (IOUs) for setting the 2014 summer rates. ORA joins Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) and other settling parties, which also file joint opening briefs supporting the settlement agreements. However, the rates reached in the settlement are independent of the climate credit. Therefore, this issue does not affect

[1] ORA Comments, at p. 1.
[2] TURN Comments, at pp. 1-3.

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the Phase 2 Settlement proposed by the Settling Parties. ORA urges that the Commission defer this issue in Phase 1 of this proceeding. It is of paramount importance that the Commission move expeditiously in considering and approving the unopposed settlements for 2014 summer residential rates."[3]

As ORA notes, the settlements that have been entered into in this phase of the proceeding are independent of the Climate Credit, and are intended to address short-term rate design needs in time for implementation this summer. SDG&E agrees that the issue of how the Climate Credit should be considered for purposes of calculation of the effective CARE discount must be resolved in order to create a longer-term rate design that complies with the requirements of Assembly Bill ("AB") 327. However, it is not necessary to address that issue in the context of the settlement agreements that have been submitted to resolve issues associated with the interim rate design proposals that have been submitted herein.

III. THE CLIMATE CREDIT OFF-SETS THE COST OF GREENHOUSE GAS ("GHG") MEASURES IN ELECTRICITY RATES IN A MANNER THAT WAS INTENDED TO CREATE LOW INCOME BENEFITS AND RETAIN CARBON PRICE SIGNALS

In its Opening Brief, consistent with the other utilities, SDG&E argued that the residential California Climate Credit should be included in the effective CARE discount calculation because it serves to off-set otherwise applicable electricity costs. While SDG&E continues to believe that this issue should be addressed in Phase 1 of this proceeding, SDG&E understands the Commission's desire to create clarity on this issue to ensure compliance with the provisions of AB327 that define the permissible level for the effective CARE discount.

[3] ORA Comments, at p. 1.

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ORA points out in its Opening Brief that the Climate Credit will be returned to customers in a manner that has been designed to preserve a carbon price signal.[4] SDG&E agrees. ORA also points out that the residential Climate Credit has been designed to benefit low income households.[5] SDG&E also agrees. However, neither means that the residential Carbon Credit should not be included in the calculation of the effective CARE discount. In that regard, in addition to participating in California's Cap and Trade program, as is the case with many other industries to comply with AB 32, electric utilities are and have also been implementing Energy Efficiency programs and a renewable portfolio standard for years, all at a cost to customers. In the residential sector, the costs of these efforts have largely been borne by upper tier customers. The Air Resources Board's ("ARB's") regulations implementing the allocation of allowance revenues make clear that the allowances allocated to utilities are based not only on the utilities' expected costs of complying with the cap-and-trade regulation, but also on the *prior costs* incurred by *all utility customers* in greenhouse gas-reducing programs, such as energy efficiency and renewable energy:

> ARB staff recommends that the promising allocation methods developed based on the evaluation using preliminary data be refined and evaluated using the final data developed by ARB staff. ARB staff recommends that the method incorporate the three main elements discussed above: *ratepayer cost burden; energy efficiency accomplishment; and early action as measured by investments in qualifying renewable resources.*
>
> . . . Staff has retained the three primary bases for allowance allocation to individual utilities (*cost burden, projected cumulative energy efficiency, and early*

[4] See, ORA Comments, at pp. 4-6.
[5] See, ORA Comments, at. pp. 3-4.

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investment in renewables). Table 9-3 of the discussion draft of the regulation contains the amount of allowances that each utility will receive annually. Table 9-3 may be found in Subarticle 9 of the regulation.[6]

The Climate Credit will off-set the cost impact associated with these measures on electricity bills because, as the California Public Utilities Commission ("Commission" or "CPUC") has stated, "an on-bill return of GHG allowance revenues to electricity customers will result in a decrease in electricity bills."[7] While the Climate Credit could have been returned to customers based on the extent to which they have borne these GHG reduction costs in the past and/or will in the future, the Commission decided to provide the credit to customers in a way that would reduce "adverse impacts to low-income households."[8] However, the mere fact that the Commission has adopted a means of returning the Climate Credit to customers in a way that will preserve carbon price signals and benefit low income households is not a reason to exclude it from calculation of the effective CARE discount. Instead, it underscores the fact that the Climate Credit has been structured in a way that is intended to maximize low income benefits.

California Public Utilities ("P.U.") Code Section 739.1(c)(1) sets forth the following direction on how to calculate the effective CARE discount rate:

> (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. ***The average effective discount determined by the commission shall reflect any charges not paid by CARE customers, including payments for the***

[6]California Air Resources Board, AB 32 Regulation, Appendix A, Staff Proposal for Allocating Allowances to the Electric Sector, July, 2011 http://www.arb.ca.gov/regact/2010/capandtrade10/candtappa2.pdf.
[7] D.12-12-033, at p. 181.
[8] D.12-12-033, at p. 110.

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

The Climate Credit off-sets the costs in electricity rates that have been incurred to pursue GHG reductions, not only for California's Cap and Trade program, but also for Energy Efficiency efforts and renewable procurement portfolio obligations, much as an exemption or discount allows a CARE customer to avoid costs associated with the programs that are specifically included in calculation of the effective CARE discount in Section 739.1(c)(1) (e.g., the California Solar Initiative, self-generation incentive program, rate components to fund the CARE program and payments made to the Department of Water Resources). Indeed, Section 739.1(c)(1) explicitly incudes discounts to fixed charges among those things that should be included in calculation of the effective CARE discount; the Climate Credit has essentially the same financial impact on customers because it constitutes a fixed credit that, "will result in a decrease in electricity bills."[9] While TURN contends that 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, the fact that the Climate Credit was structured to benefit low income households is evidence that it should be included in calculation of the effective CARE discount.[10]

[9] D.12-12-033, at p. 181.
[10] See TURN Opening Brief, at pp. 4-6.

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For these reasons and consistent with the position in its Opening Brief, SDG&E submits that the Climate Credit should be deferred to Phase 1 of this proceeding. However, if a ruling on this issue is necessary in Phase 2, SDG&E recommends that the residential California Climate Credit be included in the calculation of the total discount that is being provided to CARE customers.

IV. THE RECORD DEMONSTRATES THAT THE CUSTOMERS CFORAT/GREENLINING CLAIM WOULD EXPERIENCE A "HIGH" ENERGY BURDEN UNDER SETTLEMENT RATES ARE ACTUALLY EXPERIENCING A "HIGH" ENERGY BURDEN UNDER CURRENT RATES

CforAt/Greenlining have argued that, "…the impacts of the proposals and/or proposed settlements on energy burden were not given consideration by utilities or other settling parties."[11] This contention is contrary to the evidence that has been submitted herein. In that regard, as was pointed out in the Opening Brief of SDG&E, ORA, TURN, UCAN, SDCAN, and CUE, "[t]he Settlement Agreement has been structured to ensure that affordability concerns are addressed".[12] In short, CforAt/Greenlining's arguments fail to recognize that one of the reasons for restructuring rates in this proceeding was to address excessive increases in upper tier rates that impact high-use customers, the same group of customers that CforAT/Greenlining incorrectly argues will be harmed under the settlement rates.

On pages 4-5 of their Brief, CforAt/Greenlining try to use the energy burden data that SDG&E submitted herein (Exhibit SDG&E-10)[13] to support their argument that the settlement rates would increase the energy burden on customers they label as having a "high" energy burden of over 5%. Actually just the opposite is true. The data provided in Exhibit SDG&E-10 shows that the customers CforAt/Greenlining claim are experiencing a "high" energy burden

[11] CforAt/Greenlining Brief, at p. 9.
[12] SDG&E, ORA, TURN, UCAN, and SDCAN Opening Brief, at p. 20.
[13] Additional Data to be Supplied by Utilities as Evidentiary Exhibits of San Diego Gas & Electric Company (U902E), filed on April 1, 2014.

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under settlement rates are actually experiencing what they label as a "high" energy burden under current rates. Exhibit SDG&E-10 presents the energy burden for customers under current rates (March 31, 2014 rates based on current revenue requirements) and settlement rates (summer 2014 settlement rates assuming adoption of full revenue requirement changes). As shown in this exhibit, the customers CforAt/Greenlining are identifying as customers experiencing a "high" energy burden (greater than 5%) are essentially the same customers experiencing a "high" energy burden today, which are the high-use customers that the settlement rates are designed to benefit. If the settlement rates are not approved the energy burden for these high-use customers that CforAt/Greenlining identifies will be greater than shown in SDG&E-10 because any adopted revenue increases will need to be recovered entirely from upper tiered rates. For this reason, the energy burden argument CforAt/Greenlining is using really supports the adoption of the settlement rates because the settlement rates will reduce the energy burden that otherwise will result for these high-use Non-CARE customers.[14]

V. CFORAT/GREENLING HAVE MISINTERPRETED THE PROVISIONS OF AB327

CforAt/Greenling have argued that P.U. Code Section 382(b) requires that "all residents should be able to afford essential electricity and gas supplies." On this basis, CforAt/Greenling argue that the Commission is required to, "ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures," and that "until these obligations are met, the

[14] High-use CARE customers will experience higher energy rates under the settlement rates because SDG&E's Tier 3 rates have been frozen since January 1, 2010 pursuant to D.09-09-036, which has contributed to the increase in SDG&E's effective CARE discount of 39%. In this regard, CforAt/Greenling's legal argument reflects a fundamental misinterpretation of the express terms of AB 327 and ignores the statutory requirement in AB 327 that the CARE discount be reduced "on an annual basis…by…a reasonable percentage decrease" to no more than 35%. (P. U. Code Section 739.1(c)(2).) Because SDG&E's current effective CARE discount of 39% is outside the AB 327 legislative required range of 30-35%, changes to SDG&E CARE rates are required with or without approval of the settlement rates.

CPUC cannot adequately determine that proposed rates are 'just and reasonable'."[15]

SDG&E submits that CforAt/Greenling's legal argument contravenes the express provisions of AB 327. In that regard, CforAt/Greenling incorrectly assumes that P. U. Code Section 382(b) applies to *all* ratepayers; and fails to recognize that Section 739.1(c) expressly requires that the CPUC "shall ensure" that the average effective CARE discount falls within the 30 – 35 percent range.

SDG&E submits that P.U. Code Section 382 exclusively focuses on *low income programs*, and not on rates to "all residents." For this reason, the argument of CforAt/Greenling to the effect that section 382(b) applies to all residential electric rates must be rejected.

In addition, the language of Section 382 must be interpreted in the context of the express terms of AB 327.[16] In that regard, CforAt/Greenling have failed to reconcile their interpretation of Section 382 with the express requirements of Section 739.1(c) that the CPUC "shall ensure" that the average effective CARE discount falls within the 30 – 35 percent range, so long as any CARE discount in excess of that range is not reduced, "on an annual basis, by more than a reasonable percentage decrease below the discount in effect on January 1, 2013."[17] While Section 739.1(g) provides that, "(g) It is the intent of the Legislature that the commission ensure CARE program participants receive affordable electric and gas service that does not impose an unfair economic burden on those participants," this provision should be read in the context of Section 739.1(c)(2), which provides, "(2) If an electrical corporation provides an average effective CARE discount in excess of the maximum percentage specified in paragraph (1), the electrical corporation shall not reduce, on an annual basis, the average effective CARE discount by more than a reasonable percentage decrease below the discount in effect on January 1, 2013,

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[15] CforAt/Greenling, Opening Brief, p. 2, lines 1 – 5.
[16] The meaning of a statute may not be determined from a single word or sentence…" (*Lakin v. Watkins Assoc'd. Industries* (1993) 6 Cal.4th 644, 659.) "[T]he words of a statute [must be construed] in context,… harmoniz[ing] the various parts of an enactment by considering the provision at issue in the context of the statutory framework as a hole.." (*Cummins, Inc. v. Superior Court*, (2005) 36 Cal.4th 478, 487.) The statute's various components should be read together to achieve the overriding purpose of the legislation. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 933.)
[17] P.U. Code Section 739.1(c)(1) and (2).

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or that the electrical corporation had been authorized to place in effect by that date."

In short, the arguments of CforAt/Greenling must be rejected because they would have the Commission render the express provisions of Section 739.1 meaningless.[18]

VI. CONCLUSION

For the forgoing reasons, SDG&E respectfully requests that the Settlement Agreement submitted herein be approved and that the issue of the residential California Climate Credit not delay the issuance of a decision on Phase 2 of this proceeding. Should the Commission nevertheless consider that issue in this phase of the proceeding, SDG&E respectfully requests that the Commission find that the California Climate Credit constitutes a benefit to CARE customers, and should be included in calculation of the effective CARE discount. In addition, SDG&E recommends that the Commission disregard CforAt/Greenlining flawed arguments regarding the impact of the settlement rates on affordable rates.

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[18] Courts will avoid a construction that renders any part of the statute meaningless or extraneous. (*Woosley v. State of Calif.* (1992) 3 Cal. 4th 758, 775-776.)

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