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 U 39 E	R.12-06-013 (Phase 2) (Filed June 21, 2012)

REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), ON CALCULATION OF EFFECTIVE CARE RATE DISCOUNT USING CALIFORNIA CLIMATE CREDIT

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I. INTRODUCTION

Pursuant to request of the Administrative Law Judge dated March 26, 2014, Pacific Gas and Electric Company (PG&E) hereby provides its Reply Brief on calculation of the effective California Affordable Rates for Energy (CARE) rate discount under AB 327 in light of the California Climate Credit (CCC) received by CARE and non-CARE customers under the Commission's method for crediting AB 32 cap-and-trade allowance revenue for the benefit of customers under D.12-12-033 and the Air Resources Board's (ARB's) AB 32 cap-and-trade regulations.[1/]

As discussed in more detail below, if the Commission chooses to decide this issue at this early stage of AB 327 implementation, the Commission should reject the arguments by Greenlining/CforAT, ORA and TURN that the CCC should not be considered in calculating the effective CARE discount under AB 327. However, PG&E agrees with TURN and ORA that this issue is premature and should not and need not be considered at this early stage of AB 327, so that it can be considered consistently with broader issues of AB 327 interpretation and implementation in later phases of this proceeding.

II. TURN'S, ORA'S AND GREENLINING/CforAT'S ARGUMENTS REGARDING THE REGULATORY HISTORY OF THE CALIFORNIA CLIMATE CREDIT IGNORE THE "PLAIN MEANING" OF PUBLIC UTILITIES CODE SECTION 739.1(C).

TURN, ORA and Greenlining/CforAT argue variously that the regulatory history of the Commission's rate design for distributing a portion of AB 32 greenhouse gas (GHG) allowance revenues to residential customers through the "California Climate Credit" indicates that such revenues credited against customers' electric bills do *not* affect the "revenues that would have been produced for the same billed usage" under Public Utilities Code Section 739.1(c).[2/] PG&E

1/ E-mail from Administrative Law Judge McKinney, March 26, 2014, "Additional Issue for Briefing" ("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.")

2/ TURN Opening Brief, pp. 4- 6; ORA Limited Opening Brief, pp. 3- 6; Greenlining/CforAT Phase 2 Brief, pp. 12- 24.

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disagrees – the "plain meaning" of Section 739.1(c) may not be ignored by reference to irrelevant regulatory history regarding the California Climate Credit that in any event pre-dates enactment of AB 327 and Section 739.1(c).[3/]

TURN argues that including the California Climate Credit in the calculation of the "average effective CARE discount" under Section 739.1(c) would "contradict the Commission's goal of reducing adverse impacts of cap-and-trade on low-income households" and that Section 739.1(c) "does not include any indication" that the California Climate Credit should be included in the calculation of the CARE discount.[4/] Contrary to TURN, Section 739.1(c) is clear and unambiguous: the average effective CARE discount *must* be calculated based on a comparison of the "*revenues* that would have been *produced* for the *same billed usage* by non-CARE customers." (Section 739.1(c)(1) (emphasis added.)

TURN's reference to the rate design adopted by the Commission in D.12-12-033 – ten months *prior* to enactment of AB 327 – in order to return cap-and-trade allowance revenues to customers (including the California Climate Credit), does not in any way change the arithmetic calculation of "revenues that would have been produced" by CARE customers under Section 739.1(c)(1).[5/] The Commission's cost of service ratemaking for utility recovery of the utilities' cap-and-trade compliance costs from CARE and non-CARE residential customers makes clear that the cap-and-trade allowance revenues are used to directly offset the rates and charges billed to those customers, and thus reduce the "revenues produced" and collected from those customers.[6/]

3/ See D.12-12-033, p. 71, citing *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388; see also, *e.g., People v. Canty* (2004) 32 Cal.4th 1266, 1276 and *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

4/ TURN Opening Brief, pp. 4, 6.

5/ TURN's argument (TURN Opening Brief, pp. 8- 9) that including the revenues produced by the California Climate Credit would require a change to the rate design for allocating the California Climate Credit in rates is irrelevant to the statutory interpretation of Public Utilities Code Section 739.1(c). Contrary to TURN, Section 739.1(c) does not require the California Climate Credit to "fund" the CARE discount; it merely establishes how the CARE discount is to be arithmetically calculated and taken into account on an "apples to apples" basis compared to non-CARE rates.

6/ D.12-12-033, Ordering Paragraphs 1, 8 and 9, pp. 205- 206, 208-209 (allowance revenues,

TURN's argument that the California Climate Credit is not expressly referenced in Section 739.1(c) is likewise irrelevant to the interpretation of the statute. The legislative history indicates that AB 327 added the "revenues produced" comparison requirement to Section 739.1(c) as an amendment to the pre-existing language in Section 739.1(b)(4) which referenced various "charges" from which CARE customers were exempted. Accordingly, contrary to TURN, the general "revenues produced" language is not mere surplusage to the pre-existing "exemption form charges" language that was incorporated into Section 739.1(c), such that if the California Climate Credit is not mentioned, it is somehow exempt from the comparative calculation of "revenues produced."

In fact, a utility's electric cost of service that is incorporated into residential electric customer's bills includes numerous examples of "credits" and other off-sets to the utility's nominal costs that reduce the revenues billed and "produced" by the customer. Examples include "other operating revenues," FERC refunds, over-collections in balancing accounts, and the volumetrically distributed cap-and-trade revenues that are not included in the California Climate Credit – none of which are expressly referenced in Section 739.1(c).

In addition to arguments similar to TURN's, ORA makes a more direct argument that the California Climate Credit is *not* an "electric rate reduction," citing a prior Commission decision referring to the goal of "preserving the carbon price signal."[7/] ORA's argument regarding "preserving the carbon price signal" is directly contradicted by the Commission's later D.12-12-033, under which the Commission expressly determined that the costs of the carbon price signal in residential customers' electric rates would be fully "neutralized."[8/] ORA's reference to D.12-12-033 itself confirms the opposite of ORA's "price signal" argument: the referenced D.12-12-033 paragraph confirms that customers are likely to interpret the "on-bill credit" adopted by

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including California Climate Credit, must be used to provide an "on-bill credit" against the customer's bill, including applying any excess credit to the subsequent's month's bill; D.13-12-041, requiring utilities to include forecast cap-and trade costs and allowance revenues in 2014 rates, via on-bill credits.

7/ ORA Limited Opening Brief, pp. 4- 6, citing D.08-10-037, Section 5.5.

8/ D.12-12-033, Ordering Paragraph 1, p. 206.

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D.12-12-033 as a reduction in their electric rates, as opposed to "a check or some other form of *off-bill* rebate."[9/]

In addition to arguments similar to TURN's and ORA's, Greenlining/CforAT go a step further and argue that the revenues that comprise the California Climate Dividend are not "attributable" to the utilities at all but are directly "owned" by utility customers and distributed to them by "the State of California."[10/] Accordingly, Greenlining/CforAT argue, the California Climate Credit is never ever a part of a utility's cost of service at all, and the crediting of the California Climate Credit against customers' bills is merely an "administrative expedient."[11/]

Greenlining/CforAT's argument is contrary to the Commission's own D.12-12-033 implementing the California Climate Dividend. In D.12-12-033, the Commission expressly adopted "a methodology for allocating greenhouse gas allowance revenues *received by California's investor-owned utilities*, including small and multi-jurisdictional utilities, as part of California's Cap-and-Trade program." (D.12-12-033, p.2 (emphasis added).) In doing so, the Commission expressly ordered the utilities, among other things, to:

> "[N]eutralize the rate impacts of the Cap-and-Trade program on residential electricity rates through a volumetrically calculated *rate adjustment*" and "[d]istribute all revenues remaining after accounting for the revenues allocated pursuant to the prior three uses to residential customers on an equal per residential account basis delivered *as a semi-annual, on-bill credit*."

(D.12-12-033, pp. 2- 3 (emphasis added).) Thus, the Commission should reject Greenlining/CforAT's argument that the customer outreach and education criteria for describing the California Climate Credit somehow "trumps" the Commission's express determination of the source and ratemaking for the allowance revenues.

II. IN ANY EVENT, TURN'S, ORA'S AND GREENLINING/CFORAT'S ARGUMENTS REGARDING THE PURPOSE OF THE CALIFORNIA CLIMATE CREDIT ARE CONTRARY TO THE REGULATORY HISTORY OF THE AB 32 CAP AND TRADE PROGRAM

TURN, ORA, and Greenlining/CforAT also argue that the California Climate Credit

9/ ORA Limited Opening Brief, p. 5, citing D.12-12-033, pp. 120- 121 (emphasis added).

10/ Greenlining/CforAT Phase 2 Brief, p. 15.

11/ *Id.*, p. 19.

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cannot be characterized as an offset to utility revenues produced by CARE and non-CARE customers, because the California Climate Credit is not intended to reduce utility costs at all, but only to reduce non-utility costs incurred by utility customers.[12/]

Aside from the legal infirmities of using utility bills to deliver non-utility related services, this argument is not supported by the regulatory history of the cap-and-trade program.[13/] Nothing in AB 32, or in the ARB's regulations implementing the allowances allocated to utilities under the cap-and-trade program, mentions the "California Climate Credit" or using the allowance revenues for a purpose unrelated to the utility costs borne by utility customers.[14/] Moreover, Senate Bill (SB) 1018, the Legislature's statute directing the Commission on how utilities must distribute the cap-and-trade allowance revenues, expressly provides that:

> (a) Except as provided in subdivision (c), the commission shall require *revenues*, including any accrued interest, *received by an electrical corporation* as a result of the direct allocation of greenhouse gas allowances to electric utilities pursuant to subdivision (b) of Section 95890 of Title 17 of the California Code of Regulations *to be credited directly to the residential,* small business, and emissions-intensive trade-exposed retail *customers* of the electrical corporation.

(Public Utilities Code Section 748.5(emphasis added).) 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*

12/ TURN Opening Brief, pp. 5- 6; ORA Limited Opening Brief, pp. 3- 4; Greenlining/CforAT Phase 2 Brief, pp. 23- 24.

13/ See, e.g., *Assembly of the State of California v. Public Utilities Commission* (1995) 12 Cal. 4th 87, 48 Cal. Rptr. 2d 54 (CPUC has no authority under Public Utilities Code Section 701 to divert utility refunds for other non-utility purposes, contrary to Public Utilities Code Section 453.5 requiring equitable distribution of refunds to utility customers.)

14/ AB 32, Statutes of 2006, Chapter 488; California Code of Regulations, Title 17, Division 3, Subchapter 10 (Climate Change), Article 5, §§ 95800-96023 (17 CCR §§ 95800-96023), including Table 9-3: "Percentage of Electric Sector Allocation Allocated to Each Utility," 17 CCR § 95892(e).

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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 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.[15/]

Thus, even if *arguendo* the purposes of the cap-and-trade allowances allocated to utilities under AB 32 were relevant to an interpretation of the arithmetic calculation of the effective CARE discount under AB 327, those purposes are clearly to benefit *all* utility customers who bear the compliance costs of the cap-and-trade regulation and whose utility bills previously have paid for the costs of the utilities' pre-cap-and-trade investments in energy efficiency and renewable energy.

Notwithstanding the Commission's reference in D.12-12-033 to the "non-energy expenses of low-income households," there is no evidence in the record of AB 32, SB 1018, or in the ARB's cap-and-trade regulations, that compensating low income utility customers for their non-utility expenses was a purpose of the allowance allocation in the cap-and-trade regulation, much less a purpose that could affect the statutory interpretation of how to calculate the "effective CARE discount" under later-enacted AB 327.[16/]

III. PG&E AGREES WITH TURN AND ORA THAT THE STATUTORY INTERPRETATION OF PUBLIC UTILITIES CODE SECTION 739.1(C) IS NOT WITHIN THE SCOPE OF THE PHASE 2 SETTLEMENTS BEFORE THE COMMISSION, AND THEREFORE THE COMMISSION SHOULD DEFER A DECISION ON SECTION 739.1(C) TO A LATER PHASE OF THIS PROCEEDING

Although PG&E disagrees with TURN's and ORA's legal interpretation of Public

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15/ California Air Resources Board, AB 32 Regulation, Appendix A, Staff Proposal for Allocating Allowances to the Electric Sector, July, 2011, p. 2, http://www.arb.ca.gov/regact/2010/capandtrade10/candtappa2.pdf, (emphasis added).

16/ In fact, the textual reference to using the California Climate Credit to directly pay "non-energy expenses" in D.12-12-033 is contradicted by D.12-12-033's formal findings of fact that expressly state that the California Climate Credit should be returned "to residential customers via an on-bill credit against their electricity purchases" and "[a]n on-bill return of GHG allowance revenues to electricity customers will result in a decrease in electricity bills; however, that decrease will free up money for other purposes that customers would otherwise use to pay their electricity bills." (D.12-12-033, Finding of Fact 121, 122, pp. 181- 2).

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Utilities Code Section 739.1(c), PG&E wholeheartedly agrees with TURN and ORA that the legal issue is outside the scope of the settlements pending before the Commission in Phase 2 of this proceeding, and unnecessary for the Commission to decide as part of its consideration of those settlements.[17] PG&E respectfully requests that the Commission defer a decision on this legal issue until a later phase of this proceeding. Alternatively, if the Commission finds the issue ripe for decision, PG&E recommends that it decide it as part of a separate decision, not as part of its decision on Phase 2 settlements.[18]

IV. CONCLUSION

For the reasons discussed above, PG&E respectfully requests that the Commission reject the arguments of TURN, ORA and Greenlining/CforAT to exclude the California Climate Credit from calculation of the effective CARE discount under Public Utilities Code Section 739.1(c).

Respectfully Submitted,

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[17] TURN Opening Brief, pp. 9- 10; ORA Limited Opening Brief, pp. 1, 6.

[18] As a matter of administrative efficiency, PG&E notes that the interpretation of Public Utilities Code Section 739.1(c) is a legal issue with no pending "case or controversy" before the Commission, and thus not ripe for decision. Accordingly, any decision on the issue would be effectively an "advisory opinion" which the Commission generally declines to issue.