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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Cases filed by Pacific Gas and Electric Company Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088.	INVESTIGATION 19-09-016

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) REPLY BRIEF REGARDING EVIDENTIARY HEARING AND ASSIGNED COMMISSIONER PROPOSAL COMMENTS

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I. INTRODUCTION

PG&E's Opening Brief[1] described in detail why PG&E's Plan[2] satisfies all of the requirements of Assembly Bill ("AB") 1054 and accords with the Section 854 factors that the Commission will consider in connection with its AB 1054 evaluation. In addition to the actions PG&E has already undertaken or has planned, PG&E's Opening Brief supported, with some qualifications and modifications, the Assigned Commissioner's Proposals.

Since filing the Opening Brief, three important developments bear on the Commission's evaluation.

Governor's Office

First, PG&E continued its discussions with Governor Gavin Newsom's office, which led to a successful conclusion. As a result of those negotiations, PG&E recently filed a motion in the Bankruptcy Court, described below, with a supporting statement from the Governor that "if the Motion is granted and the CPUC approves the [PG&E] Plan with the governance, financial and operational provisions submitted to the CPUC by the Utility or otherwise agreed by the Utility, with any modifications the CPUC believes appropriate or necessary, the Plan will, in the Governor's judgment, be compliant with AB 1054."

Specifically, on March 20, 2020, PG&E filed a motion (the "Resolution Motion") in the Bankruptcy Court that seeks approval of a Case Resolution Contingency Process.[3] Among other

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[1] Pacific Gas and Electric Company's Post-Hearing Brief and Comments on Assigned Commissioner's Proposals ("Opening Brief"). As used herein, "PG&E" refers to both Pacific Gas and Electric Company (the "Utility") and PG&E Corporation.

[2] As used herein, reference to the Plan or PG&E's Plan refers to PG&E's current Plan of Reorganization (*see* Notice of Amended Plan of Reorganization, filed Mar. 17, 2020), but for consistency with testimony, pin citations are to PG&E's previously-filed January 31, 2020 Chapter 11 Plan of Reorganization except where otherwise noted.

[3] *See* Debtors' Motion Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 9019 for Entry of an Order (I) Approving Case Resolution Contingency Process, and (II) Granting Related Relief, *In re PG&E*

terms, the order granting the Resolution Motion will provide for the State of California to appoint immediately an Operational Observer who will be empowered to observe, on behalf of the State, PG&E's operational and safety efforts.[4]

Beyond the relief sought by the Resolution Motion, PG&E also disclosed in the Resolution Motion certain additional commitments, subject to certain conditions, PG&E's additional commitments are:

(1) PG&E Corporation will not pay dividends until it has recognized $6.2 billion in Non-GAAP Core Earnings following the Effective Date. That amount would be deployed as capital investment or reduction in debt.[5]

(2) If the Commission does not grant approval of PG&E's anticipated application for a post-emergence Securitization, [6] then the Utility will not seek to recover in rates any of the amounts paid in respect of Fire Victim Claims under the Plan.[7]

Corporation, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6398 (Mar. 20, 2020) ("Resolution Motion"). A copy of the Resolution Motion with exhibits was filed in this proceeding as Exhibits 1 and 2 to PG&E's Motion for Official Notice of Documents or, in the Alternative, to Accept Documents as Late-Filed Exhibits, filed Mar. 23, 2020 ("Official Notice Motion"). On March 24, 2020, Administrative Law Judge Allen granted PG&E's motion and took official notice of the requested documents.

[4] *Id.*, Ex. A at 5-6 (further describing the Operational Observer's powers, including attendance at Board meetings, conducting inspections and interviews, and review of documentation).

[5] Resolution Motion (Official Notice Motion Ex. 1) at 18 (further describing the terms, including the definition of Non-GAAP Core Earnings, and referring to the March 17, 2020 Disclosure Statement for further definition).

[6] The Resolution Motion describes PG&E's intention to pursue a single, post-emergence 30-year securitization transaction of approximately $7.5 billion (the "Securitization"), with reduced principal payments in the early years, which would replace the Temporary Utility Debt and be neutral, on average to customers and would also accelerate the deferred payments to the Fire Victim Trust to be funded under the Plan. The Securitization includes offsetting credits to be funded initially from a reserve account and further funded with the value of net operating losses contributed in the year in which the net operating losses are utilized. The Securitization structure is anticipated to yield a full (nominal) offset each year to the securitized charges. The Plan is not contingent on the approval of the Securitization. *See* Resolution Motion at 8.

[7] *Id.*

(3) If the Commission, in the sixth step of the Enhanced Regulatory Oversight and Enforcement Process as proposed in the Assigned Commissioner's Ruling ("ACR"), revokes PG&E's Certificate of Public Convenience and Necessity ("CPCN"), then the State of California will have the option to purchase all of the issued and outstanding equity interests of the Utility at a price determined pursuant to a prescribed formula.[8]

(4) If the forthcoming Securitization application is not approved or consummated, PG&E will use the cash flows from the net operating losses ("NOLs") generated from the payment of wildfire claims under the Plan to amortize the $6 billion in Temporary Utility Debt.[9]

(5) As a condition precedent to the occurrence of the Plan's Effective Date, the secured debt issued by the Utility in connection with the Plan will receive an investment-grade rating from at least one of Standard & Poor's or Moody's.[10]

(6) The Plan documents will be in form and substance acceptable to the Governor's Office.[11]

On March 20, 2020, Governor Gavin Newsom filed in the Bankruptcy Court a statement in support of the Resolution Motion (the "Governor's Support Statement").[12] The Governor's Support Statement noted that:

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[8] *Id.* at 19.

[9] *Id.*

[10] *Id.* This condition may be waived with the consent solely of the Plan Proponents and the Governor's Office.

[11] *Id.* However, if the Court declines to enter a form of Confirmation Order or to confirm the Plan unless the Plan Proponents modify the Confirmation Order or the Plan in a manner not acceptable to the Governor's Office, the Plan Proponents may modify the Confirmation Order to address the Court's requirements. *Id.*

[12] Governor Gavin Newsom's Statement in Support of Debtors' Motion Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 9019 for Entry of an Order (I) Approving Case Resolution Contingency Process and (II) Granting Related Relief, Case No. 19-30088, ECF No. 6402 (Mar. 20, 2020). A copy of the Governor's Support Statement was filed in this proceeding as Exhibit 3 to the Official Notice Motion.

> Since the [Governor's] December 13 Letter [regarding PG&E's Plan], the Governor's Office and the Debtors have engaged in discussions regarding changes to the Plan necessary to meet the state's goals. As a result of those discussions and as set forth in more detail below, the Debtors have submitted constructive responses to the ruling issued by the CPUC Assigned Commissioner in the Plan OII, incorporated or agreed to incorporate modifications to the Plan and Plan Documents, and filed the [Resolution] Motion.[13]

The Governor's Support Statement affirmed that "[i]n the Governor's view, the relief requested in the [Resolution] Motion responds to the Governor's previously stated concerns" and as a result affirmed that:

> The Governor believes that if the Motion is granted and the CPUC approves the Plan with the governance, financial and operational provisions submitted to the CPUC by the Utility or otherwise agreed by the Utility, with any modifications the CPUC believes appropriate or necessary, the Plan will, in the Governor's judgment, be compliant with AB 1054.[14]

In addition, the Governor affirmed that he believes the contemplated post-emergence Securitization to be in the public interest, stating:

> The Debtors' financial plan also contemplates an application to the CPUC for a securitization of up to $7.5 billion in wildfire claims costs. The Governor believes that a rate neutral securitization pursuant to Senate Bill 901 (Dodd, Chapter 626, Statutes of 2018) that meets all legal requirements as determined by the CPUC would, in his judgment, be in the public interest, as it would strengthen the going-forward business and support the reorganized Utility's ability to provide safe, reliable, affordable and clean energy to its customers.[15]

The Plan satisfies AB 1054 and should be approved, and the contemplated post-emergence Securitization, which will be the subject of a separate application, also will be in the public interest.

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[13] Governor's Support Statement (Official Notice Motion Ex. 3) at 2:14-18.

[14] *Id.* at 4:20-23.

[15] *Id.* at 4:14-19.

Butte Plea Agreement

Second, PG&E has entered into a plea agreement with the Butte County District Attorney accepting responsibility for the role its equipment played in starting the 2018 Camp Fire.[16] The plea agreement is subject to approval by the Bankruptcy Court and acceptance and approval by the Butte County Superior Court. The plea agreement brings to closure the criminal investigation of the company, which was the last legal proceeding related to prepetition wildfires outside the Chapter 11 Cases and this Commission's proceedings.

From the very beginning, PG&E acknowledged its role in the Camp Fire, and the plea agreement represents a formal and grave acceptance by PG&E of responsibility for this tragic event. The lessons learned from the Camp Fire and 2017 wildfires remain a driving force for PG&E to transform the company. The plea also resolves the uncertainties in the Chapter 11 cases created by the Butte County District Attorney's investigation, enabling PG&E to move forward with confirmation of the Plan with this Commission's approval, so that it can expeditiously pay victims and emerge from Chapter 11.

Financial Instability

Third, the COVID-19 virus has caused increased instability in financial markets. While the duration of these effects is unknown, market conditions have created increased pressures on PG&E's Plan. The equity backstop commitments and bridge loan commitment provide critical assurance that PG&E will be able to raise the capital needed to exit, but those commitments depend on the absence of material adverse events. These circumstances underscore the importance of a timely and reasonable Commission decision in this proceeding. If the Commission were to impose onerous conditions on its approval of the Plan (as some parties

[16] *See* Mar. 23, 2020 Form 8-K (discussing and attaching plea agreement). A copy of the Form 8-K was filed in this proceeding as Exhibit 4 to the Official Notice Motion.

recommended), it could jeopardize the financing commitments and hence PG&E's ability to timely emerge from Chapter 11.

* * *

In the remainder of this reply brief, PG&E discusses why the critiques offered in other parties' briefs are not well taken, and in any event do not undermine the core conclusion that PG&E's Plan complies with AB 1054. PG&E further addresses herein the additional conditions proposed by various parties. These proposals generally lack sufficient precision to function as effective "conditions" to Plan approval, are impractical and unrealistic, and are inconsistent with the pertinent statutory provisions to be applied by the Commission.

PG&E respectfully submits that the record herein overwhelmingly establishes that PG&E's Plan is in the public interest, complies with AB 1054, and should promptly be approved subject to the conditions endorsed in PG&E's Opening Brief and in the Resolution Motion.

II. FINANCIAL ISSUES

The record shows that PG&E has put in place the financing it needs to exit from Chapter 11 and that it will emerge with an investment-grade rating on secured debt. The record further shows that PG&E's financial metrics will steadily improve over time. The law and record also demonstrate that the Plan is neutral to ratepayers because it does not increase rates, and that the Plan does not include any contributions from ratepayers that must be compensated under AB 1054.

A. The Plan Restores PG&E To Financial Health. (Scoping Memo §§ 4.3, 4.6, 4.7)

By resolving PG&E's substantial prepetition liabilities and refinancing high-coupon prepetition debt, the Plan restores PG&E to a position of financial health upon emergence. Certain parties express a preference that PG&E should emerge in an even stronger financial position—demanding, for example, that PG&E emerge with an investment-grade issuer rating.[17] This goal, however laudable, cannot be achieved at this time. Imposing these infeasible recommendations would prevent PG&E from emerging from Chapter 11 at this time, leaving PG&E unable to pay wildfire victims and unable to participate in the Go-Forward Wildfire Fund. Such outcomes are decidedly contrary to the public interest.

PG&E's Plan expeditiously and fairly compensates wildfire victims and is funded by "new and reinstated debt and equity for both the Utility and PG&E Corporation as well as other sources of funding anticipated to total approximately $57.65 billion."[18] The Plan also gives PG&E a clear path towards further improving credit ratings over time after exiting its Chapter 11 cases. PG&E's Plan accomplishes all of this in a manner that is fully protective of customers, including through PG&E's commitment "not [to] seek to recover in rates any portion of the amounts paid in respect of Fire Claims under the Plan," apart from the contemplated post-emergence, rate-neutral Securitization.[19]

The $57.65 billion in capital PG&E will raise in connection with its exit financing will be the largest capital raise in the utility industry and one of the largest in all of corporate history.[20] The Utility also has unambiguously committed to at least $6 billion of additional equity contributions over time after emergence in order to further delever the Utility and pay down the Temporary Utility debt.[21] Consistent with this commitment, the Resolution Motion states: "The

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[17] *See e.g.*, Opening Brief of the City of San Jose (CSJ Br.) at vi, lines 6-8.

[18] PG&E-01 at 2-15 (opening testimony of Mr. Wells).

[19] Resolution Motion (Official Notice Motion Ex. 1) at 18-19.

[20] Feb. 28, 2020 Tr. at 581 (cross-examination testimony of Mr. Wells); *id.* at 667:11-12 (PG&E "ha[s] put forward a plan that is fully capitalized.").

[21] *Id.* at 575-76 (cross-examination testimony of Mr. Wells); *see also* PG&E-01 at 2-17-2-18 (opening testimony of Mr. Wells) ("PG&E anticipates that $6 billion in Temporary Utility debt would be used to pay wildfire claims. This portion of the Utility's debt would be paid off, if approved by the Commission, from the proceeds of a post-emergence rate-neutral $7 billion securitization transaction. Alternatively,

Debtors' payment of wildfire claims under the Plan will result in substantial net operating losses ('NOLs'). Consistent with the Debtors' financial projections provided in the Disclosure Statement, the Reorganized Utility agrees to use cash flows generated by application of these NOLs in future years to fund customer credits in connection with the Securitization. If this Securitization is not approved or consummated, the Reorganized Utility agrees to use these cash flows to amortize the $6 billion in Temporary Utility Debt referred to in the chart above."[22] This significant amount of new equity will sufficiently capitalize PG&E to be in line with its investment-grade utility peers including in California.[23]

In addition to these actions by the Utility, PG&E Corporation has committed in the Resolution Motion to suspend dividends, which will add even more equity to the enterprise. By agreeing not to pay dividends until it has recognized $6.2 billion in Core Earnings, PG&E will be investing that amount in infrastructure or paying down debt. For reference, at a traditional 65% earnings payout ratio, approximately $4 billion of the $6.2 billion in Core Earnings would have been paid in dividends.

In addition to new equity, PG&E's Plan also is funded by low-cost debt.[24] This includes reinstated, relatively low-coupon Utility debt and refinanced, lower-cost debt under the Noteholder RSA; new Utility and PG&E Corporation debt that will be issued in the market at exit; and the Temporary Utility debt. The Bankruptcy Code provided PG&E the unique opportunity to elect whether to repay or reinstate its prepetition debt, allowing PG&E to

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the $6 billion would be retired with proceeds from shareholders. PG&E plans to use cash flows from NOLs to support the $6 billion of Utility debt used to fund wildfire claims.")

[22] Resolution Motion (Official Notice Motion Ex. 1) at 19.

[23] *E.g.*, PG&E-01 at 3-8 (opening testimony of Mr. Plaster); Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster); Feb. 28, 2020 Tr. at 527-28, 558 (cross-examination testimony of Mr. Wells).

[24] PG&E-01 at 2-15-2-22 (opening testimony of Mr. Wells).

negotiate the Noteholder RSA, thereby lowering interest rates and achieving significant cost savings for the benefit of customers.[25]

1. Parties Continue To Criticize PG&E's Leverage Based On An Incomplete Financial Picture And Without Presenting A Feasible Alternative.

Some parties continue to assert that PG&E will be overleveraged upon emergence and that PG&E should raise comparatively more equity and less debt.[26] Yet this overlooks critical elements of PG&E's post-emergence financial picture. And parties generally do not specify what level of leverage they would find acceptable and no party has presented a feasible, alternative financing structure for PG&E's emergence from Chapter 11, particularly one that can provide expeditious and fair compensation to wildfire victims. Moreover, the Governor raised similar concerns regarding PG&E's financial strength at exit in his December 13, 2019 letter[27]—what A4NR has termed "the Newsom Principle."[28] But the Governor recently acknowledged that PG&E has since made "positive modifications" to its Plan, including "financial commitments that include additional shareholder investment in the reorganized entity," among which are the dividend suspension and the commitment to use NOLs to amortize the Temporary Utility debt if Securitization does not occur.[29] Through these commitments and others, the Governor stated, "the Debtors evidenced their responsiveness to the requirements of AB 1054

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[25] *See* 11 U.S.C. § 1124; *see also* 11 U.S.C. §§ 101(5), 1123, 1141.

[26] *See* Corrected Alliance For Nuclear Responsibility's Opening Brief and Opening Comments on Assigned Commissioner Ruling's Proposals (A4NR Br.) at 15-22; City and County of San Francisco Opening Brief on Previously Scoped Issues and Opening Comments on Assigned Commissioner's Ruling and Proposals (CCSF Br.) at 7-11; CSJ Br. at 6-7; The Utility Reform Network's Opening Brief and Comments on the February 18, 2020 Assigned Commissioner's Ruling (TURN Br.) at 20-21; Opening Brief and Comments of Marin Clean Energy (MCE Br.) at 19-22.

[27] *See* Abrams-X-05 at 4.

[28] *See* A4NR Br. at 15.

[29] Governor's Support Statement (Official Notice Motion Ex. 3) at 2-3.

and commitment to financing the improvements necessary to transform to a safe and reliable Utility."[30] And the Governor concluded that, if the Resolution Motion is granted and the Commission approves the Plan with the governance, financial and operational provisions PG&E has submitted (with any modifications the Commission believes appropriate or necessary), "the Plan will, in the Governor's judgment, be compliant with AB 1054."[31]

As set forth in PG&E's Opening Brief,[32] other parties' generalized concerns about leverage ignore at least five critical elements of PG&E's Plan and post-emergence financial profile:

- PG&E's Plan provides for a historic amount of new equity, which is particularly remarkable given the current stock market volatility and the worst financial market decline since 2008.[33]
- PG&E's quantitative metrics at exit will be in line with industry peers, including Southern California Edison Company ("SCE"), and consistent with an investment-grade issuer credit rating.[34]

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[30] *Id.* at 4.

[31] *Id.*

[32] *See* PG&E Br. at 35-36.

[33] Feb. 28, 2020 Tr. at 554 (cross-examination testimony of Mr. Wells) ("we've seen incredible disruption this week with the Corona virus [*sic*]"); *see also, e.g.*, The Wall Street Journal, *Stocks Suffer Biggest Weekly Losses Since 2008* (Feb. 28, 2020), *available at* https://www.wsj.com/articles/more-markets-head-toward-correction-territory-as-coronavirus-spooks-investors-11582864550 ("U.S. stocks extended a punishing selloff, dragged to their worst week since the financial crisis by mounting investor unease about the economic fallout from the coronavirus epidemic."); The New York Times, *Markets Plunge as a Global Recession Appears Almost Inevitable* (Mar. 16, 2020) https://www.nytimes.com/2020/03/16/business/stock-market-coronavirus-federal-reserve.html ("The disorder in financial markets has spread well beyond the market for stocks …. In the options market, the Chicago Board Options Exchange Volatility index, widely considered the stock market's 'fear gauge,' climbed more than 40 percent to its highest level since the worst of the financial crisis.").

[34] Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson) ("My recollection is that the leverage level is about consistent with Southern Cal Edison."); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster) ("I then review the financial plan that the company filed with the Commission and looked at the leverage metrics on that. And I compared the business risk into the two

- PG&E has committed to substantial equity contributions after emergence.
- The NOLs are a unique shareholder asset that is not reflected in rate base or on the balance sheet, and the real value of those NOLs counterbalances the Temporary Utility debt as they will be used to pay down that debt as they are monetized.
- The financing of PG&E's shareholder-funded contributions to the Go-Forward Wildfire Fund is a statutory requirement under AB 1054 associated with participation in the Go-Forward Wildfire Fund,[35] unrelated to PG&E's bankruptcy, and broadly applicable to all participating utilities.

CCSF, CSJ, and A4NR all criticize PG&E's ratio of debt-to-rate-base upon emergence.[36] But their estimates present inaccurate and incomplete pictures of PG&E for the aforementioned reasons. As TURN, EPUC, and IS agree, PG&E's ratemaking capital structure for setting rates should reflect the capital actually used to fund rate base, not other debt as A4NR suggests.[37] And PG&E's requested adjustments do just that by removing certain debt and/or associated charges that do not fund PG&E's rate base when calculating the ratemaking capital structure.

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closest comps, the two other California utilities. … I believe that the agencies will initially be more conservative around business risk for PG&E than it is for the other two companies. But that their leverage metrics, you know, are aligned with investment grade credit metrics."); PG&E-01 at 3-8 (opening testimony of Mr. Plaster) ("Under the contemplated PG&E Plan, PG&E's leverage profile falls within the investment grade category for the broad regulated utility sector."); Feb. 28, 2020 Tr. at 558:5-10 (cross-examination testimony of Mr. Wells) ("What I was trying to convey with that statement is that on a unsecured and secured basis, I do believe that the quantitative metrics the company is proposing under its financial plan would qualify for investment grade."); Feb. 28, 2020 Tr. at 527-28 (cross-examination testimony of Mr. Wells).

[35] *See* Pub. Util. Code §§ 3280(b), 3280(i), 3292(a).

[36] A4NR Br. at 15-22; CCSF Br. at 9-11; CSJ Br. at 6-7; *see also* CCSF-01 at 7, tbl.2, Attachment B.

[37] TURN-EPUC-IS-02 at 25:5-7 (reply testimony of Mr. Gorman); Mar. 3, 2020 Tr. at 1379 (cross-examination testimony of Mr. Gorman) ("[T]he company's intent … is that the ratemaking capital structure will reflect the capital used to support investment utility plant and equipment, and … [i]n this case, I believe that's a reasonable objective.").

Yet intervenors' estimates of PG&E's debt-to-rate-base ratio fail to account for the fact that some debt upon emergence will not actually fund rate base.

Specifically, $2.5 billion of Utility debt will be used for PG&E's contributions to the Go-Forward Wildfire Fund. In fact, like the other California large energy utilities, PG&E is financing its shareholder-funded contributions to the Go-Forward Wildfire Fund in accordance with the authorized capital structure (i.e., 52% of the contribution is funded with equity); accordingly, including the debt portion of that contribution in a debt-to-rate-base ratio would inaccurately suggest a higher ratio. Similarly, the $6 billion of Temporary Utility debt will pay wildfire claims and is counterbalanced by a unique, valuable, and off-balance-sheet shareholder asset—the NOLs—which likewise is unaccounted for in a debt-to-rate-base ratio.

Indeed, other parties recognize that shareholders will own NOLs arising from wildfire claims payment, and can beneficially use those NOLs either by funding customer credits as part of the rate-neutral Securitization (as PG&E will propose), or by refinancing the $6 billion in Temporary Utility debt.[38] A4NR asserts that the Commission determined in D.19-06-027 (the Stress Test Decision) that ratepayers, not shareholders, should receive the benefit of NOLs arising from wildfire-related liabilities. To be clear, D.19-06-027 stated only that where a utility seeks relief under the Stress Test, "[t]he Commission will maintain discretion to fashion appropriate treatment to address and preserve for ratepayers (without duplication) any tax benefits associated with losses from events that give rise to the Stress Test application."[39] That principle is consistent with PG&E's proposed rate-neutral Securitization that would utilize the NOLs to fund customer credits (as described below, and as will be elaborated in the forthcoming

[38] PG&E Br. at 34 n.103; Mar. 3, 2020 Tr. at 1221-22 (cross-examination testimony of Margaret A. Meal); Mar. 4, 2020 Tr. at 1378-1379 (cross-examination testimony of Mr. Gorman); see also Mar. 2, 2020 Tr. at 1043-1044 (cross-examination testimony of Catherine E. Yap).

[39] D.19-06-027, App'x A at 14.

application). D.19-06-027 does not otherwise bear on shareholder ownership of NOLs arising from shareholder payment of wildfire claims costs.

Some parties' estimates of debt-to-rate-base (e.g., A4NR, CCSF) also include PG&E Corporation debt, but the leverage of PG&E Corporation is not relevant to the Commission's evaluation because the Commission does not regulate a holding company's capital structure. Nor does the Commission use a holding company's capital structure as a basis to establish a utility's rates. Instead, the Commission treats funds from a parent holding company as equity in a utility subsidiary no matter their source.[40] The uncontroverted record evidence further establishes that the quantum of PG&E Corporation debt will have no impact on the Utility's access to or cost of debt.[41]

CCSF and CSJ (relying on CCSF's analysis) both compare PG&E's debt-to-rate-base ratio upon emergence to that same ratio over the 2016-2018 period.[42] Yet CCSF conceded that PG&E's debt-to-rate-base metric aligns with CCSF's proposed 2016-2018 baseline when debt not used to fund rate base is excluded from the ratio.[43] Thus, intervenors' criticisms of PG&E's leverage and capitalizations fail to account for critical elements of PG&E's Plan and post-emergence financial profile and should not be given weight. Similarly, A4NR's extreme

[40] *See* D.88-01-063, 27 CPUC 2d 347, 353 (1988) ("[T]he Commission will, of course, continue to determine the utility's capital structure and return on common equity on a stand-alone basis …."); D.86-03-090, 20 CPUC 2d 660 (Mar. 28, 1986) ("This Commission has traditionally adopted a return on equity for regulated utilities based upon the financial requirements of the utility, without regard to whether the utility is a subsidiary of a diversified corporation or a stand-alone enterprise."); *see also* D.96-11-017, 69 CPUC 2d 167 (1996).

[41] Feb. 26, 2020 Tr. at 293:1-12 (cross-examination testimony of Mr. Plaster).

[42] CCSF Br. at 10; CSJ Br. at 7 (citing CCSF-01 at 7, tbl.2).

[43] Mar. 3, 2020 Tr. at 1203:26-1204:5 (cross-examination testimony of Ms. Meal) ("Q. Well, I want to just establish that if we make that adjustment, the leverage ratio would be comparable to the time period you cite in Table 2 of 56 percent. A. Right, for that particular scenario where we're looking only at the utility level debt—. Q. Yes.").

position that the Commission should adjust PG&E's authorized cost of capital, including to reflect debt that is not funding rate base, should be disregarded.[44]

2. Other Parties Recognize The Strong Performance In PG&E's Financial Projections And PG&E's Commitment To Additional Equity Contributions To Pay Down Incremental Debt.

Other parties recognize and support the strong performance anticipated by PG&E's financial projections after it emerges from Chapter 11. EPUC and IS, for example, state that "PG&E's projected financial metrics show a significant improvement to its credit rating metric" and "suggest a significant strengthening of its credit standing over the five-year forecast period provided by PG&E's plan."[45] EPUC and IS also recognize PG&E's plan to expeditiously pay down the Temporary Utility debt and PG&E Corporation debt, noting that the "debt used to fund wildfire damage claims and trust fund is significantly reduced (paid off) over the projected five-year period" and this will "more closely align with investments in Utility rate base."[46]

However, EPUC and IS further suggest that the Commission should require PG&E to make a "commitment" to "achieve its projected financial recovery."[47] This misunderstands the nature and purpose of such financial projections. By releasing these financial projections, PG&E has indicated its best estimate of future performance based on current information and reasonable assumptions about the future. To be sure, PG&E has every intention of doing its best to meet or exceed these projections. Yet future performance ultimately will depend on a variety of factors, including many that are outside PG&E's control.

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[44] *See* A4NR Br. at 17.

[45] Opening Brief and Comments on the Assigned Commissioner's Ruling of the Energy Producers and Users Coalition and the Indicated Shippers (EPUC/IS Br.) at 23; *see also id.* at 23-30.

[46] EPUC/IS Br. at 25.

[47] *Id.* at 23.

For instance, PG&E's projections make explicit assumptions about future regulatory outcomes and cost recovery determinations,[48] and future financial performance will be affected by Commission policy. Indeed, PG&E's credit ratings "will depend not only on PG&E's future operational and financial performance but also on constructive implementation of the new statutory and regulatory regime, including AB 1054, by the Commission, and the Utility's participation in the Wildfire Fund."[49] And Commission policy, such as "modify[ing] settlements … introduces unpredictability in the regulatory process" and "is credit negative on a qualitative basis."[50] Moreover, current market volatility further illustrates the importance of macroeconomic conditions, including those external to PG&E, California, and the utility sector.[51] Following the recommendation of EPUC and IS would make PG&E effectively serve not only as a property reinsurer for its service territory with respect to wildfire risk under the doctrine of inverse condemnation, but also as an insurer against any future developments, including Commission decisions and broader macroeconomic conditions, that may materially affect PG&E's financial performance. There is no factual record or legal support for this impractical recommendation.

EPUC and IS's recommendations that the Commission require PG&E to commit to expeditiously repaying the Temporary Utility debt and limiting dividend payments to PG&E

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[48] PG&E-13 at 3-5.

[49] PG&E-01 at 2-23 (opening testimony of Mr. Wells).

[50] Feb. 28, 2020 Tr. at 676-77 (cross-examination testimony of Mr. Wells) ("I think it is credit negative on a qualitative basis to modify settlements, because it introduces unpredictability in the regulatory process. It also—another factor the market looks to is timely decision making. And modifying settlements creates the potential that parties will be more reticent to engage in settlement discussions. … I think it creates potential uncertainty that heightens risk and, therefore, is—challenges the qualitative aspects of the credit ratings.").

[51] Feb. 28, 2020 Tr. at 554 (cross-examination testimony of Mr. Wells).

Corporation shareholders until that is accomplished also are unnecessary.[52] PG&E now has made such a commitment—specifically, the reorganized holding company will not pay common dividends until it has recognized $6.2 billion in Non-GAAP Core Earnings following the Effective Date.[53] And, as already noted, PG&E has unambiguously committed to expeditiously delevering the Utility after emergence with respect to the $6 billion of Temporary Utility debt, either through Securitization or through the application of the monetized value of the NOLs.[54]

3. PG&E Will Emerge With Investment-Grade Secured Debt.

No party has come forward with affirmative evidence contradicting PG&E's showing that it will be able to access the credit markets with an investment-grade credit rating for secured debt, and none of the post-hearing briefing undermines that showing. John Plaster testified that the Utility would have an investment-grade credit rating on its secured debt, and that it would have adequate access to the capital markets post-emergence.[55] Indeed, the record clearly shows that PG&E will emerge with quantitative metrics comparable to its peers and in line with an investment-grade issuer rating.[56] And, as already noted, PG&E has agreed with the Governor to make an investment-grade rating on its secured debt a condition of effectiveness of PG&E's Plan.[57]

MCE and CSJ seek to challenge Mr. Plaster's conclusions, but their arguments are unpersuasive and unsupported by any evidence. Both MCE and CSJ rely on Mr. Plaster's

[52] *See* EPUC/IS Br. at 28-29.

[53] Resolution Motion (Official Notice Motion Ex. 1) at 18.

[54] *See* Feb. 28, 2020 Tr. at 575-76 (cross-examination testimony of Mr. Wells); PG&E-01 at 2-17, 2-18 (opening testimony of Mr. Wells); Resolution Motion (Official Notice Motion Ex. 1) at 19.

[55] PG&E-01 at 3-8 (opening testimony of John Plaster).

[56] *E.g.*, PG&E-01 at 3-8 (opening testimony of Mr. Plaster); Feb. 26, 2020 Tr. at 204:24-26 (cross-examination testimony of Mr. Johnson); Feb. 26, 2020 Tr. at 302:14-27 (cross-examination testimony of Mr. Plaster); Feb. 28, 2020 Tr. at 527-28, 558 (cross-examination testimony of Mr. Wells).

[57] Resolution Motion (Official Notice Motion Ex. 1) at 19.

acknowledgement that the Utility likely will have a sub-investment-grade credit rating on *unsecured* debt, and they assert that this establishes that PG&E will not emerge in a reasonable financial position.[58] The Utility, however, can and will issue only *secured* debt, which is common among utilities.[59] These parties nevertheless assert, without any record support, that PG&E's "capacity to issue secured debt is certain to be limited."[60] But neither MCE or CSJ (or any other party) provides any evidence as to what that purported limit on secured debt will be for PG&E, much less any showing that under any reasonable projections PG&E is likely to hit that ceiling. Their argument is refuted not only by the testimony of Mr. Plaster and Mr. Wells, but also by simple logic. In the future, PG&E will borrow to finance rate base, which both creates new assets (thereby expanding the available collateral) and a new stream of future income that can be used to amortize that debt.

CSJ's attacks on Mr. Plaster's conclusions based on his alleged bias also are unfounded.[61] Administrative Law Judge Allen and Commissioners Batjer and Rechtschaffen had the opportunity to observe Mr. Plaster's testimony live, and PG&E respectfully submits that Mr. Plaster was a highly credible witness. In addition, the fact that his employer, Barclays, is part of the exit financing actually reinforces his credibility, as it shows that Barclays has a sufficiently strong belief in PG&E's projected credit-worthiness to put billions of dollars at risk. CSJ further

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[58] CSJ Br. at 14-15; MCE Br. at 32-33.

[59] PG&E-01 at 3-4 (opening testimony of Mr. Plaster) ("It is common for utilities to issue secured debt in a mortgage bond structure."); TURN-EPUC-IS-02 at App'x B (PG&E response to data request stating that Utility exit financing will only be through secured debt); Feb. 26, 2020 Tr. 283:2- 284:19 (cross-examination testimony of Mr. Plaster) (secured debt, first mortgage bonds is the intent; no practical limit to the amount of secured debt that could be issued on an investment-grade basis).

[60] CSJ Br. at 8:9 (no citation provided); *see also id.* at 7:13-14 ("its ability to issue secured debt is likely to be very limited"; no citation provided); *id* at 8:17-18 ("What will happened when PG&E reaches its secured debt financing limit?"; no citation); MCE Br. at 32, 33 ("The Utility, were it to pursue unsecured debt …"; "PG&E's non-investment-grade rating will … lead to higher financing costs …").

[61] CSJ Br. at 13-14.

criticizes Mr. Plaster for not having engaged with the rating agencies about PG&E's credit rating under PG&E's Plan.[62] But that would not have been an appropriate role for Mr. Plaster, and he emphasized that he *has* engaged with the rating agencies more generally regarding their approaches to rating California utilities. This is an entirely appropriate approach for an expert witness.

PG&E does not anticipate receiving formal credit ratings until after Plan Confirmation, when the rating agencies can do a full review. However, after discussions with the financial markets and rating agencies since the evidentiary hearings, PG&E continues to believe that the secured debt to be issued in conjunction with PG&E's Plan will be rated investment-grade. If that expectation is not fulfilled, PG&E will promptly notify the Commission.

CSJ further asserts that Mr. Plaster's "analysis conflates the corporation with the utility," while also complaining that Mr. Plaster "did not analyze the debt at the holding company at all." These contradictory critiques are not persuasive. Mr. Plaster's expert opinion was addressed to the Utility's anticipated debt (which he did not conflate with holding company debt), which he explained did not require him to analyze the potential holding company debt.[63]

Finally, CSJ complains that Mr. Plaster relies on "constructive implementation of AB 1054" as an important element in PG&E's long term credit rating improvement, and that Mr. Plaster did not perform "stress tests" about possible alternative outcomes. However, Mr. Plaster amply explained that he did not need to perform stress tests because his evaluation corresponded

[62] *Id.* at 14.

[63] *See* Feb. 26, 2020 Tr. 290:5-6 (cross-examination testimony of Mr. Plaster) ("separate companies are not evaluated together"), 293:1-4, 10-12 ("Q. Would the amount of holding company debt potentially have an impact on the business risk of the utility? A. I don't believe so. … I don't believe that [the holding company debt is] having an impact on the utility rating.").

to the rating agencies' methodologies, and he was opining on the likely outcome of the rating agencies' evaluations.[64]

B. <u>The Plan Is Neutral On Average To Ratepayers. (Scoping Memo §§ 4.1, 4.4)</u>

AB 1054 contemplates that the Commission will make a determination, prior to June 30, 2020, that the Plan is neutral, on average, to ratepayers. PG&E's Plan satisfies the neutrality requirement because it does not increase rates and, in fact, will result in a reduction in rates through substantial interest cost savings achieved through the debt refinancing. These cost savings will reduce PG&E's cost of debt and thereby reduce its revenue requirement, yielding an estimated revenue requirement reduction in 2021 of $192 million, after accounting for amortization and recovery of certain financing-related fees (currently estimated at $154 million).[65] Accordingly, PG&E requests that the Commission:

- Determine pursuant to Section 3292(b)(1)(D)(ii) and prior to June 30, 2020 that the Plan of Reorganization is neutral, on average, to ratepayers, because the Plan and other documents resolving the insolvency proceeding do not increase rates.

[64] Feb. 26, 2020 Tr. 275:9-12, 17-20, 25-27 (cross-examination testimony of Mr. Plaster) ("my conclusions are supported by my understanding of the rating agency methodology and their analysis of the two closest comps …. [It was appropriate not to do sensitivity tests because] catastrophic events or very large material events are something that … are generally not evaluated at that rating. … I factored in my understanding of how the rating agencies work and their methodology in reaching my conclusions."); *see also id.* at 277:9-10 ("In general my experience has been that they [rating agencies] have not [done sensitivity cases involving material adverse events]"). CSJ improperly characterizes "constructive implementation" as meaning "utility-biased decisions." In fact, as the testimony established, the rating agencies view this concept as one of consistency with the regulatory construct, not "biased" outcomes. *See* PG&E-01 at 3-5:20-3-7:9, 3-8:21-24 (opening testimony of Mr. Plaster). And given the reality that credit rating agencies will evaluate the business risk component—the element that must improve in order for PG&E to achieve investment-grade ratings for unsecured debt—based on their perceptions of regulatory risk and predictability, it is difficult to see how CSJ would want a credit rating analysis to be performed without acknowledging that factor.

[65] PG&E-11.

- Reject parties' requests for long-term conditions on cost recovery after emergence as inconsistent with the statute's requirement that *the Plan and other documents resolving the insolvency proceeding* are found neutral *prior to June 30*.
- Approve PG&E's proposal to update the authorized cost of debt to incorporate interest rate savings through a Tier 2 advice letter to be filed in the Cost of Capital proceeding within 30 days of the Effective Date of the Plan.
- Find that known financing-related fees are reasonable as estimated (~$154 million), subject to a true-up in the same Tier 2 advice letter.

1. AB 1054 Directs The Commission To Evaluate The Plan And Other Documents Resolving The Insolvency Proceeding By June 30, 2020.

Certain intervenors propose that the neutrality condition requires the Commission to imagine which circumstances affecting ratepayers would not have occurred in a hypothetical world without bankruptcy, wildfires, or the deterioration in PG&E's financial condition since 2017, and requires the Commission to monitor PG&E indefinitely in order to nullify those circumstances. That approach misconstrues the statute, which contemplates a determination of neutrality that is defined as to scope and occurs at a particular moment in time. Potential rate impacts outside of PG&E's Plan are not before the Commission in this proceeding. Such costs will be addressed, if at all, in separate Commission proceedings in the normal course, not subject to AB 1054's "neutral, on average" requirement or its June 30, 2020 deadline, but instead subject to the Commission's traditional cost recovery standards.

Section 3292(b)(1)(D)(ii) states that the Commission must "determine[] that the reorganization plan and other documents resolving the insolvency proceeding are … neutral, on average, to the ratepayers of the electrical corporation." By its terms, that provision directs the Commission to evaluate the effects on ratepayers of "the reorganization plan and other documents resolving the insolvency proceeding"—and does not involve the effects of other regulatory proceedings, past utility actions or events, or the utility's financial condition after emergence. The provision therefore was designed to ensure that the Plan does not force ratepayers to bear costs that they would not have borne in the normal course—i.e., costs that have not otherwise been reviewed by the Commission for reasonableness or approved for recovery from ratepayers. PG&E's Plan of Reorganization is neutral because it does not result in any increase in rates of that kind.

TURN attacks this approach as too narrow—indeed, as "border[ing] on the frivolous"—because "the Plan 'by its terms' says nothing at all about rates."[66] But the fact that PG&E's Plan satisfies the neutrality condition is not a reason to reinterpret the statute. In prior instances in which regulated utilities have filed for Chapter 11, their plans of reorganization and accompanying decisions of courts and regulators *have* included rate impacts.[67] By contrast, here, AB 1054 prevents PG&E's Plan from increasing rates, and the Plan complies with that condition.

The Commission also must interpret the neutrality provision in harmony with the other provisions of AB 1054.[68] In Section 3292(b)(1)(D)(ii), the Legislature directed the Commission to evaluate only whether "the reorganization plan and other documents" are neutral, and did not point the Commission to the wide range of other factors that conceivably might affect PG&E

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[66] TURN Br. at 2.

[67] D.03-12-035 at 33 (Commission Decision in PG&E's prior bankruptcy) ("[W]e find that the provisions concerning the regulatory asset, which will comprise approximately 5.4% of PG&E's retail electric rates, are just and reasonable"); *id.* at 34 n.13 ("[T]he far more typical situation addressing a public utility's recovery of costs, such as the present case, involves changes to the public utility's rates."). *See also In re Public Service Co. of New Hampshire*, 114 B.R. 820, 843 (Bankr. D.N.H. 1990) ("[T]he Court concludes that the Rate Agreement compromise embodied in the Plan of Reorganization is within the range of expectable results from a litigated rate case and is in fact fair and equitable in the circumstances.").

[68] *See, e.g.*, *State Dept. of Public Health v. Superior Court*, 60 Cal. 4th 940, 955 (2015) ("A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions.").

ratepayers, such as past wildfires, climate change, macroeconomic circumstances, and the utility's overall and future financial condition. If the Legislature had wanted the Commission to address whether a broader set of factors from the utility's past and future was "neutral, on average, to ratepayers," it would have said so. Indeed, in neighboring Section 3292(b)(1)(C), the Legislature explicitly directed the Commission to examine a number of issues (including "the electrical corporation's safety history" and "recent financial condition") in evaluating the Plan—confirming that the Legislature knew how to dictate a more sweeping review when desired.[69]

Moreover, Section 3292(b) states that "an electrical corporation must meet the following conditions by no later than June 30, 2020," including the Commission's determination of neutrality.[70] The neutrality provision states the Commission will "determine that the reorganization plan and other documents resolving the insolvency proceeding *are* … neutral, on average, to the ratepayers"[71] before June 30. Thus the neutrality provision contemplates a present-tense determination, before June 30, that the Plan and other documents *are* (not "will be") neutral to ratepayers. Neighboring provisions state further conditions that "by no later than June 30," "[t]he electrical corporation's insolvency proceeding has been resolved pursuant to a plan or similar document not subject to a stay," and "[t]he [C]ommission has approved the reorganization plan and other documents resolving the insolvency proceeding."[72] Together, those statutory provisions contemplate resolution of the Chapter 11 proceeding before June 30,

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[69] *See* Pub. Util. Code § 3292(b)(1)(C) ("The commission has approved the reorganization plan and other documents resolving the insolvency proceeding, including the electrical corporation's resulting governance structure, as being acceptable in light of the electrical corporation's safety history, criminal probation, recent financial condition, and other factors deemed relevant by the commission.").

[70] *Id.* §§ 3292(b), (b)(1)(D)(ii).

[71] *Id.* § 3292(b)(1)(D) (emphasis added).

[72] *Id.* § 3292(b)(1)(D).

along with Commission approval of the Plan and determination of neutrality based on the Plan *by the same date*.

The statute is internally consistent: It makes sense that the Commission's determination of neutrality, which must occur prior to June 30, would be confined to information available before that date—namely, the information in "the reorganization plan and other documents resolving the insolvency proceeding." By contrast, some intervenors proffer definitions of neutrality that cannot be satisfied unless PG&E meets certain post-emergence conditions. Those definitions do not rely on the Plan, but instead on future developments in the utility's financial condition, the overall economy, and other Commission proceedings. Accordingly, those definitions cannot be reconciled with the statute, which contemplates a present-tense determination that the Plan and other documents *are* neutral in advance of June 30.

Other aspects of the statute and the legal background confirm that the goal of the provision was to prohibit the use of the Plan to recover costs, especially wildfire costs, from ratepayers outside the normal cost recovery process. Section 3292(b)(1)(B) requires, as a condition to participation in the Go-Forward Wildfire Fund, that the Plan fund wildfire claims in the full amount agreed in settlement or established by the bankruptcy court. Section 3292(b)(1)(D) therefore states that the same Plan that funds wildfire claims costs also must be "neutral, on average, to the ratepayers." Taken together, these provisions mean that the Utility must pay the wildfire claims and cannot use the Plan to pass those costs on to ratepayers outside the context of a normal Commission process and normal Commission standards.

Finally, the neutrality requirement should be interpreted in light of the fundamental principle that the Commission applies the "just and reasonable" standard in determining what costs can be recovered in rates. There are some exceptions to that overarching requirement, such as the Customer Harm Threshold ("CHT") in Section 451.2. But as TURN argued in the CHT proceedings, those exceptions should be construed narrowly.[73] The same principle governs Section 3292(b)(1)(D): Because costs normally are subject to the Commission's administration of the just and reasonable standard, Section 3292 should not be construed to impinge the Commission's authority to regulate cost recovery and review costs for reasonableness. By contrast, TURN and other parties urge the Commission to adopt an expansive definition of neutrality that would indefinitely restrict the treatment of various categories of potential costs. The statute contains no warrant for this limitless, ill-defined neutrality concept, which would undermine the Commission's ability to review future applications for cost recovery under its traditional standards.

2. The Plan Reduces Rates.

The Plan is neutral to ratepayers because the Plan will not increase rates. In fact, the Plan will result in a net reduction in rates through the interest rate savings arising from debt refinancing, taken together with the limited amount of financing-related fees that PG&E seeks to recover. PG&E has committed to recover only certain fees which are well below the amount of interest rate savings—a nominal amount of $1.4 billion, which PG&E translated to a net present value of $683 million using a discount rate of 7.81% and duration of 16 years.[74] The fees to be recovered, which relate to the debt refinancing that produced the interest rate savings, are currently estimated at $154 million (not including hedging costs, which are not yet known).[75] Those costs will be amortized over the life of the debt; accordingly, the approximately $154

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[73] *E.g.*, R.19-01-006, Opening Comments of The Utility Reform Network on the Order Instituting Rulemaking (Feb. 11, 2019) at 3 ("A bedrock principle of California public utilities law is that costs that are the result of utility imprudence are not just and reasonable and therefore may not be added to customer rates"); *id.* at 4-5 ("In addition to fundamental fairness, the prudence doctrine is driven by the common-sense view that rate regulation should provide the right incentives for a utility to operate safely and prudently.").

[74] PG&E-08 at 5.

[75] PG&E Br. at 52 n.180 & 53.

million in costs should be compared to the $1.4 billion in savings. Conversely, PG&E will not recover additional bankruptcy-related fees, including approximately $1.6 billion of bankruptcy professional fees. PG&E asks the Commission to (a) approve PG&E's proposal to update the authorized cost of debt to incorporate interest rate savings through a Tier 2 advice letter to be filed in the Cost of Capital proceeding within 30 days of the Effective Date of the Plan; and (b) find that known financing-related fees are reasonable as estimated (~$154 million),[76] subject to a true-up in the same Tier 2 advice letter.[77]

Although other parties continue to dispute the best method for calculating the value of those savings, they do not offer any reason to doubt that interest rate savings will arise from the bankruptcy process and will benefit ratepayers.[78] As PG&E described in its Opening Brief, the range of estimates of the net present value of interest rate savings is between $415 million (Joint CCAs) and $700 million (TURN), with PG&E's estimate at approximately $683 million.[79] PG&E's $683 million estimate does not include the recovery of financing-related fees, but the parties do not dispute that the interest rate savings that will be realized by customers exceeds the

[76] *See* PG&E Br. at 75-78; *see also* PG&E-01 at 2-18-2-21, 2-25- 2-32, 2-35-2-36 (opening testimony of Mr. Wells); PG&E-07 at 2-19-2-19A; PG&E-08 at 1-2; PG&E-09 at 2-3; PG&E-11; Feb. 28, 2020 Tr. at 646:18-28 (cross-examination testimony of Mr. Wells).

[77] *See* PG&E Br. at 75-78, 178 (Request for Commission Determinations and Authorizations), ¶¶ 9, 11 (describing this request).

[78] *See* Post-Hearing Brief and Comments on Assigned Commissioner Ruling of East Bay Community Energy, Monterey Bay Community Power, Peninsula Clean Energy Authority, and Silicon Valley Clean Energy Authority (JCCA Br.) at 16 (citing cross-examination testimony of Mr. Wells that the total interest cost savings are "closer to [$]700 million"); *cf.* EPUC/IS Br. at 16-18; Opening Brief with Comments of the California Large Energy Consumers Association (CLECA Br.) at 23-24 (agreeing with recovery of refinancing costs); CCSF Br. at 15 ("PG&E's purported interest rate savings are highly dependent on how such savings are calculated."). *But see* TURN Br. at 15 (suggesting without citations that other parties questioned the existence of interest rate savings).

[79] *See* PG&E Br. at 51; PG&E-08; PG&E-15. The $683 million estimate is PG&E's low-end estimate, which uses the discount rate of 7.81% (consistent with PG&E's weighted average cost of capital) and 16-year duration (endorsed by CCSF; *see* CCSF-01 at 26), but does not incorporate financing-related fees which PG&E will seek to recover (currently estimated at $154 million).

amount of fees PG&E seeks to recover. Indeed, PG&E calculated an illustrative revenue requirement savings of $192 million on an annual basis in 2021 under the Plan, which confirms that the combined effect of interest rate savings and financing-related fees is a net reduction in customer rates.[80]

PAO accepts PG&E's proposal to recover approximately $154 million in financing-related fees, and recommends that PG&E amortize those costs over the life of the debt (as is typical and as PG&E proposes to do).[81] CLECA likewise agrees that recovery of fees related to the debt refinancing is appropriate, but seeks to cap fee recovery at $154 million. The Commission should not impose a specific cap on the *amount* of fees, but instead should (1) accept PG&E's commitment not to seek recovery of any costs outside the *categories* identified in PG&E's Opening Brief;[82] and (2) accept PG&E's commitment that the amount of fees to be recovered will not exceed the amount of interest rate savings to be realized by

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[80] PG&E Br. at 52-53 & n.180. The estimated $192 million of savings accounts for $150 million of amortized financing-related fees and the Utility's lower cost of debt post-emergence, but does not account for "other" new issuance fees (~$4 million) or hedging costs, if any.

[81] Opening Brief of the Public Advocates Office and Comments on Assigned Commissioner's Ruling (PAO Br.) at 10; PG&E Br. at 53.

[82] PG&E identified the following categories of costs for recovery (PG&E Br. at 76, 178 ¶¶ 9, 12):

- ~$26 million in typical underwriting fees on new PG&E long-term debt (excluding any fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Go-Forward Wildfire Fund);
- ~$4 million in other issuance costs (including typical issuance costs, such as rating agency, Commission, SEC, and legal fees excluding any such fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Go-Forward Wildfire Fund);
- Up to $106 million under the terms of the Noteholder RSA as necessary to achieve the interest rate cost savings for the benefit of customers;
- ~$18 million in fees on the Bridge Facility (excluding any fees on the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Go-Forward Wildfire Fund); and
- Interest rate hedging costs, if any, associated with the Utility debt that funds rate base (excluding any costs of interest rate hedging associated with the $6 billion of Temporary Utility debt or the debt used for PG&E's contributions to the Go-Forward Wildfire Fund).

customers. Because certain of the costs that PG&E will seek to recover are associated with transactions that have not yet been consummated (such as the issuance of new debt and potential hedging transactions), the final amounts are not yet known. But given that PG&E estimates the interest cost savings of the Plan at $1.4 billion in nominal dollars, and a revenue requirement reduction of $192 million in 2021 alone, there is no danger that the fees currently estimated at $154 million will increase beyond the amount of savings.

Certain parties (TURN, CCSF, EPUC, and IS) argue that PG&E should not be allowed to recover *any* fees in rates,[83] but that position is unsubstantiated. Those parties do not appear to distinguish between the vast amount of bankruptcy-related professional fees which PG&E will not seek to recover (~$1.6 billion) and the limited amount of financing-related fees which PG&E will seek to recover (currently estimated at ~$154 million).[84] Those parties also do not acknowledge that the limited categories of fees designated for recovery either (1) were necessary to achieve the overall savings to customers of the Noteholder RSA; or (2) are typical issuance fees that are recoverable in the normal course of financing transactions (as intervenors agreed on cross-examination).[85]

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[83] TURN Br. at 15 ("The Commission should decide here that the financing-related costs and fees of PG&E's Plan will not be recovered from ratepayers, now or in the future, consistent with the 'neutral, on average' requirement."); CCSF Br. at 15 ("[T]he Commission should not allow PG&E to recover any costs associated with its bankruptcy, irrespective of any claimed interest rate savings."); EPUC/IS Br. at 7-8.

[84] TURN Br. at 12 (reiterating concerns that PG&E might seek recovery of $1 billion of bankruptcy-related professional fees); CCSF Br. at 16 (lumping financing-related costs in with 2017 and 2018 wildfire claims costs, all professional fees, and equity backstop fees).

[85] *See* Mar. 4, 2020 Tr. at 1375:18-1376:18 (cross-examination testimony of Mr. Gorman); Mar. 2, 2020 Tr. at 1017:22-8 (cross-examination testimony of Ms. Yap, in which Ms. Yap acknowledged that the Utility recovered its actual financing fees in connection with the prior bankruptcy proceeding); PG&E Br. at 52 n.181; PG&E-X-01 at 27 ("We adopt PG&E's unopposed proposal to cap bond issuance costs at $25 million plus costs for the Commission financing team.").

EPUC and IS assert that *all* "bankruptcy-related costs" are "clear examples of costs that do not meet the prudent and reasonable standard," but provides no record support for that claim.[86] Moreover, that point relies on the erroneous view that AB 1054 requires the Commission to compare the Plan to a hypothetical world without any wildfires (and hence without the liabilities that led to the Chapter 11 filing).[87] As PG&E explained in its Opening Brief, this approach is neither statutorily defensible nor capable of implementation.[88] In reality, the neutrality provision directs the Commission to determine whether the Plan itself raises rates, without comparing the Plan to a hypothetical world without wildfires or other prepetition events. PG&E's Plan will create a net decrease in rates, and PG&E's proposal—to transfer interest rate savings to customers, and recover limited financing-related costs which made those savings possible and which would be recoverable in the normal course—is entirely consistent with neutrality under the statute.

3. The Plan Does Not Require Ratepayers To Fund Wildfire Claims Costs.

PG&E's Plan also is neutral because it does not raise rates to pay for wildfire claims. Even beyond the Plan itself, PG&E will file an application with the Commission for approval of a single post-emergence Securitization of approximately $7.5 billion which would be neutral, on average, to ratepayers, and also would accelerate deferred payments to the wildfire victim trust under the Plan. If the Commission does not approve the Securitization, PG&E will not seek to recover in rates any portion of the amounts paid in respect of Fire Claims under the Plan.[89]

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[86] EPUC/IS Br. at 7-8.

[87] *Id.* ("PG&E would not have filed for Chapter 11 protections 'but for' the imprudence relate to its facilities and operations resulting in wildfire liabilities.").

[88] See PG&E Br. at 58-62.

[89] Resolution Motion (Official Notice Motion Ex. 1) at 18:23-19:2.

Additionally, the Governor has recently stated in the Support Statement filed in the Bankruptcy Court that the proposed rate-neutral Securitization would "be in the public interest, as it would strengthen the going-forward business and support the reorganized Utility's ability to provide safe, reliable, affordable and clean energy to its customers."[90]

Some intervenors contend the neutrality requirement prohibits PG&E from recovering wildfire claims costs at any time in the future.[91] PG&E's independent commitment that it will not seek recovery of Fire Claims costs except through a rate-neutral Securitization moots those arguments. Nevertheless, that view is not supported by the statute because the neutrality provision only addresses cost recovery *in the Plan* and other documents resolving the insolvency, and does not address potential future recovery of wildfire (or other) costs in other Commission proceedings or after exit. TURN and others argue that the recovery of wildfire claims costs should be uniquely restricted because those costs were "central" to the need for Chapter 11 relief,[92] but the statute does not contemplate limiting future cost recovery if the costs at issue were particularly "central" to the bankruptcy filing. EPUC and IS further argue that wildfire claims costs cannot be recovered in the future because they are imprudent, but again the record does not support that position; those costs have never been reviewed for reasonableness.[93]

Other parties also attack the proposed Securitization in their briefs, but the Commission is not being asked to approve the Securitization in this proceeding. Rather, PG&E will soon file a

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[90] Governor's Support Statement at 4 ¶ 5.

[91] *See, e.g.*, TURN Br. at 16 ("PG&E's suggestion that it is entitled to seek later recovery of any portion of those amounts that it can demonstrate as being 'just and reasonable' should be firmly and finally rejected at this time"); CLECA Br. at 16; Opening Brief of the Official Committee of Pacific Gas and Electric Company Tort Claimants on Post-Evidentiary Hearing Issues and Comments on Additional Issues Posed by Assigned Commissioner Ruling (TCC Br.) at 10.

[92] *E.g.*, TURN Br. at 16; EPUC/IS Br. at 12.

[93] EPUC/IS Br. at 10 ("This terminology should be taken further to include all imprudent and unreasonable costs resultant of wildfire damage claims.").

separate Securitization application that will explain the proposed transaction in more detail,[94] and objections to the proposal should be raised in that forum. For example, CSJ says the neutrality of Securitization cannot be determined without comprehensive analysis of the expected NOLs and their timing, but that information will be addressed in the separate Securitization proceeding.[95]

In the meantime, intervenors' criticisms of the Securitization are not only premature but also misguided. For instance, parties who insist that AB 1054 applies to the Securitization proposal are overreaching: The financing order, term sheet, and any decision approving the Securitization cannot possibly be "documents resolving the insolvency proceeding" because the insolvency proceeding will be resolved well before those documents are issued.[96] In the same vein, the Securitization documents cannot be reviewed consistent with the June 30, 2020 deadline, because Securitization will occur post-emergence; approval and consummation of the Securitization are not prerequisites for Plan confirmation or emergence. Indeed, even as PAO argues that the Securitization should be governed by neutrality, it acknowledges PG&E's testimony that Securitization is not necessary to enable PG&E to exit bankruptcy and recognizes that the Plan (without Securitization) will independently address all pre-petition debts prior to confirmation.[97]

Ultimately, parties who claim the Securitization is subject to the neutrality requirement should be satisfied because PG&E voluntarily has committed to propose a Securitization that *is*

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[94] *See, e.g.*, Feb. 28, 2020 Tr. 521:10-13 (cross-examination testimony of Mr. Wells); Mar. 3, 2020 Tr. 1097:26-1027:6 (cross-examination testimony of Mr. Kenney).

[95] CSJ Br. at vi, 20-21.

[96] *Contra* PAO Br. at 4.

[97] PAO Br. at 8.

neutral on average to ratepayers.[98] The details of that neutrality will be elaborated in the separate application. If anything, the opportunity to address Securitization in a distinct proceeding benefits stakeholders by providing an opportunity to raise objections without the June 30 deadline.

Nonetheless, some parties leap to criticize the proposed transaction. A4NR overreads the CHT Decision and argues that all NOLs from wildfire claims payment belong to ratepayers, but as described above, the Decision does not state that rule. Instead, the Decision's narrower statement that tax benefits *from the Stress Test* "should be applied against the relief the utility is requesting from ratepayers"[99] is consistent with a proposal to apply the Stress Test and utilize the cash flows from NOLs to fund customer credits. Other parties contend that Securitization will not be neutral because it will "increas[e] ratepayer risk exposure."[100] But parties generally have not quantified this concern or identified any concrete potential negative impact on ratepayers, except to suggest that bill credits might be threatened by a future bankruptcy.[101] As Catherine Yap (CLECA) acknowledged during cross-examination, however, that concern can be answered by the Commission's ability to order ongoing rate credits despite a future bankruptcy.[102] In any event, to the extent that possible increased risk affects the Commission's evaluation of the Securitization, it should be addressed in that separate proceeding.

[98] This refutes PAO's contention that PG&E is "circumventing" AB 1054 by filing the Securitization application separately. PAO Br. at 3.

[99] D.19-06-027 at 34.

[100] *E.g.*, CCSF Br. at 14.

[101] *E.g.*, *id.*

[102] Mar. 2, 2020 Tr. 1040:8-21 (cross-examination testimony of Ms. Yap) ("Q. Does this Commission have the authority to order that rate credits that would be used as an offset in a securitization to the rate charges would continue in the event of a PG&E bankruptcy? … Q. If the Commission were to determine it did have that authority, that would reassure you on the risk that you cite; correct? A. It would certainly address an[] issue.").

4. Proposals That Require Future Monitoring Are Unwarranted, Unnecessary, And Unworkable.

A. Numerous parties would use the neutrality requirement to restrict PG&E's future ability to recover costs in the normal course after exit. But the statute describes a determination of neutrality based on the Plan, by no later than June 30, 2020. The Commission will have the authority to enforce its decision in this proceeding, but additional conditions and monitoring after exit are not based on a reasonable reading of the statute, nor are they practical.

Specific attempts to use "neutrality" to attack normal course recovery of future costs are misguided. For example, EPUC and IS's argument that PG&E should not be able to recover costs of "repair and replacement" of equipment is not a defensible application of the neutrality condition.[103] The Plan does not raise rates to recover those costs, which may be subject to recovery in the normal course. EPUC and IS's related contention that these costs would be "unjust and unreasonable" has no basis in the record of this proceeding. Separately, A4NR's claim that the ongoing costs of Diablo Canyon Nuclear Power Plant violate the neutrality condition is misguided.[104] Again, the Plan does not raise rates to recover those costs—nor does the Plan remove those costs from Commission jurisdiction and continuing review.[105] Instead, the costs of Diablo Canyon have been and will continue to be reviewed by the Commission in the normal course.[106]

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[103] EPUC/IS Br. at 4-5.

[104] A4NR Br. at 8.

[105] PG&E-08 at 3-4; *see also* Feb. 26, 2020 Tr. 229-30 (cross-examination testimony of Mr. Johnson) ("Certainly, [the IBEW] understood that … we were living up to the agreement … that all the stakeholders had made, but weren't the final arbiters of the closing date. … If someone who has the authority to change the agreement changes it, we will, of course, abide by that.").

[106] In any event, PG&E contests A4NR's assertion that the Diablo Canyon Nuclear Power Plant is not necessary or cost-effective. *See* Feb. 26, 2020 Tr. 228-230 (cross-examination testimony of Mr. Johnson) (discussing value of Diablo Canyon); R.16-12-007, *Proposed Decision on 2019-2020 Electric Resource Portfolios to Inform Integrated Resource Plans and Transmission Planning* (Feb. 21, 2020) ("Diablo Canyon provides system reliability benefits, as well as GHG emissions benefits, that are needed for the

B. Other parties use the "neutrality" provision as a hook to demand long-term monitoring of PG&E and to categorically bar recovery of certain categories of costs.[107] Those approaches are not tied to the statutory text, which speaks only about the Plan and other documents resolving the insolvency and contemplates a pre-June 30 decision by this Commission. TURN protests that PG&E's interpretation of neutrality as "narrow in both scope and time" will create "a significant erosion of any meaningful protection of PG&E's ratepayers."[108] But the reality is that the additional measures of ratepayer "protection" TURN seeks are simply beyond the scope of the neutrality condition in AB 1054.

In addition to being disconnected from the statute, most demands for long-term monitoring are unnecessary because the proposed conditions already are satisfied by PG&E's Plan and related commitments. Parties raise concerns about (1) future recovery of bankruptcy fees; (2) future recovery of wildfire claims costs; and (3) future dividend policy.[109] But PG&E has already made commitments responsive to those concerns: (1) PG&E will not seek recovery

electric system as a whole."). *See also* A.16-08-006, *Joint Response to Alliance for Nuclear Responsibility's Petition for Modification of D.18-01-022* (Oct. 31, 2019) (describing the significance of 2024/2025 planned Diablo Canyon retirement to the integrated resource planning process); D.20-03-006, *Decision Denying Petition for Modification* (Mar. 28, 2020) (denying A4NR Petition for Modification of Decision Approving Retirement of Diablo Canyon Nuclear Power Plant).

[107] *See* EPUC/IS Br. at 9 (proposing Commission "[e]stablish an ongoing, periodic auditing procedures [sic] to ensure bankruptcy and wildfire claims costs are not passed on to customers directly or indirectly in PG&E's post-emergence period from bankruptcy."); TURN Br. at 20 (proposing "Commission should determine that achieving and maintaining compliance with the 'neutral, on average' requirement of AB 1054 will require assessments, both now and in the future, of whether the costs of financing PG&E's utility operations are higher due to the financing and financial structure from its Plan of Reorganization."); JCCA Br. at 19 (proposing "Commission should provide for an annual review of the baseline versus actual costs, with an opportunity for PG&E to show that its creditworthiness had improved such that neutrality 'on average' had been achieved and the mechanism should be terminated."); MCE Br. at 6 (proposing Commission "[k]eep this proceeding open as the venue for enforcing 'neutral, on average' and 'contributions of ratepayers'.").

[108] TURN Br. at 7.

[109] CCSF Br. at 15-16; *see also* MCE Br. at 7 (asserting that PG&E should not be able to recover financing costs associated with Wildfire Fund contributions, bankruptcy-related professional fees, equity backstop fees, holding company bridge fees, and 2017 and 2018 wildfire claims costs); JCCA Br. at 17.

of bankruptcy-related fees, except for limited categories of financing-related fees which are currently estimated at $154 million (plus any hedging costs) and will not exceed the interest rate savings arising from the Plan; (2) PG&E will not seek recovery of prepetition wildfire claims costs except through a rate-neutral Securitization transaction; and (3) PG&E Corporation will not pay common dividends until it has recognized $6.2 billion in Non-GAAP Core Earnings, and that amount would be deployed as capital investment or reduction in debt.

C. Proposals for future monitoring also exceed the scope of the statute because they are based on nebulous standards that are impossible to administer. As Ms. Meal acknowledged on cross-examination, "[t]he world in which PG&E had not declared bankruptcy … is highly speculative"[110]—yet parties persist in trying to define artificial measures of that alternative hypothetical world. Moreover, in many instances, PG&E already satisfies the benchmarks that parties identify.

The bulk of parties' monitoring proposals relate to comparing potential future costs of financing to a hypothetical baseline. For example, TURN suggests that "PG&E's capital structure and financing as proposed may cause higher financing costs for capital investments PG&E will make in the course of providing utility service."[111] TURN appears to mean that financing costs in the future should be compared to what ratepayers would have paid "in the absence of PG&E's reorganization," but offers no method to measure that baseline.[112] Taking a slightly different tack, Mr. Gorman, on behalf of TURN, EPUC, and IS, on cross-examination suggested comparing PG&E's future cost of debt to a hypothetical cost of debt that would have

[110] Mar. 3, 2020 Tr. at 1179:28-1180:14 (cross-examination testimony of Ms. Meal).

[111] TURN Br. at 20; *see also* CCSF Br. at 10.

[112] TURN Br. at 10.

existed in the absence of imprudence;[113] in their brief, EPUC and IS repeatedly assert without warrant that all costs related to the bankruptcy filing are imprudent.[114] By contrast, the Joint CCAs envision a baseline that "should consider both the utility's pre-petition costs (based on its pre-petition credit ratings and adjusted for interest rate changes over time) as well as the current financing costs for the other major California energy utilities."[115]

As explained in detail in PG&E's Opening Brief, those proposals are not consistent with AB 1054 and are not workable. First, the statute provides no direction or guidance for how the Commission should craft an appropriate comparator "baseline"; the fact that parties likewise fail to coalesce around a single, clear methodology for calculating the "baseline" cost of debt simply underscores that this approach is illogical.[116] Certainly, the arbitrary exclusion of certain prepetition events under Mr. Gorman's "baseline" cannot be justified with reference to the statute. In fact, at the threshold, there is "no way to compare the costs of the [P]lan to a world in which PG&E didn't file for bankruptcy," as Ms. Meal admitted on cross-examination.[117] For similar reasons, CCSF's argument that "impacts on ratepayers include more than rates" is not relevant, as CCSF does not articulate how the Commission could evaluate the relative neutrality of non-rate-related aspects of the Plan or explain why those aspects of the Plan are not "neutral."

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[113] Mar. 4, 2020 Tr. at 1330:2-18, 1367:22-1368:19 (cross-examination testimony of Mr. Gorman); *see also* PG&E Br. at 59 & n.211.

[114] EPUC/IS Br. at 7, 11.

[115] JCCA Br. at 19.

[116] *See, e.g.*, Mar. 4, 2020 Tr. at 1295:17-1297:5 (cross-examination testimony of Mr. Beach) (explaining that he selected a "baseline" that excluded the Camp Fire because it had a "close connection" to the bankruptcy filing, but included the 2017 wildfires even though "there's no way" to know whether PG&E would have filed for bankruptcy in the absence of those fires).

[117] Mar. 3, 2020 Tr. at 1184:12-23 (cross-examination testimony of Ms. Meal).

In fact, the Plan broadly is more than neutral to customers: It benefits customers by restoring PG&E to financial health and expeditiously satisfies prepetition liabilities.[118]

Second, to the extent those alternative "baselines" can be determined and applied, the evidentiary record suggests only that PG&E meets the relevant standards. For example, TURN proposes monitoring potential future "higher costs" of debt,[119] but PG&E is the only party that has offered a quantified assessment of post-exit cost of debt, which is lower than PG&E's prepetition cost of debt.[120] On the other hand, the Joint CCAs state that "the baseline should consider both the utility's pre-petition costs (based on its pre-petition credit ratings and adjusted for interest rate changes over time) as well as the current financing costs for the other major California energy utilities."[121] Setting aside that the Joint CCAs do not explain how to accommodate and reconcile those distinct benchmarks, PG&E's anticipated post-exit cost of debt is lower than all of them: The Utility's prepetition cost of debt was 4.89%; SCE's current authorized cost of debt is 4.74%, and San Diego Gas & Electric Company's ("SDG&E") is 4.59%; and yet PG&E's estimated post-emergence cost of debt is approximately 4.3%.[122]

Other proposals for future monitoring would hold PG&E accountable for its financial projections.[123] The question whether PG&E's financial condition matches its projections over the coming years is not related to the statutory condition that the Plan be "neutral, on average, to ratepayers." Moreover, as described above, PG&E's projections are its best estimate of future

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[118] *See supra* Part II.A.

[119] TURN Br. at 21.

[120] *See* PG&E Br. at 52-55.

[121] JCCA Br. at 19.

[122] PG&E Br. at 57.

[123] EPUC/IS Br. at 23; *see also* TURN Br. at 12 (discussing "higher costs of debt that PG&E's customers could face if the utility's post-emergence financial condition is less rosy than PG&E predicts.").

performance based on current information, but it would be impossible for PG&E to guarantee those projections because they depend on many factors that are outside of PG&E's control.[124]

At bottom, proposals that would measure neutrality by monitoring PG&E's future normal-course cost recovery are not just contrary to the statute. They also are bad policy because they require the Commission to assume onerous administrative responsibilities with no end date. CCSF itself makes this point when it argues that the Commission should establish up-front parameters on cost recovery, rather than "requir[e] exhaustive tracking of interest rate savings and PG&E's bankruptcy-related costs over time."[125] CCSF also observes that future conditional monitoring would "require determination of the methodology … as well as careful tracking … over time, and evaluation of appropriate methods for valuing costs and benefits that are not necessarily matched with each other over time."[126] CCSF is arguing that the interest rate savings to customers should not be compared to financing fees to be recovered. But in fact CCSF's concerns emphasize the substantial difficulties of tracking artificial measures of neutrality over time, which would include the administrative drain on the Commission and stakeholders, the substantive impossibilities of calculating hypothetical "baselines" and comparing PG&E's actual performance, and the indefinite duration of these tasks.[127] The Commission should not adopt unworkable requests for future monitoring. Instead, the

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[124] *See supra* Part II.A.2.

[125] CCSF Br. at 16.

[126] *Id.*

[127] TURN claims that PG&E's interpretation of neutrality would "render[] the ratepayer protections under AB 1054 less meaningful, with a half-life of months because they expire at or shortly after the utility's emergence from bankruptcy." TURN Br. at 10. In fact, it is TURN's proposal that is completely unbounded by time, with a half-life that may never expire. *See* TURN Br. at 11 (saying only that "the Commission will need to be attentive to the ongoing effects for a longer period going forward."). *See also* Mar. 3, 2020 Tr. at 1241:6-1243:23 (cross-examination testimony of Ms. Meal) (failing to provide a specific end date for the neutrality evaluation: "anything where there's a time … for PG&E to demonstrate that it has not imposed undue risk on its ratepayers would be appropriate.").

Commission should determine, prior to June 30, 2020 and consistent with the statute, that PG&E's Plan is neutral because it does not increase customer rates.

C. <u>PG&E's Plan Does Not Require Ratepayer Contributions. (Scoping Memo § 4.5)</u>

AB 1054 requires the Commission to "determine[] that the reorganization plan and other documents resolving the insolvency proceeding recognize the contributions of ratepayers, if any, and compensate them accordingly . . . ."[128] This provision is specific to customer contributions to the Plan and other documents resolving the bankruptcy proceeding. Customer contributions in the normal course of the Commission's ratemaking process are not "contributions" that must be compensated under AB 1054.

Because PG&E's Plan does not require incremental customer contributions via increased rates or otherwise, the Commission should determine that there are no contributions subject to compensation under AB 1054.

1. Insurance Premiums Paid By Customers In The Normal Course Are Not Contributions To the Plan Under AB 1054.

Various parties argue that the $2.2 billion of insurance proceeds that are among the Plan's funding sources reflect customer "contributions" to PG&E's Plan.[129] As an initial matter, the insurance proceeds at issue reflect funds from insurance companies, not customers. Accordingly, these parties stretch to argue that the customer "contributions" are the costs of the underlying insurance premiums. As discussed in detail in PG&E's Opening Brief, however, that position is without merit because such costs are a cost of service recovered in customer rates in the normal course, independent of PG&E's Plan.

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[128] Pub. Util. Code § 3292(b)(1)(E).

[129] *See* TURN Br. at 26-27; CLECA Br. at 24-25; CSJ Br. at 22.

The Commission has consistently treated wildfire liability insurance premium costs as a reasonable cost of service that is appropriately recovered in customer rates.[130] The Legislature affirmed in AB 1054 that such insurance coverage is critical for California's investor-owned utilities.[131] Pursuant to the Commission's general ratemaking principles, customers pay the reasonable costs of utility service, including liability insurance costs, and in return, they receive utility service.[132] Customers do not, however, have any claim to the resulting utility assets—whether rate base, insurance proceeds, or anything else. As explained by the California Court of Appeal:

> [I]t has long been established that "[b]y paying bills for service [utility customers] do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company." (*Board of Commrs. v. N. Y. Tel. Co.* 271 U.S. 23, 32 [70 L.Ed. 808, 46 S.Ct. 363] (1926).) Rather, "[c]ustomers pay for service, not for the property used to render it." (*Ibid.*) The revenue paid by the customers belongs to the company. (*Id.* at p. 31.)[133]

The reasonable costs of service borne by customers in the normal course cannot be characterized as incremental "contributions" to PG&E's Plan subject to compensation under AB 1054. TURN effectively concedes this point in acknowledging that insurance costs may be an

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[130] *See, e.g.*, D.19-19-051 (SDG&E and SoCalGas 2019 GRC proceeding) (authorizing creation of two-way balancing account for recovery of liability insurance premiums in rates); D.19-05-020 (SCE 2018 GRC proceeding) (approving SCE's liability insurance forecast to be recovered in rates); D.17-05-013 (PG&E 2017 GRC proceeding) (approving settlement that authorized recovery of liability insurance premiums in rates); D.14-08-032, at 550 (PG&E 2014 GRC Proceeding) (authorizing recovery of liability insurance premiums in rates and stating "Procuring excess liability insurance is a reasonable business practice."); D.10-12-053 (SDG&E "Z-Factor" proceeding) (approving recovery in rates of incremental insurance premiums); Resolution E-4994, at 10 (SCE "Z factor" advice letter) (approving recovery of incremental insurance coverage and stating "the Commission recognizes a utility's purchase of insurance as a reasonable expense.").

[131] *See* Pub. Util. Code § 3293.

[132] As discussed in PG&E's Opening Brief, customers also receive benefits from a utility's insurance coverage, including risk mitigation during covered periods and protection from cost recovery for any amounts covered under insurance policies.

[133] *Ponderosa Tel. Co. v. Pub. Util. Comm'n*, 197 Cal. App. 4th 48, 57 (2011).

appropriate customer expense.[134] Although TURN argues that certain insurance costs should not be paid by customers, TURN also admits that this argument is being addressed in other ratemaking proceedings before the Commission, having nothing to do with PG&E's Plan.[135]

The fact that these insurance proceeds are among the Plan's funding sources does not somehow transform them into an incremental customer contribution to PG&E's Plan. Indeed, the Plan necessarily encompasses all of PG&E's assets and liabilities in order to effectuate a complete reorganization. No party suggests that liability insurance proceeds used to satisfy claims in the normal course should be credited to customers.[136] The result should be no different in the bankruptcy context.

Moreover, a construct whereby the Commission could determine after the fact that reasonable insurance premium costs are not recoverable to the extent of utility negligence during the policy periods would introduce further uncertainty and inconsistency in Commission

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[134] *See* TURN Br. at 26 ("TURN understands that some amount of wildfire liability insurance coverage may be an appropriate expense to recover from ratepayers, consistent with the risk ratepayers may face for damage claims arising from circumstances under which the utility has not been negligent.").

[135] *See* TURN Br. at 26 ("[W]here the underlying wildfire events are linked to utility negligence or mismanagement, as has been alleged for all of the pre-petition wildfires for which claims payments are included in the Plan of Reorganization, the reasonableness of having ratepayers fund the insurance coverage on behalf of shareholders' interest is questionable, at the very least. Such issues will be more fully developed and addressed in other proceedings in which the utility seeks rate recovery of the wildfire liability insurance expenses.").

TURN has made this argument in several other proceedings involving not just PG&E, but SCE as well. *See, e.g.*, Resolution E-4994, dated February 21, 2019 (SCE advice letter requesting Z-factor treatment for wildfire liability insurance costs); A.18-12-009 (PG&E 2020 GRC proceeding); A.19-07-020 (SCE WEMA proceeding); A.20-02-004 (PG&E WEMA proceeding). The Commission previously rejected TURN's approach and should continue to do so in pending proceedings. *See* Resolution E-4994, at 10 ("[T]he Commission recognizes a utility's purchase of insurance as a reasonable expense. At the time insurance is purchased, it cannot be determined what portion, if any applies toward a claim that is the result of utility negligence."). In any event, TURN's argument should be dismissed here because there is no support in the record to find that the insurance proceeds at issue were received as a result of imprudence on the part of PG&E.

[136] Mr. Gorman, TURN's witness in this proceeding, admitted that "ratepayers do not receive refunds of insurance proceeds" in the normal course. *See* EPUC-01 at 20 (Question and Answer 19b).

proceedings at a time when all stakeholders should be aligned in the goal of strengthening the regulatory compact.[137] PG&E is poised to embark on a historic capital raise, and California investor-owned utilities need to attract critical investments now more than ever.

2. Claimed Customer Risks Associated With The Proposed Post-Emergence Securitization Are Not Contributions To The Plan, But Will Be Addressed By PG&E's Securitization Proposal.

Various parties also argue that the potential risks of Securitization constitute customer contributions that should be compensated under AB 1054.[138] As discussed in PG&E's Opening Brief, and above, such risks are not customer contributions to the Plan for the threshold reason that Securitization is not part of PG&E's Plan. PG&E will file a separate application seeking Commission approval of Securitization, which will address the customer benefits and the overall transaction in more detail.

3. Because The Plan Does Not Require Ratepayer Contributions, There Is No Need For Ongoing Review By The Commission.

TURN and MCE propose that the Commission should establish an ongoing review process for parties to identify and quantify claimed customer "contributions" to PG&E's Plan that will "emerge or become more apparent over time."[139] As discussed in more detail above, such proposals contravene the statute and should not be adopted.

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[137] For example, "regulatory risk" components comprise 50% of the overall Moody's rating for utilities, with "Ability to Recover Costs and Earn Returns" at 25%. *See* CCSF-01, Attachment H (Moody's, "Rating Methodology: Regulated Electric and Gas Utilities" (June 23, 2017)) at 4. Similarly, S&P evaluates "the regulatory framework's relative credit supportiveness" based in part on "how regulatory stability" and "financial stability … protect a utility's credit quality and its ability to recover its costs." *See* PG&E-X-04 (S&P Global Ratings, "Key Credit Factors For The Regulated Utilities Industry" (Nov. 19, 2013)) at 6.

[138] *See* A4NR Br. at 6-8; CCSF Br. at 14-15; CSJ Br. at 22.

[139] *See* TURN Br. at 27 ("For further contributions that will emerge or become more apparent over time, the Commission should establish that interested parties will have an ongoing opportunity to identify and seek to quantify such contributions, and propose an appropriate mechanism of compensating ratepayers accordingly for such contributions."); MCE Br. at 8-9 ("If the Commission approves the PG&E Plan, this proceeding should remain open to evaluate and determine for each transaction or broader impact (1) whether it would result in a ratepayer contribution; and (2) a quantified dollar figure for that

As with the neutrality requirement, AB 1054 requires the Commission to determine by June 30, 2020 that the Plan recognizes customer contributions, if any. If the statute contemplated the ongoing review and evaluation of hypothetical future "contributions" that TURN and MCE propose, it would be impossible for the Commission to make this determination by June 30, 2020, as required by the statute. For that reason alone, such proposals must be rejected. The proposals should also be rejected because there are no customer "contributions" to the Plan now or in the future. The future "contributions" that MCE posits in its brief are based on a fundamental misunderstanding of the statute and the record. For example, MCE illogically suggests the non-bypassable charge the Commission imposed on ratepayers in D.19-10-056 to support the Go-Forward Wildfire Fund[140] could be deemed a customer contribution to PG&E's Plan.[141] The Commission adopted that charge pursuant to AB 1054 for PG&E, SCE, and SDG&E, not because of PG&E's Chapter 11 case. MCE also erroneously suggests the $6 billion Temporary Utility debt and equity backstop commitments could be potential customer contributions,[142] but the record is clear that those costs will be the responsibility of shareholders,

contribution."). *See also* MCE Br. at 7 ("[F]ollowing each determination of a 'ratepayer contribution' in this proceeding, PG&E should have a 30-day window to file a motion in this proceeding containing a disallowance schedule for tracking and ensuring 'neutral, on average' and 'contributions of ratepayers' continue to be met.").

[140] *See* D.19-10-056 ("This decision finds that it is appropriate for the Commission to exercise its broad authority to impose a non-bypassable charge on the ratepayers of California's large electrical corporations in order to support California's new Wildfire Fund, and that the imposition of such a charge is just and reasonable.").

[141] *See* MCE Br. at 9 (identifying as potential "contribution" "the $6 billion in ratepayer spend PG&E triggered through its decision to include the AB 1054 Wildfire Fund in its restructuring plan.").

[142] MCE Br. at 9.

not customers.[143] Other potential future "contributions" identified by MCE—e.g., securitization and costs associated with the Regional Restructuring Plan—are not part of PG&E's Plan at all.

AB 1054 is limited to customer contributions to "the reorganization plan and other documents resolving the insolvency proceeding." In light of PG&E's Plan, the Commission can and should determine at this time that the Plan does not require ratepayer contributions, with no need for ongoing review or future "tracking."

D. <u>Other Parties Agree With PG&E Regarding The Overarching Purpose Of The Ratemaking Capital Structure. (Scoping Memo § 4.7)</u>

PG&E has proposed three sets of adjustments for calculating its ratemaking capital structure consistent with the overarching goal of identifying the mix of debt and equity funding PG&E's rate base.[144] No party has contested the basic principle put forward by PG&E regarding the overall objective of the regulatory capital structure and, in fact, other parties agree with PG&E on this point. For instance, EPUC and IS agree that the "[r]atemaking [c]apital [s]tructure [s]hould [r]eflect [c]apital [u]sed to [f]und [i]nvestments in Utility [r]ate [b]ase."[145] And PG&E's proposed adjustments faithfully implement that principle in terms of regulatory accounting, a point that EPUC and IS do not meaningfully contest.[146]

To be sure, EPUC and IS note that "Mr. Gorman opined that such adjustments *may* also include removing common equity that is used to fund contributions to the California Wildfire

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[143] *See* PG&E-01 at 2-15:18-20 (opening testimony of Mr. Wells); PG&E-08 at 2. The record also is clear that the Temporary Utility debt will be used to pay wildfire claims at exit, not pre-petition debt as asserted by MCE. *See id.*

[144] PG&E Br. at 45-47. *See* PG&E-01 at 2-21-2-22 (opening testimony of Mr. Wells); PG&E-07 at 2-22-2-22A.

[145] EPUC/IS Br. at 31. *See also* TURN-EPUC-IS-02 at 25:5-7 (reply testimony of Mr. Gorman); Mar. 3, 2020 Tr. at 1246-47 (cross-examination testimony of Mr. Gorman) ("[I]n this case, I believe that's a reasonable objective.").

[146] EPUC/IS Br. at 31.

Trust from the equity included in the ratemaking capital structure."[147] Yet the issuance of equity and payment to the Fire Victim Trust has no effect on the Utility's equity balance except insofar as the payment extinguishes the non-cash charge and thereby restores the common equity balance by removing the effect of the non-cash charge. Thus, no "exclusion" is necessary.[148] Obviously, the payment of equity *to* the Fire Victim Trust is an outflow; it does not add to the Utility's equity and is not counted as an addition to the Utility's regulatory capital structure.

EPUC and IS also suggest for the first time in their opening brief that PG&E's proposed adjustments should depend on "PG&E agree[ing] to the financial improvement objectives based upon its own five-year financial forecasts."[149] For reasons already discussed, EPUC and IS's recommendations in this regard misunderstand the nature and purpose of PG&E's financial projections and would hold PG&E responsible for exogenous factors entirely outside its control that may affect future financial performance.[150] This is unwarranted and unnecessary given the commitments PG&E already has made and it would be particularly inappropriate in the context of PG&E's ratemaking capital structure.

E. <u>Fines and Penalties (Scoping Memo § 4.2)</u>

As described in PG&E's Opening Brief, the Commission has approved as fair and reasonable settlements resolving three of four Commission proceedings regarding claims for fines or penalties based on PG&E's prepetition conduct.[151] In the fourth such proceeding, the Wildfire OII, PG&E entered a $1.675 billion settlement agreement with SED, CUE, and OSA.[152]

[147] EPUC/IS Br. at 31 (emphasis added).

[148] *See* PG&E Br. at 46, nn.163-64.

[149] EPUC/IS Br. at 31.

[150] *See supra* Part II.A.2.

[151] PG&E Br. at 66.

[152] *Id.* at 67.

The Presiding Officer's Decision issued February 27, 2020 (POD) approved the settlement with modifications that raised the dollar value of the settlement by nearly $1 billion, factoring in estimated future tax savings that the modifications would require PG&E shareholders to forgo.[153] On March 18, 2020, PG&E both appealed and filed a motion seeking other relief regarding the POD, requesting that the settlement be approved as originally submitted.[154] As explained in PG&E's Opening Brief, however, the Commission need not address the outcome of this appeal or the final resolution of the Wildfire OII settlement in order to determine in this proceeding that PG&E's Plan meets the requirements of AB 1054. The confirmation of PG&E's Plan is not conditioned on the resolution of the Wildfire OII,[155] and thus the Commission may approve, and the Bankruptcy Court may confirm, PG&E's Plan before a final resolution of the Wildfire OII has been reached. While PG&E's Plan does provide that the satisfactory resolution of that proceeding is a condition precedent to the Effective Date of the Plan,[156] PG&E expects to reach a resolution of the Wildfire OII that will permit exit from bankruptcy.

No party disputes that PG&E's settlement of the above proceedings will result in the satisfactory resolution of claims for pre-petition fines or penalties. MCE's arguments regarding PG&E's payment of fines and penalties are either baseless or beyond the scope of this proceeding. MCE asserts that the Commission must take some unspecified "protective measures" to be able to impose fines and penalties with regard to "the Tubbs Fire, the Kincade Fire and all other conduct, including unknown conduct that has occurred."[157] This argument

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[153] I.19-06-015, Presiding Officer's Decision Approving Proposed Settlement Agreement with Modifications (Feb. 27, 2020) (Wildfire OII POD).

[154] I.19-06-015, Pacific Gas and Electric Company's (U 39 E) Appeal of Presiding Officer's Decision Approving Settlement Agreement with Modifications, filed Mar. 18, 2020.

[155] PG&E's Plan § 9.1(c).

[156] *Id.* § 9.2(m) [3/9 Plan § 9.2(*l*)].

[157] MCE Br. at 42.

goes beyond the issue scoped in this proceeding—namely, the Plan's satisfactory resolution of claims for monetary fines or penalties for pre-petition conduct[158]—both to the extent it relates to post-petition conduct, and because conduct that is not the subject of a claim for fines or penalties does not implicate whether PG&E's Plan provides for satisfactory resolutions of such claims that will allow PG&E to emerge from bankruptcy. MCE's suggestion that the Commission should order PG&E to pay any fines and penalties imposed *in the Wildfire OII* without impacting the funding for the Fire Victims Trust[159] is also outside the scope of this proceeding, because it calls for a particular remedy in that separate proceeding (and, indeed, the POD in that proceeding proposed such a remedy[160]).

F. **Parties' Arguments Regarding PG&E's Requested Financing Authorizations And The Holding Company Conditions Lack Merit. (Scoping Memo § 4.7)**

MCE's brief advances a number of arguments related to PG&E's requested financing authorizations and the Commission's holding company conditions that are legally erroneous and entirely lacking in evidentiary support.[161] Similarly, CCSF's characterization of PG&E's short-term debt authorization is incorrect.[162] Accordingly, these arguments should be given no merit.

1. Financing Authorizations

PG&E has requested four specific debt authorizations in this proceeding in connection with its exit from Chapter 11.[163] MCE is the *only* party to object to these authorizations, and its objections are wrong.

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[158] Scoping Memo at 6.

[159] MCE Br. at 43.

[160] *See* Wildfire OII POD at 2.

[161] MCE Br. at 17-28, 33-40.

[162] CCSF Br. at 8-9.

[163] PG&E Br. at 71-75; Feb. 28, 2020 Tr. at 544:7-8, 13-15 (cross-examination testimony of Mr. Wells).

First, MCE asserts that PG&E has failed to comply with Rule 3.5 of the Commission's Rules of Practice and Procedure.[164] MCE makes this assertion without reference to any specific information MCE believes is lacking, apart from passing references in other portions of its brief to "term sheets."[165] Yet Rule 3.5 applies to "*[a]pplications* to issue stock or evidences of indebtedness" (emphasis added) and, consistent with the direction in Administrative Law Judge Allen's December 27, 2019 Ruling Modifying Schedule, PG&E has "request[ed] approval of the long-term debt in this proceeding" and not "via a separate application," which would be subject to Rule 3.5.[166] In any event, PG&E has included the information required by Rule 3.5 (and the information customarily included in PG&E's prior financing applications). The evidentiary record amply supports a Commission determination.[167]

MCE's supposition that the utility must present the term sheet for a financing transaction before the Commission can authorize the utility to pursue such a transaction is unprecedented and unworkable. Utilities typically submit applications seeking authorization for a total quantum of debt that will be issued in the market at some future point in the time when a specific need arises. In that scenario, such applications describe the types of debt instruments the utility seeks authorization to issue and the utility's anticipated need for that debt. But, contrary to MCE's suggestion, there are no "term sheets" or agreements that specify the exact terms of the debt for which authorization is sought.[168] Accordingly, the Commission routinely grants debt

[164] MCE Br. at 34.

[165] *See* MCE Br. at 37, 38, 40.

[166] December 27, 2019 Ruling at 4-5.

[167] *See* PG&E-01 at 2-25-2-38 (opening testimony of Mr. Wells); PG&E-02 (Exs. 2.1-2.5); PG&E-03 (Ex. 2.6); PG&E-04 (Exs. 2.7-2.9); PG&E-07 at 2-27 – 2-28, 2-Exh.2.8-1-2-Exh.2.8-44 (Ex. 2.8). *See, e.g.*, A.14-06-020 (2014 PG&E long-term debt application).

[168] *See, e.g.*, A.19-10-014 (2019 SCE long-term debt application); A.17-12-008 (2017 SCE long-term debt application); A.19-10-015 (2019 SDG&E long-term debt application); A.08-12-014 (2008 PG&E short-term debt application).

authorizations without a "term sheet" or the full terms and conditions, which depend on market conditions when the debt is actually issued.[169]

Here, some of PG&E's requested authorizations are to issue debt in the market while others relate to specific debt instruments the terms of which PG&E has already negotiated given the circumstances of the Chapter 11 cases, namely the debt to be issued under the Noteholder RSA and the Bridge Facility. For these debt instruments, PG&E included their full terms and conditions in the record (along with the other information PG&E typically includes in its debt applications in support of all four of PG&E's requested debt authorizations).[170] For this reason the exhibits to Mr. Wells' direct testimony alone occupy nearly three full volumes. Thus, PG&E's request in fact includes more information than accompanies a typical debt application.

Second, contrary to MCE's suggestion, the Utility Bridge Facility does not constitute a guaranty within the meaning of Public Utilities Code § 701.5. MCE effectively concedes as much by admitting that "MCE *loosely defines this as a 'guaranty*.' "[171] Section 701.5 prohibits a utility from "issu[ing] any bond, note, lien, guarantee, or indebtedness of any kind pledging the utility assets or credit for or on behalf of any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation" except in certain circumstances where authorized by the Commission. MCE asserts that certain prepayment provisions in the Utility Bridge Facility which reference the PG&E Corporation Bridge Facility constitute "an impermissible guaranty."[172] Yet these terms in the Utility Bridge Facility simply do not "pledg[e] … utility assets or credit for or on behalf of" PG&E Corporation under Section

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[169] *See, e.g.*, D.18-06-008 (granting A.17-12-008); D.09-05-002 (granting A.08-12-014).

[170] *See* PG&E-02 (Exs. 2.1-2.5); PG&E-03 (Ex. 2.6); PG&E-04 (Exs. 2.7-2.9). *See also* PG&E-07 at 2-Exh.2.8-1-2-Exh.2.8-44 (Ex. 2.8).

[171] MCE Br. at 39 (emphasis added).

[172] *Id.*

701.5. Moreover, the terms make clear that prepayment of the PG&E Corporation Facility would "be subject to requisite regulatory approvals,"[173] which a fortiori would encompass compliance with Section 701.5.[174]

Third, MCE makes a number of other incorrect assertions regarding the Bridge Facility. MCE states that PG&E did not provide a "term sheet" for "the $5.825 billion PG&E Corporation facility."[175] The $5.825 billion Bridge Facility is for the *Utility*, not PG&E Corporation, and PG&E provided the commitment letter, including a term sheet.[176] To be sure, there is a separate *$5 billion* Bridge Facility for PG&E Corporation[177] but that facility is not subject to Commission approval.[178] PG&E made clear that the PG&E Corporation facility is "not a utility obligation."[179] MCE nevertheless continues to assert that it "would be the responsibility of the Company [i.e., the Utility] until the debt is able to be refinanced"[180] and suggests that if the Utility receives insurance proceeds the *Utility* would be required to prepay the *PG&E Corporation* facility.[181] To support this proposition, MCE mischaracterizes the testimony of Mr.

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[173] PG&E-07 at 2-Exh.2.8-27.

[174] MCE also states that "[a]ny cross-default between the Company and the Corporation's debts would be an impermissible guaranty." *Id.* at 39. But a cross-default provision does not constitute a guaranty. *See Cross-Default Clause*, Black's Law Dictionary (11th ed. 2019); *Guaranty*, Black's Law Dictionary (11th ed. 2019).

[175] MCE Br. at 39.

[176] *See* PG&E-07 at 2-Exh.2.8-1-2-Exh.2.8-44 (Ex. 2.8).

[177] *See* Second Amended Motion for Entry of Orders (I) Approving Terms of Debtors' Entry Into and Performance Under, Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors' Entry Into and Performance Under, Debt Financing Commitment Letters and (III) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses As Administrative Expense Claims, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6013, Ex. 4.

[178] Feb. 28, 2020 Tr. at 791:20-792:1 (statement of counsel on behalf of PG&E).

[179] Feb. 28, 2020 Tr. at 791:21 (statement of counsel on behalf of PG&E).

[180] MCE Br. at 39 (citing Feb. 28, 2020 Tr. at 551:22-27).

[181] *Id.* at 38.

Wells, stating that he "confirmed" this was the case.[182] MCE asked "But in the meantime, until you refinance, all these commitments are the responsibility of the company and you're seeking approval of those transactions; is that correct?"[183] Mr. Wells' response—"I am"—was a response to the second part of a two-part question and cannot reasonably be construed as "confirming" the first part of MCE's question. The PG&E Corporation facility is debt of PG&E Corporation, not the Utility. As already noted, there is no guaranty of this PG&E Corporation debt by the Utility and, contrary to MCE's suggestions, the Utility has no obligation to repay the PG&E Corporation facility, i.e., it is not "on the hook," whether "in the event of receipt of insurance and condemnation proceeds," "if [PG&E] Corporation cannot pay," or otherwise.[184]

MCE also appears to confuse the Bridge Facility with the Temporary Utility debt.[185] They are not the same. PG&E has requested authorization to issue up to $11.925 billion in debt in the market and this could take the form of either long-term debt or short-term debt.[186] This total amount has three components: $100 million for refinancing pollution control bonds, $5.825 billion in new Utility debt, and $6 billion in Temporary Utility debt to pay wildfire claims costs.[187] If PG&E were to issue this as short-term debt at exit, one possible instrument PG&E could use is the Bridge Facility if, for example, "debt market conditions deteriorate" such that PG&E cannot issue this debt in the market.[188] But the Bridge Facility is currently sized to cover

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[182] *Id.* at 39.

[183] *Id.* at 791:22-26.

[184] MCE Br. at 38-39.

[185] *Id.*

[186] PG&E Br. at 72; *see* PG&E-01 at 2-29-2-31, 2-33-2-34 (opening testimony of Mr. Wells).

[187] *See* PG&E-01 at 2-16 tbl.2.2.

[188] PG&E-01 at 2-36.

the $5.825 billion component of the $11.925 billion request, not the $6 billion in Temporary Utility debt as MCE suggests.[189]

Fourth, MCE takes issue with PG&E's contemplated issuance of secured debt and claims that it is "without any benefit to ratepayers."[190] MCE provides no record support for this assertion, and there is none. The record unambiguously demonstrates that PG&E has negotiated debt refinancing under the Noteholder RSA that significantly reduces the interest rate on certain prepetition debt for the benefit of customers and that PG&E plans to take advantage of currently low interest rates associated with secured debt for exit. PG&E's cost of debt will decrease as a result of PG&E's Plan, benefitting customers.

Finally, unlike MCE, CCSF does not object to PG&E's requested debt authorizations but CCSF does mischaracterize the basis of PG&E's short-term debt request. Specifically, in its testimony CCSF asserted that PG&E's requested $2 billion increase to its short-term debt authorization, associated with, inter alia, collateral posting requirements, was *due to* PG&E's bankruptcy.[191] PG&E clarified this issue before the start of evidentiary hearings: "As clarification, PG&E's higher collateral posting requirements arise from the fact that PG&E Corporation and the Utility no longer have investment-grade credit ratings. Rating agencies downgraded PG&E below investment-grade in early January 2019, prior to and separate from PG&E's filing for Chapter 11 bankruptcy."[192] Moreover, the record shows that PG&E sought a similar $2 billion increase to its short-term debt authorization in late 2018 *before* filing for

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[189] MCE Br. at 38-39. PG&E has noted that it "could seek to increase the amount of the Bridge Facility up to the full amount of the $11.925 billion in requested short-term authorization," PG&E-01 at 2-36 n.63, but it has not done so to date.

[190] MCE Br. at 35.

[191] CCSF-01 at 12-13, 22-23.

[192] PG&E-08 at 4 (citations omitted).

Chapter 11 and accessing the debtor-in-possession financing.[193] CCSF conceded this was the case during the evidentiary hearings[194] yet continues to erroneously assert this point in its brief.

2. Holding Company Conditions

MCE's allegations regarding the Commission's holding company conditions are equally meritless, misread the record, and fall outside the scope of this proceeding and the Commission's jurisdiction. MCE advances a number of arguments that, in its view, show PG&E is undercapitalized and that this undercapitalization constitutes a violation of the holding company conditions.[195] MCE goes so far as to argue that "PG&E's failure to make a showing regarding … the first priority condition is inexcusable"[196] and to "recommend[] that the holding company authorization should be revoked."[197] Yet demonstrating compliance with all the holding company conditions is not part of PG&E's burden in this proceeding, which is focused on issues related to AB 1054 and PG&E's Plan.[198] Just as PG&E does not have a burden to demonstrate compliance with the Commission's affiliate transaction rules or its General Orders in this proceeding,[199] so too with respect to the holding company conditions.

MCE's claim that PG&E will be undercapitalized at exit and that this constitutes a violation of the first priority condition[200] is unsupported and overlooks the new debt and the historic amount of equity that PG&E Corporation will raise for the primary benefit of the Utility

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[193] *See* PG&E-X-06 (A.18-10-003).

[194] Mar. 3, 2020 Tr. at 1223:18-28 (cross-examination testimony of Ms. Meal).

[195] MCE Br. at 18-28.

[196] MCE Br. at 20.

[197] MCE Br. at 26, 27-28.

[198] *See* Scoping Memo at 4-7.

[199] *See, e.g.*, PG&E Advice Letter 4114-G/5576-E (June 28, 2019) (Affiliate Transaction Rules Compliance Plan).

[200] MCE Br. at 19-21.

as well as PG&E's commitments to additional equity contributions and delevering after exit.[201] MCE asserts that the capital structure adjustments PG&E proposes violate the first priority condition, but does not explain the basis for this accusation; in fact, those adjustments are warranted (and broadly supported), as discussed above. MCE seems to think that it violates the first priority condition for the Utility to pay a dividend to the parent while the Temporary Utility debt is outstanding, but again, this lacks any support. The Utility Board can reasonably conclude that a dividend should be paid to the parent, consistent not only with the first priority condition, but also with the condition that it establish a dividend policy as if it were a standalone company. As noted, the Utility has the benefit of NOLs, which will generate substantial future cash flow that can support either credits in the Securitization or, if that is not consummated, the amortization of the Temporary Utility debt. Taking the NOLs into account, as well as the remainder of PG&E's capital spending plan and access to capital, the Utility Board could reasonably conclude that a dividend is warranted and would not deprive PG&E of the capital needed to meet its public service obligations.[202] Certainly, there is no basis for MCE to assume the contrary conclusion.

Likewise, MCE appears to dispute the undeniable benefits to PG&E of the equity backstop commitments.[203] MCE overlooks the fact that the equity backstop provides substantial certainty regarding PG&E's ability to raise the equity component of its plan funding at exit.[204] This certainty is particularly significant in light of recent market volatility. Moreover, the equity

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[201] PG&E-01 at 2-16 tbls.2.2-2.3 (opening testimony of Mr. Wells).

[202] See D.02-07-043 at 15 (characterizing first priority condition as meaning that if the "utility's ability to discharge its obligation to serve [is] threatened due to lack of access to 'capital' . . . the first priority condition requires its holding company to give the utility preference over all competing potential recipients of capital resources.").

[203] MCE Br. at 24-25.

[204] PG&E-01 at 2-24 (opening testimony of Mr. Wells).

backstop commitments are agreements between PG&E Corporation and certain PG&E Corporation shareholders. As such, they do not involve obligations of the Utility and fall outside the Commission's limited jurisdiction over PG&E Corporation.[205] PG&E also submitted the equity backstop commitments to the Bankruptcy Court for approval, which was granted.[206] While MCE claims that the timing of this filing of the amendment to the equity backstop commitment letter "demonstrate[s] that PG&E is not acting in good faith and is likely to be intentionally acting in bad faith,"[207] there is no basis for these assertions or for MCE to suggest that the timing of this filing *in the Bankruptcy Court* had anything to do with this proceeding. The equity backstop is a transaction involving PG&E Corporation, not the Utility. MCE never inquired about the earlier equity backstop agreement, and the amendment was not material to any issue before the Commission in this proceeding. Nevertheless PG&E publicly disclosed the amendment promptly. MCE's baseless accusation should be disregarded.

MCE also claims that the equity backstop would "dilute the shares awarded to compensate fire victims thus reducing the [stock] value … that must rebound before victims can be made whole."[208] MCE is simply wrong. The Fire Victim Trust receives new shares at Plan value, subject to a floor.[209] The simultaneous issuance of shares to the backstop parties is

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[205] *PG&E Corp. v. Pub. Utilities Comm'n*, 118 Cal. App. 4th 1174 (2004).

[206] *See* Order (I) Approving Terms of, and Debtors' Entry Into and Performance Under, Equity Backstop Commitment Letters and (II) Authorizing Incurrence, Payment and Allowance of Related Premiums and Expenses as Administrative Expense Claims, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6321 (approving Second Amended Motion for Entry of Orders (I) Approving Terms of Debtors' Entry Into and Performance Under, Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors' Entry Into and Performance Under, Debt Financing Commitment Letters and (III) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses As Administrative Expense Claims, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6013).

[207] MCE Br. at 14.

[208] MCE Br. at 25.

[209] Under PG&E's Plan, Aggregate Fire Victim Consideration is defined as including "$6.75 billion in New HoldCo Common Stock (issued at Fire Victim Equity Value), which shall not be less than 20.9% of

accounted for in developing Plan value. In fact, the only persons whose equity is arguably diluted by the backstop are the existing shareholders—precisely the opposite of MCE's contention[210] and completely consistent with the principle that current shareholders should bear the cost of paying prepetition wildfire victims. In any case, the impact of the backstop on various shareholders is outside the scope of this proceeding and beyond the Commission's jurisdiction.[211]

MCE also argues that PG&E's requested adjustments for calculating the ratemaking capital structure and its request for short-term debt authorization that exceeds the amount automatically permitted under Public Utilities Code Section 823 demonstrate this purported undercapitalization.[212] Yet other parties agree with PG&E's overarching principle regarding the ratemaking capital structure[213] and many of the adjustments requested are consistent with AB 1054.[214] Moreover, MCE asserts that PG&E's Section 823(c) request "relies upon" the Commission's decision exempting the debtor-in-possession financing from Sections 823 and

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the New HoldCo Common Stock based on the number of fully diluted shares of Reorganized HoldCo (calculated using the treasury stock method (using an Effective Date equity value equal to Fire Victim Equity Value)) that will be outstanding as of the Effective Date …." PG&E's Plan § 1.6.

210 MCE Br. at 24.

211 MCE also takes issue with potential payment of the Backstop Commitment Premium in cash. *See* MCE Br. at 25-26. Yet such a cash payment could occur only in the event PG&E terminates the Backstop Commitment Letter or a plan of reorganization other than PG&E's Plan is confirmed by the Bankruptcy Court. *See* Second Amended Motion for Entry of Orders (I) Approving Terms of Debtors' Entry Into and Performance Under, Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors' Entry Into and Performance Under, Debt Financing Commitment Letters and (III) Authorizing Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses As Administrative Expense Claims, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6013, Ex. C at 21. But PG&E is requesting that the Commission approve only PG&E's Plan, not any other plan.

212 MCE Br. at 21-23. MCE also erroneously suggests that PG&E "seeks a waiver" to "the stand-alone dividend" requirement. *Id.* at 27. This is not the case.

213 *See supra* Part II.D.

214 *See* Pub. Util. Code §§ 3292(g), 8386.3(e).

851, and suggests that PG&E's request here should be reserved for such an "extraordinary situation."[215] Yet MCE is wrong that PG&E's request here "relies upon" or relates to D.19-01-025 in any way. Rather, Section 823(c) places a limit on the amount of short-term debt that utilities are automatically permitted to issue *without* Commission approval pursuant to Section 823(b). PG&E's request here for short-term debt authorization above that amount is necessarily a standard feature of short-term debt applications by utilities and Commission decisions approving such applications,[216] not something reserved for "extraordinary situation[s]" or indicative of "[i]nsufficient [c]apitalization."[217]

MCE claims that PG&E has not provided sufficient financial information in this proceeding for Commission oversight, such as by not disclosing the amount of PG&E Corporation prepetition funded debt ($650 million) in testimony, not providing disaggregated sources and uses, and "provid[ing] no information" regarding claims related to pollution control bonds.[218] Yet PG&E did disclose the amount of PG&E Corporation debt in discovery,[219] and PG&E did provide detailed information regarding the Utility's uses, namely the uses of the Utility's long-term debt.[220] PG&E also referenced the pollution control bond claims in testimony

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215 MCE Br. at 23 (citing D.19-01-025).

216 *See, e.g.*, D.19-09-008 at 3-6 (granting § 823(c) authorization in A.19-04-023, SCE's 2019 short-term debt application); D.19-05-009 at 3, 5-6, 11-12 (granting § 823(c) authorization in A.19-01-010, SDG&E's 2019 short-term debt application); D.09-05-002 at 5 (granting § 823(c) authorization in A.08-12-014, PG&E's 2008 short-term debt application).

217 MCE Br. at 22-23.

218 MCE Br. at 19.

219 *See* PlanOfReorganizationOII_DR_AdHocCommittee_003-Q84 (Dec. 9, 2019). (This data response is not part of the record, but MCE's incorrect assertion itself is an implicit characterization of things not in the record; if the Commission believes that MCE's assertion needs to be addressed with evidence, PG&E will offer it as a late exhibit.)

220 *See* PG&E-01 at 2-17 tbl.2.4 (opening testimony of Mr. Wells).

and also described how they would be treated under PG&E's Plan.[221] Specifically for the claims related to Series 2008F and 2010 E—which MCE seems to focus on[222]—PG&E indicated the approximate value of those claims ($100 million), an amount that MCE cites in its brief[223] even while claiming "PG&E simply has provided *no information*."[224] If MCE thought additional information regarding 2008F and 2010E series of pollution control bonds or any others was necessary, MCE was free to take discovery on that issue. It did not.

G. Earnings Adjustment Mechanism (ACR § 8)

As discussed in PG&E's Opening Brief, now is not the right time for the Commission to consider the safety-oriented Earnings Adjustment Mechanism (EAM) outlined in ACR Proposal § 8.[225] It would introduce additional uncertainty to the capital markets at the very moment that a massive capital raise is imminent, would present difficult regulatory issues, and would at best be a less direct mechanism than the safety-oriented executive compensation system that PG&E is implementing.

No party took any different position, or provided any contrary evidence, on these points. Indeed, no party offered any comments in favor of the EAM.[226] On the other hand, TURN, EPUC, IS, PAO, TCC, and SBUA all submitted comments in opposition to the potential EAM. TURN expressed concerns that an EAM could result in "managing to the metric" or even outright manipulation, and that it would require significant regulatory resources to define the

[221] *See* PG&E-01 at 2-2 tbl.2.1, 2-9 – 2-10, 2-16 tbl.2.2, 2-17 tbl.2.4 (opening testimony of Mr. Wells).

[222] MCE Br. at 37.

[223] MCE Br. at 38.

[224] MCE Br. at 19 (emphasis added).

[225] PG&E Br. at 68-71 and Decl. of Jason Wells (PG&E Br. App'x C).

[226] CLECA voiced general support for the ACR Proposals, but did not specifically mention the EAM. *See* CLECA Br. at 25.

metrics and audit the results.[227] EPUC and IS joined in TURN's objections and also expressed concern that the metrics would be unduly difficult to specify.[228] PAO opposed the potential EAM as inconsistent with the pending settlement in the 2020 General Rate Case.[229] TCC "strongly opposes" the EAM proposal as "fraught with complications" and having "potentially enormous negative implications for the Utility, credit ratings, and victims as both ratepayers and (under the Plan) shareholders."[230] TCC noted that a "far more direct and effective means of incentivizing" safety performance is an executive compensation system.[231] Finally, SBUA opposed on the ground that rewarding PG&E with 4% additional earnings for safety performance "sends the wrong message."[232]

In light of the comments submitted by all the parties, PG&E recommends that the Commission's decision in this matter not include any post-emergence consideration of an EAM.

III. NON-FINANCIAL ISSUES

A. PG&E's Board-Level Governance Structure (Scoping Memo § 3.1 and ACR §§ 3-5)

No party's testimony disputed that PG&E's Board-level "governance structure [is] acceptable" within the meaning of AB 1054.[233] And now, no party's opening brief disputes that

[227] TURN Br. at 90-93.

[228] EPUC/IS Br. at 37 (also saying that this proposal is too vague, and under alternative interpretations is too large and would swamp the cost of capital results, or is too small to be worth the extensive effort it would entail to define and implement).

[229] PAO Br. at 15.

[230] TCC Br. at 30.

[231] *Id.* at 31.

[232] Opening Brief of Small Business Utility Advocates (SBUA Br.) at 22. Ironically, this SBUA argument illustrates one of the concerns that PG&E noted: That capital markets and rating agencies would focus just on the downside risk (among other reasons out of concern that the upside potential might not be available in reality).

[233] Pub. Util. Code § 3292(b)(1)(C).

that structure satisfies the statute—nor could a party credibly do so, particularly given PG&E's willingness to augment its already robust Board-level governance by supporting the proposals in the ACR, with some modifications. In addition, in the Governor's Support Statement, the Governor acknowledged that PG&E has "submitted constructive responses" to the ACR proposals. The Governor's Support Statement further stated that, if the Resolution Motion is granted and the Commission approves PG&E's Plan with the governance, financial and operational provisions submitted to the Commission by PG&E or otherwise agreed to by PG&E, with any modifications the Commission believes appropriate or necessary, the Plan will, in the Governor's judgment, be compliant with AB 1054.[234] Several parties nevertheless propose incremental changes they posit would further improve Board oversight. Whatever the merits of those proposals, the fact remains that PG&E's Board-level governance satisfies the statute. In any event, while some of the parties' proposals may be constructive, others lack merit and should be rejected as conditions of Plan approval.

<u>Board Member Nomination Process</u>. A few parties advance suggestions regarding the director nomination process. TCC argues that "[s]election of the [director] skills matrix is of vital importance and cannot be outsourced, without continuing oversight, to search firms that may be ill-equipped to assess safety skills."[235] PG&E agrees; authority for developing the matrix should not be ceded to an outside firm because such a firm cannot possibly be as familiar with PG&E's business and Board needs as PG&E's Boards are. Rather, as PG&E previously stated[236] and as the ACR proposes, any "independent search firms [should be used] to *assist* in refining

[234] Governor's Support Statement (Official Notice Motion Ex. 3) at 2:16-17, 4:20-23.

[235] TCC Br. at 28.

[236] *See* PG&E Br. at 106 n.368.

[PG&E's] skills matrix,"[237] with ultimate responsibility for the matrix continuing to reside with the Boards.

TCC also proposes, however, that the director skills matrix for the initial post-emergence Board, and any changes to the matrix in subsequent years, be submitted to the Commission for its approval.[238] PG&E's testimony set forth the director skills matrix it will use in connection with the selection of the initial post-emergence Board,[239] and PG&E's Opening Brief affirmed its support for the additional characteristics and Safety Expertise Criteria set forth in the ACR proposals (with some modifications), which PG&E likewise will use in connection with the selection of the initial post-emergence Board. Following the Effective Date, and prior to the Sunset Date of the Board governance provisions, if PG&E wishes to modify the director skills matrix, it would file a Tier 2 advice letter, giving parties the opportunity to comment and the Commission the opportunity to disapprove such amendment.[240]

SBUA contends that PG&E's director skills matrix should include "small business and small commercial load utility customer experience," particularly given that "Ms. Brownell … testified that she does not know if the strength of small business experience on the Board has increased or decreased with the recent change to Board membership."[241] Ms. Brownell testified that the matrix's existing reference to "large scale customer experience"[242] encompasses

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[237] ACR § 4, App'x A at 4 (emphasis added); *see also id.* at 5 (referring to the "firm retained to identify new board candidates and to *assist* in refining the skills matrix") (emphasis added).

[238] *See* TCC Br. at 26-28.

[239] *See* PG&E-01 at 4-11-4-12 (opening testimony of Ms. Brownell). It would not be practical for the Commission to approve any changes to the matrix prior to the selection of the initial post-emergence Board, given the need to move forward with the search process before the Commission issues its decision in this proceeding.

[240] *See* PG&E Br. at 109.

[241] SBUA Br. at 19-20.

[242] PG&E-01 at 4-12 (opening testimony of Ms. Brownell)

extensive experience with all kinds of customers, including small business customers.[243] Although Ms. Brownell could not speak to the *relative* small business experience on the current Boards, as compared to past Boards on which she did not serve, she testified that the current Boards have extensive experience serving small business customers—and Ms. Brownell herself is a small business owner.[244] The inclusion in the matrix of "customer experience" is sufficient to address SBUA's concern and to yield a Board that reflects a wide range of important skills; the Commission should not more specifically require representation of small business interests, as opposed to the many other stakeholders who are interested in PG&E' performance.

Board Member Qualifications. With two exceptions, no party expressed any support for the ACR's proposed "presumption" that all current Board members must depart.[245] The two exceptions are TCC, which provides no elaboration or analysis whatsoever;[246] and TURN, which expresses support only in part by saying that "directors who were nominated or supported by speculative investor interests drawn to PG&E by its bankruptcy should not serve on the post-emergence Boards."[247] Neither TURN nor any other party, however, has disputed even through argument, much less through evidence, that the current directors are qualified to serve. There is no evidentiary basis in the record for the presumption proposed in the ACR or by TURN. That said, as PG&E previously explained,[248] it expects a substantial number of new directors at

[243] *See* PG&E Br. at 82 & n.282 (quoting cross-examination testimony of Ms. Brownell).

[244] *See id.* at 82 & n.281 (quoting cross-examination testimony of Ms. Brownell).

[245] ACR § 4, App'x A at 5.

[246] *See* TCC Br. at 24.

[247] TURN Br. at 48.

[248] *See* PG&E Br. at 110.

emergence. All directors on emergence would be subject to an extensive vetting process that will include the Governor's Office.[249]

TURN also reiterates its testimony that the Commission should require at least half of the directors to have safety experience in the energy industry or another industry involving inherently hazardous products and services, and at least one-third of the directors to have direct operational experience in the energy industry.[250] PG&E addressed these arguments in its Opening Brief, and will not repeat those points here.[251] PG&E notes, however, that at least one other party appropriately has rejected calls for prescriptive quotas on Board membership, given the need to retain flexibility, to balance an appropriate range of diverse skills, and to ensure the most qualified Boards possible in light of the pool of available candidates.[252]

<u>Board Member California Residency</u>. Though all parties—PG&E included—appear to agree that California residents should comprise a significant portion of the Boards, the parties express differing views about the ACR's proposal that "[a]t least 50 percent of the directors should be California residents."[253] As PG&E previously stated, although it is committed to using

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[249] TURN asserts without elaboration that "[a]ny director replacements within three of years emergence should … be subject to this same review and approval process." TURN Br. at 50. PG&E does not believe this is necessary, especially if the Commission requires initial post-emergence director terms to exceed one year. *See* ACR § 4, App'x A at 5 (proposing three-year terms); PG&E Br. at 108-09 (arguing that two-years terms with a phase-out would be preferable to three-year terms).

[250] *See* TURN Br. at ii, 40-42, 48-50.

[251] *See* PG&E Br. at 82-83.

[252] *Cf.* TCC Br. at 26 (opposing the ACR's proposal that at least 50% of Board members be California residents). TURN proposes that the Commission monitor compliance with any Board membership requirements that may be imposed by requiring PG&E to submit a Tier 3 advice letter detailing its compliance. *See* TURN Br. at iii, 43. TURN then envisions an apparently lengthy process of public comment, and, presumably, briefing. *See id.* TURN's proposal is not workable. The members of the Boards, as they may change from time to time, will be publicly disclosed in proxy statements and other SEC filings. But many director candidates would be deterred from participating in a process in which their nomination and election would be subject to subsequent disapproval by the Commission.

[253] ACR § 4, App'x A at 5.

its best efforts to achieve this percentage at emergence, a mandatory quota would be unwise because it could impair PG&E's ability to assemble the most qualified Boards overall.[254] TCC agrees, observing that "adopting a quota that mandates that a specified percentage of members be from California may run counter to the goals of AB 1054 by prioritizing State residency over ensuring selection of the best candidates in terms of experience, diligence, and talent."[255]

Some parties disagree and would mandate quotas that are even stricter than that proposed in the ACR, thereby making it even more difficult to assemble the most qualified Boards. The Joint CCAs argue that a majority of the directors should reside not just in California, but in PG&E's service territory in particular.[256] The Joint CCAs thus artificially would exclude qualified candidates not only from the other 49 states where nearly 90% of the U.S. population lives, but also from Los Angeles, San Diego, and other areas of California served by other utilities. TURN disagrees in part; it would mandate a quota for California residents, while giving "preference" to candidates residing in PG&E's service territory.[257] MCE is the most extreme, arguing that "*[a]ll* directors should be required to be residents in PG&E service territory during their tenure."[258] It even proposes forcing directors to move to PG&E's territory if they wish to serve on the Boards.[259] In MCE's view, corporate directors are "no different" from "[e]lected officials [who] are required to live within the communities they serve."[260]

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[254] *See* PG&E Br. at 7, 82, 88.

[255] TCC Br. at 26.

[256] *See* JCCA Br. at iv, 21-22.

[257] TURN Br. at 48.

[258] MCE Br. at iv; *see also id.* at 44-46.

[259] *See id.* at 45.

[260] *Id.*

These proposals are not consistent with the goal of constituting the most qualified Boards when it comes to safety and other expertise. Most of the people in America with experience with complex electric and gas utilities (other than PG&E) do not live in California or PG&E's service territory, and the same statement is true for most of the people in America with experience with nuclear power plants, renewable energy facilities, customer-centric businesses, high-risk businesses and disaster management. These proposals also evince a fundamental misunderstanding about corporate boards in general. Independent director candidates often have full-time jobs[261] and cannot simply pull up stakes and move to California for a part-time board position; imposing such a requirement drastically would reduce the pool of qualified candidates.[262] Moreover, directors are nothing like elected officials when it comes to where they should reside; independent directors oversee the business and affairs of a company, are supposed to bring fresh and independent perspectives, and are *precluded* by New York Stock Exchange rules from being otherwise materially affiliated with the company;[263] whereas elected officials represent the people of particular communities and so *of course* must be a member of those communities.

Though PG&E firmly believes that California residents should comprise a substantial portion of the Boards, and has committed to use its best efforts to achieve at least 50% upon

[261] *See, e.g.*, PG&E Corporation and Pacific Gas and Electric Company Joint Proxy Statement at 21-29 (May 17, 2019) (describing the occupations of PG&E's then-current directors), *available at* http://s1.q4cdn.com/880135780/files/doc_financials/2019/05/2019-Proxy-Statement-final-web-ready.pdf.

[262] The average public company director in the United States spends only about 20.4 hours per month on board business. *See* Nat. Ass'n of Corp. Directors, *2016-2017 NACD Public Company Governance Survey*, at 2 (2016), *available at* https://www.nacdonline.org/files/2016%E2%80%932017%20NACD%20Public%20Company%20Governance%20Survey%20Executive%20Summary.pdf. PG&E's current directors have spent significantly more time than that, however, given the many challenges facing the companies. *See* PG&E-04 at 4-Exh.1-2-4-Exh.1-3 (Compliance Filing in Safety Culture OII).

[263] *See* Corp. Code § 300(a) (providing that a board oversees the business and affairs of the company); New York Stock Exchange Listed Company Manual § 303A.02(a) (defining an "independent" director as a director who, among other requirements, "has no material relationship with … the company.").

emergence, PG&E urges the Commission to reject any proposals for prescriptive quotas as contrary to the public interest.

Board Member Terms. No party has expressed support for the ACR's proposal that director terms be three years. The only party that commented, TCC, agrees with PG&E that terms longer than one year are contrary to best practices.[264] As TCC explains:

> One-year terms for Board members have become nearly universal among public companies. Granting Board members three-year terms would needlessly limit accountability and delay the replacement of poorly performing Board members at a time when highly effective Board members are most vitally needed.[265]

As PG&E explains in its Opening Brief, if the Commission nevertheless elects to require terms that are longer that one year, initial two-year terms with a phase-out would be preferable to the three-year terms proposed in the ACR.[266]

Board Member Independence. PG&E supports the ACR's proposal that the Boards of the Utility and of PG&E Corporation be the same (except that the CEO of the Utility would be a member of the Board of the Utility).[267] Some parties, however, propose eliminating or limiting Board overlap to address alleged "conflicts" on the part of Utility Board members and thereby purportedly to make Utility Board members more "independent."[268] These parties, however, fail to establish that there is a conflict between the interests of PG&E Corporation and the Utility. On the contrary, because the Utility is PG&E Corporation's only substantial asset, the Utility and PG&E Corporation have a common interest in ensuring that the Utility is financially sound.

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[264] *See* PG&E Br. at 107-08 & nn.377-379.

[265] TCC Br. at 25.

[266] *See* PG&E Br. at 108-09.

[267] *See* ACR § 4, App'x A at 5; *see also* PG&E Br. at 106-07.

[268] *See* EPUC/IS Br. at 21-23, 34-36, A3; MCE Br. at iv, 44-45; TCC Br. at 24-25; TURN Br. at 48.

Other parties' contrary speculation is without merit. EPUC and IS state that PG&E Corporation could divert funds from the Utility to "capital programs outside the Utility,"[269] but that concern is inapplicable to PG&E Corporation as it exists today. Nor is there a basis to require different independent directors on the Boards today based on the speculation that, in the future, PG&E Corporation could have such non-regulated investment opportunities. Initially, as discussed in PG&E's Opening Brief, the Commission's Holding Company conditions and Affiliate Transaction Rules—and, in particular, the first priority condition—address these issues,[270] and parties do not explain why those protections are ineffective. Similarly, the stated concern of EPUC and IS that the Utility's dividend policy will be driven by the needs of PG&E Corporation[271] ignores the protections of both the standalone dividend condition and the first priority condition, which are specifically directed at that concern.[272] Indeed, the Commission adopted these protections at a time that the holding companies were diversified, and they continue to apply to Sempra. (The independent directors of Edison International and SCE are identical; and the board of SDG&E is composed of Sempra and SDG&E management (i.e., is not independent).) There is no basis to conclude that these protections are inadequate for PG&E Corporation, which is not diversified. And if the Commission in the future became concerned about these protections if PG&E Corporation did diversify, it could address the issue at that time.

[269] EPUC/IS Br. at 34.

[270] PG&E Br. at 85-87.

[271] EPUC/IS Br. at 35; *see also* MCE Br. at 45 (expressing concern about PG&E Corporation "inappropriately extracting value from the Utility"); TCC Br. at 24 (expressing concern that PG&E Corporation could "subordinate PG&E's public safety obligations to the immediate financial interests of PG&E Corporation's equity holders.").

[272] PG&E Br. at 86.

To the extent these parties' underlying concern is a conflict of interest between customers and shareholders, the record shows that this conflict is illusory,[273] but in any case adding directors to the Utility Board who are not directors of PG&E Corporation would not resolve this concern. Because all directors owe fiduciary duties to owners, the directors of the Utility would be legally obligated to act for the benefit of PG&E Corporation. Indeed, the same issue would exist even if the Utility were a publicly-traded company without a parent.

Board Committee Structure. SBUA argues that "[t]he Boar [sic] should establish a subcommittee of the Board tasked with small-business service oversight to avoid reduced attention to this important class during the reorganization."[274] SBUA did not advocate this in its testimony, but rather made this proposal for the first time in its late-filed opening brief. SBUA does not explain anything about this proposal, such as which Board committee would form this subcommittee, or how or why existing Board committees are inadequate to oversee matters relating to small businesses.[275] Nor does SBUA provide any example of any other utility with a

[273] EPUC and IS speculate that "the board of directors is unlikely to act on its own for the benefit of customers" because "the board has no legal fiduciary duty to customers." EPUC/IS Br. at 22. The record unequivocally refutes this. *See* Feb. 28, 2020 Tr. at 714-15 (cross-examination testimony of Ms. Brownell ("I believe a fiduciary responsibility to shareholders means that we do everything possible to deliver value to the customers, to the communities, and to other stakeholders. … If I'm not serving the customers, if I have a massive failure in safety, as we have seen, if the people who purchase my services and pay my bills are not satisfied, that has a direct translation into the financial well-being of the Company."); *id.* at 715 ("Q. … But doesn't fiduciary duty mean that if there is a conflict between customer interests and shareholder interest, that you have to put the interests of shareholders first? A. I can't imagine a situation in which a conflict—we have not been presented with one, nor have I ever candidly on the boards that I have served."); *id.* at 717 ("I'd like to believe that all of our Board members are customer advocates. And I have seen a lot of demonstrations of that in Board decisions.").

[274] SBUA Br. at 19-20.

[275] *See* PG&E Br. at 91 (explaining how oversight of small business-related issues is shared among Board committees).

board-level "small business" committee or subcommittee.[276] SBUA's undeveloped and unsupported proposal should not be imposed as a condition of Plan approval.

Some parties support the ACR's proposal for a safety subcommittee of the Executive Committees, whose members would have designated safety expertise and be responsible for approving executive officers prior to the full Boards doing so.[277] In PG&E's view, however, it would be preferable for such expertise and responsibilities to reside with the existing SNO Committees, rather than with an overlapping subcommittee of the Executive Committees. As PG&E explained in its Opening Brief, the SNO Committees are better fits for this role, and a separate subcommittee of the Executive Committees would be confusing and redundant, and potentially lead to a loss of accountability.[278]

With respect to the SNO Committees, no party expresses support for the ACR's proposal that PG&E "consult[] with or [obtain] approval [from] the State and CPUC staff for the initial members of the SNO Committees."[279] To the contrary, the one party that commented, TCC, expresses "reservations about the necessity of [this] proposal."[280] As TCC observes, "The expertise of SNO Committee members has recently been recognized by the Executive Director of the Commission when she issued an initial safety certification to the Utility pursuant to

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[276] Other California investor-owned electrical utilities do not appear to have such a board-level committee. *See* Edison International and Southern California Edison Company, Joint Proxy Statement at 19-21 (Mar. 15, 2019) (listing board committees), *available at* https://www.edison.com/content/dam/eix/documents/investors/corporate-governance/2019-eix-sce-proxy-statement.pdf; Sempra Energy, Notice of Annual Shareholders Meeting and Proxy Statement at 13-15 (Mar. 22, 2019), *available at* https://www.sempra. com/sites/default/files/content/files/node-page/file-list/2019/2019_proxy_sre.pdf.

[277] *See* PAO Br. at 13; TCC Br. at 27-29; TURN Br. at 49-50, 52. As noted in PG&E's Opening Brief, the sequence matters because a Board committee or subcommittee cannot veto the decision of the full Board. *See* PG&E Br. at 112 n.388.

[278] *See* PG&E Br. at 110-12.

[279] ACR § 3, App'x A at 4. TURN "generally supports" the ACR's proposals regarding the SNO Committees, but provides no analysis of this particular proposal. *See* TURN Br. at 51.

[280] TCC Br. at 23.

AB 1054, finding that PG&E 'has met all the relevant requirements of Pub. Util. Code § 838[9], regarding its initial safety certification, including documentation that PG&E has 'established a safety committee of its board of directors composed of members with relevant safety experience.'"[281] PG&E agrees with TCC's observations, although as previously noted PG&E would ensure that the initial post-emergence SNO Committee members are acceptable to the Governor's Office.[282] PG&E believes that consulting with the Commission, by contrast, is unnecessary in light of consultations with the Governor, and impractical from a timing perspective given that post-emergence SNO Committee members likely will be designated prior to a Commission decision in this matter.[283]

Finally, TURN supports, as PG&E does, the ACR's proposal for periodic SNO Committee reporting to the Commission.[284] TURN also urges that such reporting "be as transparent as possible," such as through a process whereby "*after* any such meetings, the CPUC could provide notices identifying the date and location of the meeting, attendees, and topics discussed."[285] PG&E supports the general principle of transparency, and does not object to an after-the-fact notice process. PG&E emphasizes, however, that SNO Committee reporting may involve highly sensitive business, legal, and other matters, and the confidentiality of such communications should be preserved.

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[281] TCC Br. at 23 (citing Aug. 23, 2019 letter from Executive Director Alice Stebbens). A4NR takes a swipe at the SNO Committees, asserting that past delays in submitting SNO Committee minutes to the Commission somehow mean that Committee members are not "sufficiently motivated" to oversee safety. A4NR Br. at 27. As A4NR itself notes, however, such delays have had nothing to do with the SNO Committees, and already have been addressed internally. *See id.* at 27-28 (citing cross-examination testimony of Ms. Brownell).

[282] *See* PG&E Br. at 99.

[283] *See id.* at 99-100.

[284] *See* ACR § 3, App'x A at 4; TURN Br. at 51; PG&E Br. at 98.

[285] TURN Br. at 51 (emphasis added).

Board Oversight of Safety, Risk, Compliance, and PSPS. Various parties also make a number of operational proposals that they believe would improve the Boards' oversight of safety, risk, compliance, and/or PSPS. Specifically:

ISOC Reporting. CLECA argues that "[t]he Board must maintain a technical advisory group" to "obtain information from PG&E Management, as well as additional sources, and evaluate that information independently, using its own expertise," in order to "ensure the Board has a firm and independent grasp on all safety issues."[286] PG&E agrees that the Boards should have access to whatever technical consultants the Boards may need to carry out their responsibilities. PG&E's Independent Safety Oversight Committee ("ISOC") is one such resource. As stated in Ms. Brownell's testimony, "The ISOC's reports and recommendations, and any responses from the lines of business, [are] provide[d] to the SNO Committees and the full Boards," such that "[t]he ISOC [is] a useful independent resource to [both] management and the Boards."[287]

To the extent CLECA suggests that the ISOC's reports should go *only* to the Boards and not to management, CLECA provides no justification for shielding the reports from management, as PG&E previously explained.[288] Obviously, management also can benefit from the ISOC's reports. Moreover, PAO and other parties agree that the reports of an independent safety monitor (whether the ISOC or another Independent Safety Advisor appointed after the federal monitorship ends) should go both to the Boards and to management.[289]

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[286] CLECA Br. at 6-7.

[287] PG&E-01 at 4-26 (opening testimony of Ms. Brownell).

[288] *See* PG&E Br. at 93.

[289] *See* PAO Br. at 12 ("[T]he specific role of the Independent Safety Advisor should be clarified to make clear that the position reports directly to PG&E Company's [sic] President and CEO, in addition to the PG&E Board of Director's [sic] Safety and Nuclear Oversight Committee, CRO, and CSO. The Independent Safety Advisor would chair the Independent Safety Oversight Council (ISOC), an

Commission Audits of Board Deliberations. CLECA argues, as it did in its testimony, that the Boards should "be required to independently evaluate all major safety proposals made by PG&E Management," and that "Commission staff or independent auditors (hired at PG&E shareholder expense) should audit the evaluation process."[290] PG&E's Opening Brief responds to this proposal, explaining that the Boards already evaluate all major safety proposals from management, and that CLECA's proposal for having the Commission staff audit the quality of the Boards' deliberations is both undeveloped and ill-conceived.[291] PG&E will not repeat its Opening Brief points here, but notes that CLECA's brief, like its testimony, devotes only a single sentence to its "audit" proposal, such that it remains entirely unexplained.[292] CLECA's undeveloped proposal should not be imposed as a condition of Plan approval.

Employee/Managerial Codes. CLECA repeats its testimony's proposal that the Boards update PG&E's Employee Code of Conduct,[293] and TURN repeats the similar proposal from its testimony that the Boards create a "Code of Managerial Expectations" to be submitted for party comment and Commission approval in some future docket.[294] PG&E previously responded to these proposals. As PG&E noted, it could indeed be constructive for the Boards to consider updating the Employee Code of Conduct and developing a separate Code of Managerial Expectations, but these are matters falling squarely within the traditional function of a board and

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independent safety-focused organization within PG&E."); TCC Br. at 22 (arguing that "it will be essential for the Independent Safety Advisor to work with the CRO, the CSO, and PG&E's management team and Board.").

290 CLECA Br. at 7.

291 *See* PG&E Br. at 94.

292 *Compare* CLECA Br. at 7 *with* CLECA-01 at 6 (reply testimony of Ms. Yap).

293 *See* CLECA Br. at 11; CLECA-01 at 9 (reply testimony of Ms. Yap).

294 *See* TURN Br. at iii, 54-57; TURN-01 at 23-24 (reply testimony of Mr. Long).

its business judgment.[295] PG&E does not agree that such matters need to be part of a Commission proceeding, and the language of such codes should not be imposed as a condition of approval of PG&E's Plan.

Written Certification Regarding Safety. TURN repeats the proposal in its testimony that "[t]he Commission should require … that each member of PG&E's Boards agree in writing that safety takes priority over shareholder financial considerations, if and when those values come into conflict."[296] PG&E explained in its Opening Brief why TURN's proposal is ill-conceived and should be rejected.[297]

Implementation of ISA Recommendations. TCC argues in a single sentence that if an Independent Safety Advisor is installed after the federal probation and monitorship end, "the Commission should require that the Board either fully implement the Independent Safety Advisor's recommendations or promptly file a report to the Commission detailing the Independent Safety Advisor's recommendation(s) and the Board's reasons for choosing not to implement them in whole or in part."[298] TCC's proposal fundamentally misunderstands that the Boards are the ones statutorily charged with overseeing the business and affairs of the companies, and it is their obligation to decide whether and to what extent to implement the recommendations of technical advisors, how best to deploy limited resources to mitigate safety risks, and so forth.[299] TCC's proposal would go a long way toward creating a presumption that

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[295] *See* PG&E Br. at 95.

[296] TURN Br. at 40; *see also id.* at ii, 37-39.

[297] *See* PG&E Br. at 95-98.

[298] TCC Br. at 22-23.

[299] *See* Corp. Code § 300(a) ("The business and affairs of the corporation shall be managed, and all corporate powers shall be exercised by or under direction of the board.").

the Boards must do whatever the Independent Safety Advisor says, which would upend basic principles of corporate governance. TCC's proposal should be rejected.[300]

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In sum, based on the evidentiary record in this proceeding, PG&E's Board-level "governance structure [is] acceptable" within the meaning of AB 1054—particularly with the augmentation PG&E is prepared to undertake in response to the ACR's proposals. Indeed, no party's brief disputes this, and some parties' recommended improvements are often ill-advised. PG&E's Board-level governance structure should be deemed adequate for purposes of approving PG&E's Plan.

B. Utility Safety and Governance, And Related ACR Proposals (Scoping Memo §§ 3.1, 3.2, 3.4 and ACR §§ 1, 2, 6, 7)

1. Chief Risk Officer And Chief Safety Officer (ACR § 1)

PG&E fully supports the ACR's proposal for appointment of both a Chief Safety Officer (CSO), with workplace and public safety under his purview, and a Chief Risk Officer (CRO). TURN's recommendation that the roles of CSO and CRO be merged into a single position is premised on a misconception of the differing functions of these positions.[301] TURN's "concern[] that overlapping responsibilities in such key positions will undermine accountability for risk and safety at the senior manager level, and could lead to misunderstandings between the two

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[300] TCC also asserts that "approval of the POR should be conditioned on PG&E allowing the TCC to nominate an observer to attend all meetings of the PG&E Board." TCC Br. at 25. TCC does not explain why TCC uniquely should get to attend Board meetings, how its proposal would square with the need to maintain privileged and business-sensitive information in confidence, and how this could be accomplished consistent with legal restrictions on the disclosure of material non-public information. The role of the Victim Trust in the governance of PG&E is a matter to be addressed by the Victim Trust and the company; the Commission should not inject itself in that discussion. TCC's undeveloped proposal should be rejected.

[301] *See* TURN Br. at 58 ("TURN recommends that the Commission direct PG&E to have a single executive-level position for the functions served by the CRO and the CSO.").

organizations about spheres of responsibility" is not well founded.[302] The CSO's and the CRO's respective responsibilities are complementary, but do not overlap. The CRO is essentially a centralized function, and is not confined to individual lines of business or to safety-related risks. As described by Ms. Brownell, previously at PG&E "[d]ifferent businesses viewed risk and measured risk differently," but the company has "moved to a better system of risk management"—one that is consistent enterprise-wide—because "[i]n order to effectively measure risk, you have to have an agreement enterprise wide on what those risks are."[303] The CRO prescribes and oversees consistent processes and mechanisms for how risk is identified, quantified, and measured, and the processes for determining the effectiveness of mitigation measures. While safety-related risks are an important category of risks that such processes apply to, they are not the only category. The CRO's oversight of risks at the enterprise level encompasses, for instance, the risk of business interruption from a cyber-attack. TURN's recommendation fails to acknowledge the unintended consequence of tasking the CSO with oversight of non-safety-related risks—whether it relates to setting risk management standards (the role of a CRO) or in implementation of mitigation measures (the role of a risk owner).[304]

TURN also appears to misunderstand the different functions of the CRO and the CSO as they apply to safety-related risks. As detailed in PG&E's response to TURN's data request, the "CRO governs the structure and process by which the company identifies, assesses, and manages its risks, and sets risk management standards."[305] Again, the structure prescribed by the CRO for

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[302] *Id.*

[303] Feb. 28, 2020 Tr. at 776:23-777:1 (cross-examination of Ms. Brownell).

[304] For similar reasons, SBUA's argument that each of the CSO, CRO, and CEOs of the Utility and the holding company be "required to personally sign off" on mitigation plans for wildfire and PSPS, PG&E's Safety and Health Plan, and its risk register disregards the distinct skillsets and expertise for each of these roles.

[305] TURN-X-03 (PG&E's response to TURN 14-2), *cited at* TURN Br. at 57-58.

evaluating risk applies enterprise-wide, not just to safety-related risks. "The CSO then uses that structure to identify and analyze enterprise workforce and public safety risks including current controls and proposed mitigations," will "create safety policies and standards across the enterprise," will define the methods and "organizational structure needed to meet safety objectives," and will monitor and "report on the achievement of those objectives."[306] As succinctly described during Mr. Vesey's cross-examination by TURN's counsel, "[t]he chief safety officer fundamentally is working on mitigation strategies and prevention. … [T]he chief risk officer basically sets up the protocols, the process, and the way we measure and think about risk generically. The chief safety officer deals with helping to identify the risks around work force and public safety and then actually executes the programs to mitigate those."[307] When TURN's counsel paraphrased Mr. Vesey's testimony by describing the CSO role as "more of an execution and implementation role," Mr. Vesey confirmed that that was "a good portion of it."[308]

Mr. Vesey also affirmed during the evidentiary hearing that, although the prior CSO role was tied to workplace safety, the new CSO role encompasses public safety as well.[309] Indeed, after a worldwide talent search PG&E has appointed such a CSO who started in this role on March 9, before the parties' opening briefs were filed.[310] PG&E's prior interim CSO took on the mantle following the departure of Jon Franke in June 2019; he was sourced internally at PG&E, an appointment intended to be temporary while the Utility conducted an exhaustive search for the type of skillset that would span both workplace and public safety.[311] To the extent

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306 *Id.*

307 Feb. 26, 2020 Tr. at 349:21 – 350:9 (cross-examination of Mr. Vesey).

308 *Id.* at 350:11-17 (cross-examination of Mr. Vesey).

309 *Id.* at 349:5-11 (cross-examination testimony of Mr. Vesey).

310 Feb. 27, 2020 Tr. at 445 (cross-examination of Mr. Vesey).

311 *See id.*; PG&E-01 at 5-8.

intervenors have evaluated the experience of the former interim CSO, or looked to the prior scope of the role, and concluded that there should be two CSO positions—one dedicated only to workplace safety, and one dedicated only to public safety—the premise of their reasoning is faulty.[312] Creating a divide between workplace and public safety also is not necessary, and would diminish the ability of the new CSO to maintain consistency in safety standards and mitigation efforts across the enterprise.

As PG&E stated in its Opening Brief, it opposes a public process to review candidates being vetted for these positions, and opposes making the appointment subject to approval by Commission staff.[313] For the same reasons animating PG&E's position with respect to appointment of the initial CSO and CRO, PG&E opposes CCSF's suggestion that the Commission "have a role in selecting the people who fill these positions" in the future.[314] Maintenance of clear distinctions between operational decisions by the Utility and regulatory guidance from the Commission is desirable both with respect to the initial appointment of these executives and down the road. Commission involvement in the selection of Utility personnel connotes a level of Commission responsibility for the performance of those individuals. The Commission should allow PG&E to select its personnel and hold it accountable for the results.[315]

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[312] *See* CCSF Br. at 24 ("The fact that PG&E's present interim CSO seems to have very limited experience in public safety highlights the problem"; recommending the Commission "consider appointing two CSOs in order to have one whose focus is solely on public safety"); *see also* PAO Br. at 12 (recommending two CSOs, in part based on conception that "the PG&E definition of the CSO role appears focused on workplace safety, rather than public safety.").

[313] PG&E Br. at 128-29.

[314] CCSF Br. at 24.

[315] *See* PAO Br. at 11-12 (expressing concern that "added layers of Commission review over positions overseeing PG&E's safety obligations may erode rather than strengthen PG&E's responsibility to [sic] safety."). While the PAO's comment was made with regard to meetings between the CRO, CSO, and Commission staff, the same concerns apply even more strongly to a Commission role in selecting the individuals who fill these positions.

The intervenors take opposing views with respect to the advisability of regular communications between Commission staff and PG&E's CRO and CSO. PAO, for instance, "recommends the Commission reconsider the regular reporting protocol for the CRO and CSO."[316] PG&E welcomes the ACR's proposal for regular meetings with the CRO, and semi-annual reporting by the CSO. If the Commission determines that a different method of communication or frequency is desirable, PG&E will be open to that as well. Regardless of the format or frequency of communications, having such meetings and reporting be public by default may hinder the ability of PG&E's executives to have a full and open dialogue with Commission staff. For that reason, PG&E opposes CCSF's suggestion that "the information the CRO and CSO provide to the Commission or Commission staff should be made publicly available in regular reports."[317] A more workable approach, which PG&E is open to discussing with the Commission, is a version of TURN's suggestion that, after such meetings, a notice could be issued identifying the date of the meeting, attendees, and a general description of the topics discussed.[318]

2. Regional Restructuring (ACR § 6)

(a) Focusing On Regionalization, A Structural Modification With Uniform Support

While there are differences of opinion regarding the timing of the application to restructure, the implementation of interim steps, and the particulars of how the regions should be defined, no party has taken issue with the notion that regionalization presents "a way to get back closer to your customer"—recognizing "that Stockton and San Francisco are two different places with two different sets of customers and customer interests"—and a way to achieve local

[316] *See, e.g.,* PAO Br. at 11-12.

[317] CCSF Br. at 25.

[318] TURN Br. at 59.

decision-making that is responsive to specific needs of specific customer populations.[319] As Ms. Yap, on behalf of CLECA, testified on cross-examination, regionalization "has the potential to improve the quality of service and the relationships that PG&E has with the local communities and its customers," including "its large customers."[320] Ms. Yap agreed that regional restructuring would be beneficial to customers and on her "list of to-dos" regardless of whether PG&E had filed for bankruptcy.[321] More to the point, regionalization's value to PG&E's customers is the same irrespective of the insolvency proceeding, and thus MCE's statement that the costs of regional restructuring "must be included in the assessment of ratepayer contributions and neutrality" is incorrect.[322] The ACR's proposal that PG&E submit an application for approval of a regional restructuring plan by June 30, 2020—after a decision must be rendered in this proceeding—and that such an application include "recovery of associated costs" further bolsters the conclusion that the costs of regionalization are not relevant to AB 1054's rate neutrality analysis.[323]

Several parties have resisted PG&E's suggestion in its January 31 written testimony that, during the initial time period for implementing the proposed regional restructuring plan, consideration of other structural alternatives be set aside.[324] Parties who argue that the issues pending in the Safety Culture OII are not within the scope of this proceeding[325] are correct, but

[319] Feb. 25, 2020 Tr. at 77:2-79:5 (cross-examination of Mr. Johnson).

[320] Mar. 2, 2020 Tr. at 1018:9-17 (cross-examination of Ms. Yap).

[321] *Id.* at 1018:18-1019:10 (cross-examination of Ms. Yap).

[322] MCE Br. at 47.

[323] ACR, App'x A § 6.

[324] PG&E-01 at 1-9-1-10 (opening testimony of Mr. Johnson).

[325] *See* CSJ Br. at 4; Comments of the Center for Energy Efficiency and Renewable Technologies on the Assigned Commissioner Proposals (CEERT Br.) at 7-9; Opening Brief of South San Joaquin Irrigation District (SSJID Br.) at 8.

PG&E is not proposing that the Commission so rule in this proceeding; rather, PG&E recommends that the Commission do so in the Safety Culture OII. The Plan states that a satisfactory resolution of various proceedings is a condition of confirmation. Just as the resolution of certain claims for monetary fines or penalties is such a condition, so too is the resolution of the structural proposals in the Safety Culture OII. Those resolutions would occur in the respective dockets. PG&E's testimony in this docket identifies that issue and indicates what PG&E would consider a satisfactory resolution.

More specifically, the moratorium proposed by PG&E relates to consideration of structural modifications, like separating the Utility into gas and electric utilities, selling its gas assets, municipalizing its service territory, or modifying or eliminating PG&E's holding company structure; PG&E's leadership does not "quibble with the idea that the Commission has the power to review and potentially revoke, with due process, CPCNs."[326] Mr. Johnson explained during cross-examination that "[t]he issue here is we have to emerge somehow in some form from bankruptcy, and if we are debating at the same time what the corporate form [or] structure is, I don't think both of those things can happen at the same time. So the suggestion here is we try the regionalization approach, and see how that works."[327] PG&E proposed that the regionalization structure be maintained for a period of at least five years, recognizing that "from the time you actually deploy and implement a new organization until the time you reach steady state so you can measure its effectiveness does take a number of years."[328]

[326] Feb. 25, 2020 Tr. at 82:23-83:17 (cross-examination of Mr. Johnson).

[327] *Id.*

[328] Feb. 27, 2020 Tr. at 399:7-14 (cross-examination of Mr. Vesey). While PG&E's opening testimony filed on January 31 measured the five-year maintenance period from the effective date of PG&E's Chapter 11 Plan, a confluence of factors—namely, the COVID-19 pandemic and wildfire season—may impede PG&E's ability to submit its regionalization application and implement interim steps in concert with the Chapter 11 Plan effective date. To ensure sufficient time is afforded for full deployment of a regionalization structure, and evaluation of its effectiveness once in place, PG&E proposes that the five-

Ms. Yap, on behalf of CLECA, concurred that "it takes years to actually effect [a] reorganization."[329] No party has denied that that the implementation of other structural modifications in parallel would be disruptive to and distract from the implementation of a regionalized structure. If the Commission ultimately denies PG&E's application for regional restructuring, then at that time other structural alternatives could be considered.

(b) Timing And Content Of Application

PG&E's application for approval of a regional restructuring plan will be evaluated in a separate proceeding. Thus, the intervenors' complaints concerning the lack of detail regarding the regional restructuring plan, as well as their commentary regarding how PG&E's service territory should be divided into regions, is premature.[330] During cross-examination, Mr. Vesey described some of the principles which would guide how the proposed regions would be defined. Effective communication with community leaders and local government is key, as "the regions need to be designed in a way that the local management can actually understand what those differences are in serving their customers in the most responsive way . . . . to fully understand what those needs are in that particular area."[331] Thus, PG&E is "considering potentially four to five regions," making sure that regions are "appropriately assigned" so PG&E "present[s] as a local company," and "the intent is to align in an effective way along county jurisdictional lines."[332] Both Mr. Vesey and Mr. Johnson also described the animating principles in

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year minimum maintenance period for regionalization be measured from implementation of the Regional Restructuring Plan, not the Chapter 11 Plan.

[329] Mar. 2, 2020 Tr. at 1050:4-12 (cross-examination of Ms. Yap).

[330] For the same reason, SBUA's argument that "this proceeding must generate a formal statement of obligations" regarding the regionalization plan, among other things, is not practical or advisable. SBUA Br. at 4.

[331] Feb. 27, 2020 Tr. at 489:17-490:3 (cross-examination of Mr. Vesey).

[332] *Id.* at 395:2-18 (cross-examination of Mr. Vesey).

"determining what is a local decision, local function, what is a centralized function, and what is in between" for purposes of PG&E's anticipated regional restructuring plan.[333] For instance, functions which relate to "responsiveness to day-to-day customer needs," such as "relighting pilot lights, opening up outage lines," are best when localized.[334] "Other things, you would centralize and keep the way they are; say, transmission of electricity, transmission of gas, asset management . . . ."[335] The function of the CRO in setting standards for risk assessment and evaluation which apply enterprise-wide is another centralized function, which is why the proposal to appoint region-specific lead risk personnel would simply be a redundancy that obscures clear lines of communication.

PG&E's application will lay out its proposed regions, the governance structure, and categorization of functions as centrally managed, centralized functionally with regional presence, and regionally managed—answering many of the questions posed by intervenors concerning the regionalization proposal.[336] PG&E continues to work to meet the ACR's proposed deadline of June 30, 2020 to file that application, though it notes that the impact of COVID-19 and the recent stay-at-home orders have the potential to impair PG&E's ability to fully develop and complete the application in that time frame. It is likely that PG&E may need to ask for an extension of time to complete the application. Consistent with Rule 16.6, PG&E may ask the Executive

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[333] Feb. 25, 2020 Tr. at 78:8-14 (cross-examination of Mr. Johnson); *see also* Feb. 27, 2020 Tr. at 491:11-19 (cross-examination of Mr. Vesey) ("I don't think that we're looking to have separate isolated regions, each doing their own thing. Where there's commonality, that information would be shared. There would be programming. And to where we would have common use of a scale or knowledge that you could deploy, that's what you would do.").

[334] Feb. 25, 2020 Tr. at 78:17-79:5 (cross-examination of Mr. Johnson).

[335] *Id.*

[336] *See, e.g.,* TURN Br. at 84; JCCA Br. at 20. PG&E does not oppose PAO's suggestion that the directors who meet the Safety Expertise Criteria (either the SNO Committee or the Safety Subcommittee) have a role in approving the delineation of the proposed regions and division of responsibility between localized and centralized operations.

Director of the Commission to extend the filing deadline as necessary based on further information and developments. PG&E requests that the Commission's decision in this proceeding recognize that possibility.

(c) Implementation Of Interim Steps Towards Regionalization

PG&E believes that moving to a regionalized organization will increase responsiveness to customers, bring the organization closer to local communities, and increase customer satisfaction. In light of this, PG&E supports taking some interim steps towards regionalization while its application is pending, and will only do so to the extent these steps can be accomplished without detracting from PG&E's public safety responsibilities. As detailed in its Opening Brief, PG&E proposes that the interim steps towards implementing regionalization not be taken concurrently with filing the application (presumably on June 30, 2020), but rather that these interim steps begin after the conclusion of wildfire season, likely in the first quarter of 2021. To the extent this is a departure from the ACR's proposal, PG&E believes it is prudent to wait to divide its service territory into the proposed regions, and wait to appoint regional officers and lead safety personnel in each region, until after wildfire season so adjustments to the new structure do not pose a distraction to the important work during wildfire season. Based on the current timeline, barring the need for an extension of time owing to the impact of the COVID-19 pandemic, these interim steps would be in place by June 2021. This approach would address CLECA's concern that PG&E could be distracted by reorganization during wildfire season, and affords additional time to flesh out the contours of the regionalization plan between the filing of the application and the actual implementation of interim steps.

3. Independent Safety Advisor (ACR § 2)

PG&E has embraced independent oversight of its operations, as evidenced in its voluntary appointment of the ISOC and its work with the Federal Monitor. PG&E is supportive of maintaining an Independent Safety Advisor after the Federal Monitorship ends, and asks that defining the exact contours of that role be deferred until closer to the end of the Federal Monitorship, so PG&E's experience with both the ISOC and the Federal Monitor can be given due consideration and best practices and lessons learned can be incorporated into the new role. Thus, PG&E proposed in its Opening Brief that four months prior to the end of the Federal Monitorship, it file an advice letter proposing the function of the Independent Safety Advisor, supporting its recommendation as to which elements should operate in the vein of the Federal Monitor, which would be best modeled after the ISOC, and proposed improvements to either format. PAO's assumption that "[t]he Independent Safety Advisor would chair the Independent Safety Oversight Council (ISOC), an independent safety-focused organization within PG&E"[337] further supports the notion that additional input, shaped by experience with the current ISOC, would be useful before the function and support structure for the post-Monitor Independent Safety Advisor are determined. In that advice letter, PG&E can also map out a proposed reporting structure; PG&E is agreeable to PAO's recommendation that the Independent Safety Advisor report directly to the Utility CEO in addition to the SNO Committee, CSO, and CRO. Even in the absence of such direct official reporting, PG&E anticipates that there would be regular informational reporting to the Utility CEO by the Independent Safety Advisor. In such an advice letter, PG&E can also respond more directly to suggestions that the Independent Safety Advisor report to the Commission, detailing its position regarding how the effectiveness of feedback and transparency of communication with the Independent Safety Advisor would be hindered by taking Utility leadership out of the reporting structure.

[337] PAO Br. at 12.

4. Safety And Operational Metrics (ACR § 7)

All parties are supportive of the concept of Safety and Operational Metrics. The exact contours of these metrics will be proposed and determined in the context of a separate proceeding, so the parties' various arguments advocating for specific metrics, while perhaps offered as a preview of the parties' positions to come, are inchoate and not best addressed here. As proposed in the ACR, PG&E anticipates that it would propose Safety and Operational Metrics for the Commission's review, revision, and approval. MCE's assertion that PG&E "should be precluded from <u>defining</u> these metrics"[338] overlooks the Commission's important role in revising any proposals as it deems appropriate before issuing its approval.

5. Compliance And Probation

(a) Addressing Past Conduct

AB 1054 requires the Commission to consider PG&E's "reorganization plan and other documents resolving the insolvency proceeding, including [its] resulting governance structure" in light of, among other factors, the company's "safety history" and "criminal probation."[339] PG&E has presented evidence regarding the company's history, as well as its existing and planned governance and operations, to establish a context for the Commission to evaluate whether additional changes to PG&E's governance structure are needed to satisfy AB 1054's standards. The record demonstrates that PG&E is committed to taking responsibility for its past

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[338] *See, e.g.*, MCE Br. at 49.

[339] Pub. Util. Code § 3292(b)(1)(C).

actions and learning from the past to further improve its safety performance moving forward.[340] Last week's guilty plea with respect to the Camp Fire is consistent with this commitment.[341]

PG&E recognizes that its past shortcomings have at times resulted in grave consequences, including with respect to the Camp Fire and 2017 wildfires. The Camp Fire destroyed the towns of Paradise and Concow, impacted Magalia and other parts of Butte County, and took the lives of more than 80 people. Thousands lost their homes and businesses. Many others were forced to evacuate and leave their lives behind. PG&E deeply regrets the tragedy and the company's part in it. From the very beginning, PG&E acknowledged its role in the Camp Fire, and with the plea agreement with the Butte County District Attorney, the Utility formally admits its responsibility for the Camp Fire.[342] The Utility's acceptance of responsibility in the plea agreement brings the investigation of the company to closure and hopefully helps the communities and all involved move forward. Since the tragic 2017 and 2018 wildfires, the Utility has worked hard to improve the safety of its operations, through steps such as increased safety inspections, enhanced vegetation management, system hardening, and its PSPS

[340] *See, e.g.*, PG&E-01 at 1-4 (opening testimony of Mr. Johnson) ("PG&E also has fallen short in recent years, at times with grave consequences. These shortcomings are well-known, in particular the 2010 San Bruno explosion and the catastrophic wildfires of 2017 and 2018."); *id.* at 5-4 (opening testimony of Mr. Vesey) ("The Utility obviously has had a multitude of grave problems in recent years, including the 2010 explosion in San Bruno, an ensuing federal criminal conviction and probation, the devastating 2017 and 2018 wildfires, and the Chapter 11 filing. I recognize, as do a range of stakeholder constituencies, that there needs to be change."); *id.* at 8-3 (opening testimony of Ms. Kane) ("The 2010 San Bruno pipeline explosion was a terrible tragedy. Immediately afterwards, PG&E accepted responsibility for what happened and took significant action to help those impacted and to make its pipeline system safer."); Mar. 2, 2020 Tr. at 821:11-823:8, 852:20-855:15 (cross-examination testimony of Ms. Kane) (explaining that "PG&E has taken responsibility for the Locate and Mark matter" and has undertaken significant remedial measures). *See generally* PG&E-01 at Chs. 5, 6, & 8 (opening testimony of Mr. Vesey, Ms. Powell, Mr. Pender, Ms. Maratukulam, and Ms. Kane) (describing the Utility's efforts to enhance safety and operations, its comprehensive wildfire safety programs, and its efforts to build a best-in-class compliance and ethics program).

[341] *See* Mar. 23, 2020 Form 8-K (Official Notice Motion Ex. 4) (attaching plea agreement)).

[342] *See id.*

Program.[343] PG&E has built a compliance and ethics program that reflects best practices, and it has welcomed thoughtful input from the Federal Monitor and other outside experts.[344] PG&E has strengthened its governance and supports further improvements as proposed in the ACR. In all these ways, and others, PG&E has shown that it recognizes that what it did in the past was not acceptable, and that it must change. The plea agreement, likewise, reflects that sober attitude, and the memory of the Camp Fire and its victims will continue to drive the transformation of PG&E.

(b) Response To MCE's And Mr. Abrams' Arguments

MCE argues that PG&E's Plan and governance do not currently meet AB 1054's standards because the Utility allegedly is "[e]vading" compliance with the probation conditions relating to vegetation management, "[i]gnor[ing]" "red flags" in the letter the Federal Monitor prepared last year relating to the Utility's vegetation management work, and "[m]isrepresenting" the effects of vegetation management on the frequency of Public Safety Power Shutoff ("PSPS") events.[345] These claims mischaracterize the facts and are incorrect.

First, there is no evidence that the Utility is evading its obligations under the probation.[346] As the Utility has explained both in this proceeding and in the federal proceeding overseeing the probation, it is not feasible for the Utility to certify perfect compliance with all applicable vegetation management requirements at any specific point in time because its service territory

[343] *See, e.g.*, PG&E-01 at Ch. 6 (opening testimony of Ms. Powell, Mr. Pender, and Ms. Maratukulam).

[344] *See, e.g.*, PG&E-01 at Ch. 8 (opening testimony of Ms. Kane); PG&E-01 at 5-23-5-30 (opening testimony of Mr. Vesey).

[345] MCE Br. at 28-31.

[346] *See generally* PG&E-01 at Ch. 8 (opening testimony of Ms. Kane) (describing the Utility's extensive efforts to comply with the probation and monitorship).

has millions of trees and a natural environment that is constantly changing.[347] But the Utility still strives to achieve as close to perfect compliance as is feasible[348] and has robust processes and practices in place to meet its compliance obligations.[349] The Utility's routine vegetation management work and enhanced vegetation management work undergo multistep processes that include inspections of the lines, performance of the identified work, post-work quality control to verify that the work has been completed in compliance with the applicable standards, and quality assurance, and any trees that do not pass a quality review are sent back through the process for any necessary rework.[350]

Second, the Utility has acknowledged that the letter filed by the Federal Monitor in August 2019 identified areas for improvement relating to the quality of the Utility's vegetation management work and related records management, and the Utility has taken the Monitor's findings very seriously.[351] At the time, the Utility's Enhanced Vegetation Management ("EVM") Program was a new program implemented on an unprecedented scale and pace, and the

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[347] PG&E Br. at 117-118; *see* Mar. 2, 2020 Tr. at 824:4-826:4 (cross-examination testimony of Ms. Kane); Feb. 27, 2020 Tr. at 498:1-499:12 (cross-examination testimony of Mr. Vesey).

[348] *See, e.g.*, Mar. 2, 2020 Tr. at 874:17-877:5 (cross-examination testimony of Ms. Kane); PG&E-01 at Ch. 8 (opening testimony of Ms. Kane).

[349] *See, e.g.*, Mar. 2, 2020 Tr. at 923:20-925:26, 933:2-935:6 (cross-examination testimony of Mr. Pender); PG&E-01 at 6-5 (opening testimony of Mr. Pender).

[350] *See, e.g.*, Mar. 2, 2020 Tr. at 923:20-925:26, 929:14-28, 933:2-935:6 (cross-examination testimony of Mr. Pender); PG&E-01 at 6-5 (opening testimony of Mr. Pender). MCE has made much of the fact that PG&E's witnesses did not provide a bright-line definition of what constitutes "substantial compliance" with the vegetation management requirements (MCE Br. at 28-29), but that question is more complex than simply setting a fixed number of how many trees can be out of compliance at any given moment and is a question more appropriately determined by the court overseeing the probation and the regulating bodies. As discussed, the Utility's approach has been to focus on implementing effective processes and practices and to strive to achieve as close to perfect compliance as is feasible.

[351] *See* PG&E-01 at 8-18-8-20 (opening testimony of Ms. Kane); *id.* at 6-5-6-6 (opening testimony of Mr. Pender); *see also* Mar. 2, 2020 Tr. at 834:13-835:9 (cross-examination testimony of Ms. Kane) (PG&E "took all of these findings extremely seriously" and took "a number of steps" to improve); Feb. 28, 2020 Tr. at 707:20-23 (cross-examination testimony of Ms. Brownell) ("Q. The … federal monitor identified problems with the enhanced vegetation management recordkeeping; is that right? A. Yes.").

Utility has been continuously improving the program based on its learnings.[352] The Utility already has implemented several measures to address the issues raised by the Monitor and the Utility's own internal findings, including "enhanced training, added layers of quality review, additional personnel, steps to improve the accuracy of its mapping, and improvements related to the applications used for records management."[353] Notably, after the Utility added a quality assurance step to the EVM process in the last quarter of 2019, it found that for approximately 98% of the sampled miles, all of the EVM work in those miles met the applicable standards, which was a significant improvement over the results of the first pass quality review.[354]

Third, MCE mischaracterizes PG&E's statements regarding the potential impacts of vegetation management on the frequency of PSPS events to construe them as being contradictory.[355] In the federal proceeding related to the criminal probation, the court asked about whether the identified shortfalls in the Utility fully meeting the applicable vegetation management requirements were increasing the frequency of PSPS events.[356] The Utility

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[352] PG&E-01 at 8-19, n.27 (opening testimony of Ms. Kane) ("[T]he identified difficulties partly arose … from the unprecedented speed and scale of roll-out of this new program."); *id.* at 8-18-8-20 (providing examples of measures implemented to improve); *id.* at 6-4-6-6 (opening testimony of Mr. Pender) ("To PG&E's knowledge, the Utility's EVM Program is unprecedented in terms of its scope, scale, and pace of implementation."); *see also* Mar. 2, 2020 Tr. at 834:13-835:9 (cross-examination testimony of Ms. Kane); *see* Mar. 2, 2020 Tr. at 993:6-996:14 (cross-examination testimony of Mr. Pender) (describing PG&E's continuous improvement with respect to wildfire safety).

[353] *See* PG&E-01 at 6-5-6-6 (opening testimony of Mr. Pender); *id.* at 8-18-8-20 (opening testimony of Ms. Kane) (providing examples of the measures implemented); *see also* Mar. 2, 2020 Tr. at 834:13-835:9 (cross-examination testimony of Ms. Kane) (PG&E "took all of these findings extremely seriously" and took "a number of steps" to improve).

[354] Mar. 2, 2020 Tr. at 923:20-926:15, 927:14-21, 933:2-935:15 (cross-examination testimony of Mr. Pender).

[355] *See* MCE Br. at 29-30 ("PG&E has argued that its Enhanced Vegetation Management (EVM) program would <u>not</u> reduce the frequency of PSPS before Judge Alsup,[ ] but when asked before the Commission, and only when pressed, PG&E stated that it did.").

[356] Feb. 19, 2020 Hearing Tr. at 17-24 ("THE COURT: … But don't you admit that if you were in full compliance with your own mitigation plan and with the state law, that there would be fewer times that you would need to do—resort to PSPS? MR. ORSINI: No, Your Honor . . ..").

explained that PSPS events have been necessitated by extreme weather and fire danger conditions, such as "high-wind events," rather than "any deficiency in the vegetation management clearance,"[357] and further explained that "[e]ven with perfect vegetation compliance, PG&E would still need to maintain a PSPS program to address extreme weather and fire danger conditions."[358] At the evidentiary hearing in this proceeding, counsel for MCE asked a different question: Rather than asking about the effects of the delta between PG&E's vegetation management work and perfect compliance, counsel for MCE asked generally whether "compliance with the vegetation management and enhanced vegetation management required by law and under PG&E's plan reduce PSPS[.]"[359] In response, Mr. Vesey explained that vegetation management work "should limit the scope" of PSPS "within a certain range of [normal] weather conditions," but that "when you have extremely high gusts of winds, … no amount of vegetation management on your right of way can necessarily protect those assets. So you can have debris flying in from way off your right of way, and so in that instance, it really depends on the weather conditions."[360] Contrary to MCE's suggestion, PG&E's position has been consistent and correct.

Mr. Abrams argues that PG&E's Plan and governance do not currently meet AB 1054's standards in light of the criminal probation because PG&E's Chief Ethics and Compliance Officer "has been unable to keep PG&E on the straight and narrow path relative to the law since

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[357] *Id.*

[358] *United States v. Pacific Gas and Electric Co.*, No. 3:14-CR-00175-WHA, Response to Order to Show Cause and Further Order to Show Cause, ECF No. 1140 (N.D. Cal. Feb. 12, 2020) at 3; *see also* Feb. 19, 2020 Hearing Tr. at 17-19 ("[N]o amount of vegetation management work … will take away the need to engage in PSPSs. … Because what happens in these high-wind events is not simply that a branch that is ten feet from the line cracks and falls. The real problem and the real risk long-term is a tree 40 feet from the lines …. ").

[359] Feb. 27, 2020 Tr. at 479:14-17 (cross-examination testimony of Mr. Vesey by Ms. Kelly).

[360] *Id.* at 479:27-480:17.

she was hired [in 2015]," has not updated PG&E's Code of Conduct since August 2013, and did not review PG&E's Plan for ethical concerns.[361] Mr. Abrams' arguments should be rejected. Ms. Kane's testimony demonstrates that PG&E has built a robust, effective Compliance and Ethics Program and has undertaken extensive efforts to fully comply with the probation,[362] and Mr. Abrams has not identified any evidence indicating otherwise.[363] In addition, Mr. Abrams' assertion that PG&E's Code of Conduct has not been updated since August 2013 is refuted by Ms. Kane's opening testimony that PG&E updated its Codes of Conduct in 2018.[364] Further, Mr. Abrams' criticism that Ms. Kane did not review PG&E's Plan for ethical concerns[365] is based on his misunderstanding of the role of an ethics and compliance officer. As explained in PG&E's Opening Brief, the appropriate governance function of an ethics and compliance officer is to implement and oversee a properly functioning ethics and compliance program, including by leading training and culture building efforts.[366] It was not within Ms. Kane's role to evaluate whether the Plan—which embodies settlements with the key constituencies, including the Tort Claimants Committee and professionals representing a substantial majority of holders of Wildfire Claims—is a fair resolution of the parties' claims.[367]

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[361] William B. Abrams Opening Brief Regarding Pacific Gas and Electric Company Plan of Reorganization Pursuant to AB 1054 and Related Bankruptcy Exit Criteria (Abrams Br.) at 4-5.

[362] *See* PG&E-01 at Ch. 8 (opening testimony of Ms. Kane).

[363] Abrams Br. at 4-5; *see also* Abrams-01 at 16-17 (reply testimony of Mr. Abrams discussing criminal probation).

[364] PG&E-01 at 8-14 (opening testimony of Ms. Kane).

[365] Abrams Br. at 5.

[366] *See* PG&E Br. at 124, n.449; PG&E-01 at 8-2 (opening testimony of Ms. Kane) ("As Chief Ethics and Compliance Officer, I oversee and monitor the companywide Compliance and Ethics Program and lead ethics and compliance training and culturebuilding efforts.").

[367] *See* PG&E-01 at 8-2.

6. Public Safety Power Shutoffs (PSPS)

CLECA's and SBUA's proposals relating to PSPS are not warranted under AB 1054's standards for governance and should not be imposed as conditions of Plan approval.[368] CLECA recommends that the Commission condition its approval of PG&E's Plan on the following four conditions:

> (1) "PG&E's dramatic improvement in its ability to map out its electrical and natural gas facilities, as well as a significant improvement in the education of PG&E personnel about the location and function of the systems."[369]
>
> (2) "PG&E's developing situational awareness of locations where sudden electrical service interruptions could lead to conditions with health and safety or environmental consequences."[370]
>
> (3) "PG&E's prompt and accurate notification of its largest customers, especially those with critical facilities and/or manufacturing facilities, where interruption of power produces potential health, safety, or environmental consequences, using a dedicated communication pathway through account representatives."[371]
>
> (4) "PG&E's development of a system where its large power customer representatives who are directly advising customers have the ability to obtain regular and ongoing updates of information about the PSPS events, and have the authority to disseminate that up-to-date information to customers."[372]

These proposed conditions are unnecessary because the record demonstrates that PG&E already is engaging in substantial efforts to improve its PSPS performance, including with respect to situational awareness and customer notifications,[373] and PG&E is making additional

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[368] PSPS-related issues are being addressed in numerous other Commission proceedings such as the *Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*, R.18-12-005. *See infra* n.373.

[369] CLECA Br. at 10.

[370] *Id.*

[371] *Id.*

[372] *Id.* at 10-11.

[373] *See, e.g.*, PG&E-01 at 6-2, 6-7-6-8, 6-11-6-14 (opening testimony of Ms. Powell & Ms. Maratukulam) (providing examples of the Utility's significant efforts to further enhance its PSPS Program); *id.* at 5-35 (opening testimony of Mr. Vesey); Feb. 26, 2020 Tr. at 157:24-158:21 (cross-examination testimony of Mr. Johnson). The Utility's efforts to improve its PSPS Program are discussed in greater detail in its 2020 Wildfire Mitigation Plan and in other proceedings before the Commission relating to de-

commitments in this proceeding to further strengthen its safety and governance.[374] To the extent CLECA is proposing that PG&E change its incident command structure with respect to large power customer representatives, CLECA has not shown that a different structure would be more effective in notifying customers of PSPS-related information or in achieving the program's objectives.[375] In addition, CLECA's proposals should not be adopted because they are not sufficiently well defined to function as "conditions"; they do not direct PG&E to take specific actions or include measurable objectives to assess compliance.

SBUA requests that the Commission (1) "formally determine" that PG&E "has substantial responsibility for public safety risks created by [a PSPS event]," and (2) require PG&E to include PSPS as a risk on its risk register "[i]n order to start rigorously evaluat[ing] PSPS risks."[376] SBUA's requests are not necessary or productive. The record demonstrates that the Utility already considers the potential public safety risks of de-energization when deciding

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energization. *See, e.g.*, *Order Instituting Investigation on the Commission's Own Motion on the Late 2019 Public Safety Power Shutoff Events*, I.19-11-013; *Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*, R.18-12-005; *Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018)*, R.18-10-007; *see also* Pacific Gas & Electric Company's Response to OII, *Order Instituting Investigation on the Commission's Own Motion on the Late 2019 Public Safety Power Shutoff Events*, I.19-11-013 (December 13, 2019) (discussing the Utility's efforts in greater detail).

[374] *See generally* PG&E Br. at Sections IV.A-C (discussing PG&E's safety and governance commitments).

[375] *See, e.g.*, Mar. 2, 2020 Tr. at 943:19-944:20 (cross-examination testimony of Ms. Maratukulam) ("We strive to follow the incident command structure in all of our emergency response events. We are executing them as quickly as possible, and we believe that that system is the most efficient on delivering on the objections of the program.").

[376] SBUA Br. at 8-9.

whether power must be turned off for safety,[377] and already is engaging in significant efforts to mitigate the impacts of PSPS events.[378]

Moreover, SBUA's premises for its first request are flawed. SBUA suggests that because SDG&E's equipment ignited fires in 2007, PG&E has had "ten years of deficiencies" with respect to its safety history.[379] However, the environmental conditions in Northern California and Southern California have differed substantially over the past ten years, and the wildfire risk in Northern California has increased dramatically in recent years due to changes in environmental conditions.[380] SBUA also criticizes the fact that the Utility's target of reducing the number of customers affected by individual PSPS events by nearly one-third was developed based on a case study of the October 26, 2019 PSPS event,[381] but Ms. Maratukulam explained that the specified mitigation efforts will be conducted across all high-fire threat districts and not

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[377] *See* PG&E-01 at 6-10-6-11 (opening testimony of Ms. Maratukulam); Mar. 2, 2020 Tr. at 898:20-899:23 ("Q. … Does PG&E consider the public safety risks created by power outages in its decision to execute PSPS events? A. We do."); Mar. 2, 2020 Tr. at 900:25-901:8, 984:1-985:25 (cross-examination testimony of Ms. Maratukulam).

[378] *See, e.g.*, PG&E-01 at 6-11-6-14 (opening testimony of Ms. Maratukulam); *id.* at 5-35 (opening testimony of Mr. Vesey); Mar. 2, 2020 Tr. at 1005:15-1006:21 (cross-examination testimony of Ms. Maratukulam & Mr. Pender) (describing efforts to secure additional, hardened Community Resource Center facilities in 2020); Feb. 26, 2020 Tr. at 157:24-158:21 (cross-examination testimony of Mr. Johnson); *see also* Pacific Gas & Electric Company's Response to OII, *Order Instituting Investigation on the Commission's Own Motion on the Late 2019 Public Safety Power Shutoff Events*, I.19-11-013 (December 13, 2019) (discussing the Utility's efforts in greater detail).

[379] SBUA Br. at 5 ("For instance, SDG&E's equipment sparking fires in 2007 should have been a wakeup call and PG&E only recently began facing the task of fixing ten years of deficiencies.").

[380] For example, in 2012, the Commission described the risks in Southern California as materially different from the threat in Northern California: "There is no history of catastrophic power-line fires in Northern California, and Northern California does not experience Santa Ana winds that contribute significantly the risk of catastrophic power-line fires in Southern California." D.12-01-032 at 74; *see also id.*at 166, Finding of Fact 8. Also, as of 2012, only 15 percent of PG&E's service area was designated as having an elevated wildfire risk on the fire-threat maps recognized by the Commission at the time, but today, more than 50 percent of PG&E's service territory is designated as Tier 2 or Tier 3 High Fire Threat District Areas. *See* HFTD area maps designated in D.17-12-024, *available at* https://www.cpuc.ca.gov/FireThreatMaps/.

[381] SBUA Br. at 5-6.

just in the areas impacted by that event.[382] SBUA further argues that "little stock should be placed in the notion that PG&E is on track to substantially reduce the number of customers impacted by PSPS events this year" because Mr. Vesey testified that enhanced vegetation management activity would not reduce PSPS events in certain severe weather conditions,[383] but SBUA's claim ignores PG&E's many other efforts to reduce the number of customers impacted by PSPS events, such as "leveraging more granular data and deploying additional sectionalizing devices, … microgrids, and other activities."[384] Notably, on several occasions, SBUA mischaracterizes the testimony of PG&E's witnesses. For example, SBUA asserts, "when asked whether the person in charge of overseeing PSPS 'perform [sic] any sort of balancing to risks of implementation for the PSPS event, versus the risks of non-implementation of the event?' Mr. Vesey refused to say 'yes.'"[385] But the transcript reveals that SBUA misstates the testimony; in the quoted portion of the testimony, Mr. Vesey was asked about the role of the enhanced CRO position in considering the risks surrounding PSPS events,[386] and he explained that the CRO's input likely would be considered and weighed heavily but would not override the decision of the officer in charge under PG&E's processes.[387]

[382] Mar. 2, 2020 Tr. at 967:26-968:6 ("Q. And will all those activities that were identified be conducted in 2020 across all the areas in which PSPS could occur? A. Yes. So while the case study was performed on the 10-26 event specifically, we are working to operationalize those mitigation efforts across the high-fire threat district.").

[383] SBUA Br. at 6 (citing Feb. 27, 2020 Tr. at 479-482).

[384] PG&E-01 at 6-13 (opening testimony of Ms. Maratukulam).

[385] SBUA Br. at 7 (quoting Feb. 27, 2020 Tr. at 411).

[386] Feb. 27, 2020 Tr. at 411:5-8 ("Q. Do you expect the CRO to perform any sort of balancing to risks of implementation for the PSPS event, versus the risks of non-implementation of the event?); *id.* at 411:25-412:3 ("Q. …[W]ould you see the CRO as having the authority to override a decision that has otherwise been made to implement a PSPS event because of a review of the risk of turning off the power and the harms that such an action might create?").

[387] Feb. 27, 2020 Tr. at 411:5-412:16 ("A. I do not believe that the CRO would be a decision to override. I think a CRO can inform, bring those intentions and those risks to the officer in charge. But given the challenge of accountability and clarity and purpose, we want one individual in charge that ultimately

SBUA's second request—that PG&E be required to categorize PSPS as a risk on its risk register—would not have its intended effect and would instead be counterproductive. In utilizing the risk register framework, PG&E currently analyzes PSPS as a mitigant to wildfire risk.[388] It is appropriate to categorize PSPS as a mitigant, because it is a measure that is implemented intentionally for the purpose of reducing the risk of catastrophic wildfires after carefully evaluating various factors.[389] Also, PSPS and wildfire risk should be considered in the same context, rather than as separate risk events, because they are interrelated: a decision to not de-energize would have the effect of increasing wildfire risk in certain conditions.[390] Although PSPS is categorized as a mitigant, PG&E still considers the potential impacts of a PSPS event on customers when deciding whether to implement that mitigant and de-energize for public safety.[391]

7. Other Utility Governance And Structural Proposals From Parties

(a) Maintenance Of Small Business Programs

SBUA suggests that PG&E must commit to maintaining specified small business programs for the next five years, or else PG&E's Plan will fail to satisfy Public Utilities Code

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makes the decision. So the officer in charge for an—particular event gets inputs from a lot of different places, one that I'm assuming would take—be taken and weighed very heavily, would be the view of the Chief Risk Officer in terms of any concerns that that individual may have.").

388 Feb. 27, 2020 Tr. at 484:1-27 (cross-examination testimony of Mr. Vesey).

389 *See generally* PG&E-01 at 5-11-5-18 (opening testimony of Mr. Vesey) (describing EORM program); *id.* at PG&E-01 at 6-7, 6-10-6-14 (opening testimony of Mr. Pender & Ms. Maratukulam) (discussing PSPS Program).

390 *See* PG&E-01 at 6-7, 6-10-6-14 (opening testimony of Mr. Pender & Ms. Maratukulam) ("[I]n certain conditions, public safety is best served by implementing a PSPS event to reduce the risk of catastrophic wildfires."); *id.* at 5-34-5-35 (opening testimony of Mr. Vesey) ("[T]he PSPS events achieved their singular purpose: preventing catastrophic wildfires.").

391 *See* PG&E-01 at 6-10-6-11 (opening testimony of Ms. Maratukulam); Mar. 2, 2020 Tr. at 898:20-899:23 (cross-examination testimony of Ms. Maratukulam) ("Q. … Does PG&E consider the public safety risks created by power outages in its decision to execute PSPS events? A. We do."); Mar. 2, 2020 Tr. at 900:25-901:8, 984:1-985:25 (cross-examination testimony of Ms. Maratukulam).

Section 854(c)(2)'s criterion of maintaining or improving the quality of service to customers.[392] However, as noted in PG&E's Opening Brief, SBUA has not demonstrated that quality of service to small businesses will decline as a result of PG&E's emergence from Chapter 11 pursuant to PG&E's Plan, much less that PG&E's quality of service will decline overall.[393] Rather, SBUA insinuates that the quality of service to small businesses might decline in the midst of PG&E's transformation, without any supporting evidence except for the general proposition that during a transition "existing core competencies could suffer by being overlooked."[394] Such rant speculation, which could equally be hypothesized with respect to innumerable aspects of PG&E's operations, cannot suffice to show that PG&E's quality of service will decline, especially in light of PG&E's numerous initiatives to improve service to all customers. Thus, SBUA's argument that PG&E cannot satisfy Section 854(c)(2) unless PG&E makes certain commitments to maintain small business programs is unsupported by the record in this case.

(b) Holding Company Structure

TURN asserts that an "issue that leaps from the record of this case" is whether PG&E should retain its holding company structure, and that "the record provides substantial evidence that this structure hinders effective and efficient governance."[395] However, the five pages that TURN devotes to this issue are devoid of even a single instance where the holding company structure hindered effective or efficient governance. TURN decries supposed duplication and confusion from having two Boards, but fails to point to any meaningful confusion, much less any way that appropriate corporate decision making has been impaired. This is unsurprising, as the

[392] SBUA Br. at 2, 19.

[393] PG&E Br. at 175.

[394] SBUA Br. at 18 (citing cross-examination testimony of Mr. Johnson).

[395] TURN Br. at 43.

parent/subsidiary structure is ubiquitous in the corporate world, with the parent and subsidiary necessarily having separate (though often overlapping) boards. PG&E's Opening Brief pointed out that there are a number of potential positives from retaining the holding company structure, and that there are concrete downsides to revisiting that structure at this time.[396] TURN simply has not made a case that any action on the holding company structure is necessary to satisfy AB 1054, and any more generic desire to revisit the issue is both unwise at this stage and beyond the scope of this proceeding.

(c) Divestiture Of Generation Business

The Joint CCAs and MCE assert that PG&E should be restructured as a "wires-only company."[397] MCE further asserts that the "Commission should direct this process to begin *in this proceeding* to send a signal to PG&E and its creditors to plan accordingly."[398] As PG&E noted in its Opening Brief, this proceeding is plainly not the proper context to address such a proposal, and the Commission should not include any provision relating to such a possibility in its decision in this matter. Indeed, MCE's suggestion that this would "send a signal to PG&E … creditors" shows precisely why this is such an extraordinarily poor suggestion. In order to exit bankruptcy, PG&E will need to raise a historic amount of capital in the near future. And as the Commission is well aware, and the Declaration of Jason Wells confirms, inserting additional uncertainty at this time would have a negative impact on PG&E's credit rating and cost of capital.[399] That would without doubt redound to the detriment of the Utility's customers, who would bear the burden of such higher capital costs.

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[396] PG&E Br. at 170-71.

[397] JCCA Br. at 10-15; MCE Br. at 4-6.

[398] MCE Br. at 6 (emphasis added).

[399] Decl. of Jason Wells (PG&E Br. App'x C) ¶¶ 6-8 (discussing the negative effect of creating uncertainty about PG&E's future, in the context of discussing potential CPCN review).

Because potential divestiture of PG&E's generation assets is so plainly beyond the scope of this proceeding (and as it was not scoped, no adequate record on the subject has been developed), and as it would in any event be impractical to meaningfully evaluate such a proposal in the time frame available to evaluate PG&E's Plan, MCE's proposal should be rejected.

C. Executive Compensation (Scoping Memo § 3.1 And ACR § 9)

No party disputed in its testimony that PG&E's executive compensation structure—which leads the industry in its focus on safety and customer welfare—satisfies the requirements of AB 1054 as codified in Public Utilities Code Sections 8389(e)(4) and (e)(6). And no party disputes in its opening brief, aside from a few undeveloped points, that the executive compensation program satisfies the statute. As with the parties' proposals in other areas, their proposals regarding executive compensation primarily amount only to suggestions for purported improvements, which, whatever their merits, do not change the fact that the structure presented in PG&E's testimony satisfies the statute.

1. The Executive Compensation Structure Satisfies Section 8389(e)(4).

Covered Officers. No party has contested PG&E's understanding that AB 1054's executive compensation requirements apply only to Utility employees who qualify as "executive officers" within the meaning of 17 C.F.R. § 240.3b-7 (plus the Secretary and Treasurer, as stated in Public Utilities Code § 451.5).[400] Some of the parties' arguments, however, evince no regard for the limited reach of the statute.

PAO, for example, criticizes Mr. Johnson's compensation[401]—but because he is not a Utility employee, his compensation is not subject to AB 1054[402] and is beyond the scope of this

[400] *See* PG&E-01 at 7-20 & n.21 (opening testimony of Mr. Lowe); PG&E Br. at 149.

[401] *See* PAO Br. at 15-16.

[402] *Compare* Pub. Util. Code § 8389(e)(4), (e)(6) (governing the executive compensation only for "electrical corporation[s]") *with id.* § 218(a) (defining "electrical corporation" as "every corporation or

proceeding.[403] In any event, PAO's criticisms are meritless. PAO hypothesizes that Mr. Johnson's compensation "must" be poorly designed because he received stock options for 2019 despite PG&E "*potentially* igniting the Kincade Fire" in 2019.[404] PAO does not and cannot dispute, of course, that the cause of that fire remains under investigation, nor does PAO contend that compensation should be withheld based on mere potentialities. That aside, PAO's argument ignores that PG&E's executive compensation structure has been entirely revamped; the 2019 structure is nothing like the post-emergence structure PG&E has presented to the Commission in this proceeding.[405] PAO's argument therefore is not only out-of-scope, but also moot.

SBUA contends that "[s]eparate incentive structures" tailored to individual job functions "are necessary for lower-management employees,"[406] and MCE similarly argues that "[t]he Commission should impose requirements to ensure that incentive compensation for *all* employees [is] comprised of short-term and long-term incentives."[407] These contentions, too, are beyond the scope of this proceeding because AB 1054's requirements do not apply to "lower-management employees," much less "all employees."[408] In any event, PG&E has incentive plans

person owning, controlling, operating, or managing any electric plant for compensation in this state") *and* § 3280(e) (defining "electrical corporation" to have the meaning set forth in § 218(a)).

[403] *See id.* § 8389(e)(6)(C) ("It is the intent of the Legislature, in enacting this paragraph and paragraph (4), that any approved bankruptcy reorganization plan of an electrical corporation should, in regards to compensation of executive officers *of the electrical corporation*, comply with the requirements of those paragraphs.") (emphasis added).

[404] PAO Br. at 15 (emphasis added).

[405] *See* PG&E-01 at 7-7 – 7-8 (opening testimony of Mr. Lowe) (describing the process of revamping the structure for 2020).

[406] SBUA Br. at 12; *see also id.* at 13-14.

[407] MCE Br. at 52 (emphasis added; other emphasis omitted).

[408] MCE also asserts that "PG&E's current CEO Incentive Compensation is tied solely to short-term incentives." MCE Br. at 52; *see also id.* at 1 (defining MCE's use of "PG&E" to include the Utility). This is untrue. *See* PG&E-01 at 7-20 (opening testimony of Mr. Lowe) (stating that PG&E's executive compensation structure applies to all of the Utility's executives, which necessarily include Mr. Vesey as CEO). MCE also complains that PG&E filed an executive compensation-related motion in the bankruptcy court after hearings in this proceeding concluded. *See* MCE Br. at 16. Although MCE says

for lower-level managers and employees, with customized weightings of performance metrics based on individual business units.[409]

TCC makes a proposal that is even further afield of the statute because it does not pertain even to employees, let alone to executives. TCC contends, in a single sentence, that "[a]t least 35% of *director* compensation should be conditioned appropriately on public safety performance."[410] TCC does not elaborate on this proposal, nor did TCC or any other party submit evidence that might permit the Commission to evaluate it. Further, the panelists at the April 15, 2019 public workshop in the Safety Culture OII universally condemned the idea, in part because it could compromise directors' objectivity and independence.[411] Institutional investors also disfavor it for the same reasons; the California Public Employees Retirement System ("CalPERS") has stated, for example, that, "compensation programs should not provide directors with performance-based awards under any circumstances, as such awards may create a

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that this public filing "makes additional key disclosures," *id.*, MCE does not identify anything beyond the total expected cost of the STIP and the performance metrics applicable to Mr. Johnson. *See id.* at 50-51. Neither is at issue in this proceeding under the terms of AB 1054. Moreover, MCE acknowledges that the bankruptcy court "[m]otion is consistent with the submissions in this proceeding." *Id.*

[409] *See* Mar. 3, 2020 Tr. at 1168 (cross-examination testimony of Mr. Lowe) ("[F]or the individuals who are at [the director level] or below, they have different weightings. So it will be individualized based on the weight of that business unit, if they're in the electric operations, the gas operations or generation; otherwise, it is not modified unless their goals, their individual goals, are tied directly to the business units' goals.").

[410] TCC Br. at 32 (emphasis added).

[411] *See* Apr. 15, 2019 Tr. of Proceedings (Part 1) in Safety Culture OII at 87-88 (comments of Kenneth Feinberg, former Director of Executive Compensation, Department of the Treasury) ("I wouldn't apply [incentive compensation] to board members. … [Y]ou don't want to lose the competitive effort to secure the very best board members."); *id.* at 89 (comments of Kenneth Bertsch, Executive Director of the Council for Institutional Investors) ("I would not want independent board members receiving incentive compensation. I think you want a degree of objectivity and not drinking the Kool-Aid on their part, and so I think you pay board members some reasonable amount. You do not do it on an incentive basis."); *id.* at 89 (comments of attorney Susan Mac Cormac) ("I think you have—you want to maintain the independence and the objectivity of the board."); *id.* at 90 (comments of Dr. Lynn Paine of Harvard Business School) (stating that incentive compensation for directors "does run the risk of undermining objectivity.").

potential conflict with the directors' primary role as an independent representative of shareholders."[412]

Safety Incentives. PG&E's executive compensation structure unquestionably complies with Section 8389(e)(4)'s requirement "to promote safety as a priority and to ensure public safety." Under PG&E's program (1) the vast majority of executive compensation (64% on average) at target levels consists of performance-based incentive compensation under the Short-Term Incentive Plan ("STIP") and the Long-Term Incentive Plan ("LTIP"); and (2) the vast majority of those plans' performance metrics are based on safety, especially public safety (more than 70% under the STIP, and at least 75% under the LTIP).[413] No party seriously disputes that this industry-leading focus on safety[414] fulfills—indeed, exceeds—the statutory requirements. The parties' various proposals for purported "improvements" therefore should not stand in the way of Plan approval.

In any event, a number of the parties' proposals are misplaced, and in some instances, affirmatively counterproductive and contrary to the shared goal of public safety. Specifically:

- TCC proposes to *dilute* the LTIP's focus on safety by permitting as little as "50 percent of an executive's long-term incentive compensation [to be] based on public safety performance."[415] TCC further argues that the LTIP should not use

[412] PG&E-05 at 4-Exh.3-23 (CalPERS, *Governance and Sustainability Principles* (Sept. 2019)); *accord* PG&E-06 at 4-Exh.11-42 (Glass Lewis, *An Overview of Glass Lewis' Approach to Proxy Advice* (2020)) ("[T]o ensure directors are not incentivized in the same manner as executives but rather serve as a check on imprudent risk-taking in executive compensation plan design, equity grants to directors should not be performance-based. Where an equity plan exclusively or primarily covers non-employee directors as participants, we do not believe that the plan should provide for performance-based awards in any capacity.").

[413] *See* PG&E Br. at 149-50.

[414] *See id.* at 150; PG&E-01 at 7-9 (opening testimony of Mr. Lowe).

[415] TCC Br. at 32.

its existing safety metrics, but rather should use "a relevant subset of the adopted Safety and Operational Metrics."[416] TCC provides no reasoning or analysis in support of this suggestion, and it is counterproductive; as PG&E previously explained, it "has designed its executive compensation performance metrics from the standpoint of best practices for executive compensation in particular," and would have concerns about tying compensation to metrics developed for other purposes in other contexts (e.g., potentially creating unintended and negative incentives for individual executives).[417]

- MCE argues that fully "95% of incentive payments should be tied to safety outcomes."[418] MCE does not and cannot point to anything in the statute that requires such a high percentage. Nor does it cite any example of any utility anywhere that has done anything close to this. MCE likewise makes no attempt to rebut PG&E's evidentiary showing that such a narrow focus on safety would fail to promote other critical aspects of PG&E's mission, including reliability and affordability.[419]
- MCE also argues that while it is "technically true" that PG&E's structure heavily promotes safety, "[e]ach sliver of safety [in the metrics] is broken down into sub-components such that PG&E would have to have serious deficiencies in eleven different safety areas for compensation to be [significantly] reduced."[420] But that

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[416] *Id.*

[417] PG&E Br. at 165; *see also* PG&E-01 at 7-3-7-7 (opening testimony of Mr. Lowe) (describing certain best practices as reflected in the Willis Towers Watson study that appears in TURN-X-09).

[418] MCE Br. at v, 52.

[419] *See* PG&E-01 at 7-8, 7-9, 7-21 (opening testimony of Mr. Lowe).

[420] MCE Br. at 50.

is inherent in any comprehensive set of metrics. The alternative would be to focus the metrics on a single or only a few safety areas (wildfire risk, for example) and thereby fail to promote safety in other critical areas (gas, dam, nuclear, and PSPS safety, for example). No party—not even MCE—contends that *that* would be a good idea.[421]

- SBUA says that the STIP's "individual [performance] modifier" should not be allowed to "overrid[e] the safety incentive created by the STIP."[422] PG&E agrees. But the individual performance modifier could never have this effect because it is merely an *overlay* to the STIP's safety-related and other performance metrics. Specifically, the modifier potentially reduces to as low as 75%, or increases to as high as 125%, an individual executive's *otherwise payable* STIP award, depending on the individual's job performance.[423] Even if a particular executive's performance modifier had nothing to do with safety, it could not possibly override the STIP's fundamental focus on safety.[424]

- TURN argues that the LTIP's performance metrics must be scrapped and "replaced with [exclusively] outcome-based metrics."[425] TURN does not and

[421] *See* PG&E-06 at 4-Exh.11-34 (Glass Lewis) ("Glass Lewis generally believes that measuring a company's performance with multiple metrics serves to provide a more complete picture of the company's performance than a single metric; further, reliance on just one metric may focus too much management attention on a single target and is therefore more susceptible of manipulation.").

[422] SBUA Br. at 14.

[423] *See* PG&E Br. at 151 n.525; PG&E-01 at 7-14-7-15 (opening testimony of Mr. Lowe); Mar. 3, 2020 Tr. at 1167-68 (cross-examination testimony of Mr. Lowe).

[424] TURN argues that "[t]he criteria governing and bounding the Board's discretion regarding the 75%-125% modifier on otherwise payable STIP awards must be included in the ECP." TURN Br. at v, 84. TURN appears to be asking for disclosure of each executive's individual job performance goals and annual job performance evaluations, which differ for each executive and change from year to year. TURN's request is not meaningful, and treads on employee privacy concerns.

[425] *Id.* at iv, 83.

cannot dispute, however, that the LTIP already uses outcome-based metrics, and that across both the STIP and the LTIP, the metrics are overwhelmingly outcome-based.[426] Moreover, TURN does not and cannot cite anything in AB 1054 that requires *any* metric, much less all metrics, to be outcome-based—although PG&E agrees that such metrics are desirable. Most significantly, TURN ignores PG&E's evidentiary showing that the key activity-based metric in the LTIP—"System Hardening"—is critical for reducing wildfire risk, and concomitantly, the need for PSPS; as PG&E's testimony shows, completing just 20% of PG&E's planned system hardening in High Fire Threat Districts can reduce catastrophic wildfire risk by as much as 90%.[427] Promoting this actual reduction in risk is far more important than slavishly adhering to labels like "outcome-based."

- TURN further argues that the System Hardening metric should be replaced with something it calls "Number of Ignitions in High Fire Threat Districts (HFTD), normalized by Red Flag Warning (RFW) circuit mile days."[428] TURN says that "[t]he outcome this metric would measure is the number of ignitions that occur in locations and weather conditions in which an ignition is most likely to lead to a catastrophic wildfire."[429] TURN ignores that PG&E already uses almost exactly this metric in its STIP.[430]

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[426] *See* PG&E-01 at 7-10, 7-16 (opening testimony of Mr. Lowe).

[427] *See id.* at 7-17.

[428] TURN Br. at 72.

[429] *Id.* at 72-73.

[430] *See* PG&E-01 at 7-11 (opening testimony of Mr. Lowe) (describing the "Reportable Fire Ignitions" metric); PG&E-06 at 7-Exh.1-1 (exhibits explaining that this metric measures ignitions only "within the Utility's High Fire Threat District[s].").

- TURN also argues that the "PSPS Notification Accuracy" and "Customer Satisfaction" components of the LTIP's "Customer Experience" metric "should be rejected."[431] TURN made these same arguments in its testimony, and has added nothing substantive to them in its brief. PG&E's Opening Brief already responds to those arguments, so PG&E will not repeat those points here.[432]

Of all the parties' proposals, the most problematic—the one that most threatens to undermine the shared goal of public safety—is the proposal of SBUA and TURN to use metrics that directly and artificially incentivize a reduction in the number and frequency of PSPS events.[433] PG&E appreciates that SBUA and TURN are making these proposals with the best of intentions. Certainly PG&E shares the goals of reducing the number, frequency, and scope of PSPS events, which is why PG&E has (1) deployed a variety of operational initiatives in furtherance of these goals; (2) included "System Hardening" as a metric in the LTIP (because hardening the system will reduce underlying wildfire risk, thereby naturally reducing the need for PSPS); and (3) included metrics in the STIP and the LTIP that promote reducing the scope and impacts of PSPS events through technological solutions.[434] But PG&E has profound concerns with any proposal that would inject personal financial motivations into the decision of *whether to implement* a PSPS event during extreme weather events, which is what SBUA's and TURN's proposals would do. When PG&E's personnel are making that momentous decision—with safety risks either way—PG&E wants them focused exclusively on *safety*.[435]

[431] TURN Br. at 74; *see also id.* at 75-76.

[432] *See* PG&E Br. at 155.

[433] *See* SBUA Br. at 10-12; TURN Br. at iv, 73, 83.

[434] *See* PG&E-01 at 7-11, 7-12, 7-17 (opening testimony of Mr. Lowe) (describing the STIP's "Distribution Circuit Sectionalization" metric and the LTIP's "Substation Enablement" metric); PG&E-06 at 7-Exh.1-3, 7-Exh.1-16 (exhibits to testimony describing these metrics).

[435] *See* PG&E Br. at 153.

TURN responds that, under both PG&E's executive compensation program and TURN's proposed alternative, there are "metrics based on PG&E's success in preventing ignitions in locations and weather conditions that pose the highest risk of catastrophic wildfire."[436] TURN postulates that a reasonable executive would calculate that his or her financial incentives lie predominantly in calling a PSPS event, rather than risking a wildfire by not calling one.[437] That is not clear; it could depend on, among other things, the overall mix of scores across the various performance metrics together with the effect of the STIP's individual performance modifier. Regardless, TURN's argument just illustrates PG&E's point: This is precisely the sort of calculus PG&E does *not* want its personnel engaging in when deciding whether to implement a PSPS event. TURN's and SBUA's proposals, though well-intentioned, should be rejected as contrary to the public interest.

<u>Financial Stability Incentives</u>. No party disputes that PG&E's executive compensation structure complies with Section 8389(e)(4)'s requirement to "promote … utility financial stability." The structure does this in three ways: (1) by heavily promoting customer, public, and workforce safety, which inherently promotes financial stability; (2) by using "Core Earnings per Share" as a STIP metric; and (3) by using a "Total Shareholder Return" ("TSR") modifier as an overlay for the LTIP metrics.[438]

MCE nevertheless argues that the structure should promote "financial health" instead of "financial performance" in order "to better align with the public interest rather than shareholder interest."[439] MCE does not explain what a change in nomenclature would accomplish—it is the

[436] TURN Br. at 73-74; *see also* PG&E-01 at 7-11 (opening testimony of Mr. Lowe) (describing the STIP's "Reportable Fire Ignitions" metric); PG&E-06 at 7-Exh.1-1 (exhibits describing this metric).

[437] *See* TURN Br. at 73-74.

[438] *See* PG&E Br. at 154.

[439] MCE Br. at 51.

substance of the metrics that matters, not the verbiage one might use to describe them. In any event, the statute requires the structure to promote "financial *stability*,"[440] and no party disputes that PG&E's structure does so.

MCE also says, in a single sentence, that the executive compensation structure should not use "shareholder-focused metrics such as earnings per share."[441] It does not and cannot dispute, however, that core earnings per share reflects financial health and stability, and thus is consistent with AB 1054's requirements.[442] Nor does MCE explain why PG&E should have an aversion to shareholder-related metrics; PG&E needs to remain an investable entity, and PG&E showed through unrebutted testimony that shareholder-related metrics are "expected by institutional shareholders in order to help align executive incentives with long-term shareholder welfare."[443]

In the same vein, TURN takes issues with the LTIP's TSR overlay, arguing that "PG&E should not be allowed to base its … incentive compensation on stock performance" because "[g]ood financial performance, even with a long-term view, does not mean the utility has ensured or prioritized public safety."[444] TURN misses the point of the TSR modifier: Although strong

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[440] Pub. Util. Code § 8389(e)(4) (emphasis added).

[441] MCE Br. at 52.

[442] Core earnings per share also aligns with operational efficiency, and thus, customer affordability.

[443] PG&E-01 at 7-18 (opening testimony of Mr. Lowe); *see also* PG&E-05 at 4-Exh.3-23 (CalPERS) ("CalPERS believes well-designed compensation programs can be a powerful and effective tool to reward value-creating executives and employees and appropriately align their interests with those of providers of capital (shareowners) to achieve sustainable, long-term investment returns. … Compensation programs should symmetrically align the interests of the companies' executives and employees with the providers of capital, that is, both sides should participate in the good and bad times. Incentive pay should be tied to shareowner experience."); PG&E-05 at 4-Exh.4-7 (California State Teachers Retirement System, *Corporate Governance Principles* (Nov. 2018)) ("The [executive compensation] philosophy should promote an alignment of interests between management and shareholders."); PG&E-05 at 4-Exh.6-11 (Blackrock, *Proxy Voting Guidelines for U.S. Securities* (2019)) ("BlackRock supports equity plans that align the economic interests of directors, managers, and other employees with those of shareholders."); PG&E-06 at 4-Exh.11-34 (Glass Lewis) ("When used appropriately, [long-term incentive programs] can provide a vehicle for linking an executive's pay to company performance, thereby aligning their interests with those of shareholders.").

[444] TURN Br. at 81.

safety performance is necessary for strong share performance (and thus, for the TSR modifier to have a positive effect on compensation), the purpose of the TSR modifier is not to incent public safety. The purpose is to promote financial stability as AB 1054 requires, including by ensuring that PG&E remains an investable entity from the perspective of long-term institutional investors.

Objective Performance Metrics. No party disputes that the STIP and LTIP comply with § 8389(e)(4)'s requirement to use "performance metrics that are measurable and enforceable." Though TURN continues to say that a few of the metrics are not defined as crisply as it would prefer, TURN does not say anything substantive in its brief that it did not already say in its testimony.[445] Because PG&E's Opening Brief already responds to those concerns, PG&E will not repeat that discussion here, but rather incorporates it by reference.[446]

Tying 100% of Incentive Compensation to Safety Performance. No party contends that PG&E should tie "100 percent of incentive compensation to safety performance," as permitted but not required by Section 8389(e)(4). Various parties, however, express different degrees of support for the ACR's proposal for "[a] presumption that a material portion of executive incentive compensation shall be withheld if … PG&E is the ignition source of a catastrophic wildfire, unless the Commission determines that it would be inappropriate based on the conduct of the utility."[447] Specifically:

PG&E supports the ACR's proposed presumption, provided that the PG&E Boards and/or the Compensation Committee have authority to determine whether the relevant facts overcome the presumption, and if not, what constitutes the appropriate "material portion" to

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[445] *See* TURN Br. at 72, 76-78.

[446] *See* PG&E Br. at 155.

[447] ACR § 9, App'x A at 9.

withhold for any particular executive.[448] As PG&E notes in its Opening Brief and the Declaration of John Lowe attached as Appendix D thereto, ceding this discretion to the Commission (as proposed in the ACR) in the current politically charged environment could negatively impact PG&E's ability to recruit.[449] PG&E's Boards also are likely to be better-positioned to make a fully informed decision because they are likely to have greater access to information (e.g., because disclosure of investigative facts to the Commission while the investigation is ongoing may not be feasible in the context of a catastrophic event).[450] For these reasons, PG&E believes that the discretion to withhold incentive compensation in the event of a catastrophic wildfire should continue to reside with the Boards and the Compensation Committee, rather than with the Commission.

MCE and TCC support the ACR's proposal, but would pre-define "material portion" with no apparent regard for any relevant facts and circumstances. Specifically, MCE proposes presumptively withholding 95% of all executive compensation,[451] whereas "TCC submits that the words 'a material portion' should be defined as at least 75%."[452] Neither party provides any reasoning or analysis in support of its recommendation, nor do they explain how a one-size-fits-all approach would be either fair or consistent with PG&E's need to attract and retain talented

[448] *See* PG&E Br. at 166-67. PG&E's support for this proposal is also subject to working out several key details elided by the proposal, such as how one defines "catastrophic wildfire," who makes the determination about the ignition source, what to do in the event of disputes about the ignition source (e.g., if CAL FIRE makes one determination but a jury makes another), what to do with potential incentive payments when the determination is pending, and how to determine causation when a third party plays a role in the ignition (e.g., if a car knocks over a non-negligently placed utility pole).

[449] *See* Decl. of John Lowe (PG&E Br. App'x D) at ¶ 11.

[450] *See id.* ¶ 10.

[451] *See* MCE Br. at 52.

[452] TCC Br. at 32.

executives.[453] Similarly, neither party shows any regard for the fact that the appropriately withheld percentages may be different for different officers; in the case of a catastrophic wildfire, for example, the percentage appropriately withheld from the head of Electrical Operations may be very different from the percentage appropriately withheld from, say, the corporate Secretary. MCE's and TCC's failure even to acknowledge such nuances underscores that discretion should not be pre-defined, but rather should be exercised by the Boards and/or the Compensation Committee based on all the relevant facts and circumstances of the particular situation and the particular executive.

TURN also repeats its somewhat different proposal for withholding incentive compensation in the event of a catastrophic safety event, namely: (1) *mandatory* withholding of 50% from all executives without regard to facts, circumstances, individual roles, or individual fault; and (2) discretionary withholding of up to the remaining 50%.[454] PG&E previously responded to these proposals, explaining that, as shown by the testimony of TURN's own witness, they would lead to arbitrary and unpredictable results, and thereby impair PG&E's ability to attract and retain talented executives.[455] PG&E also responded to TURN's argument that discretion to withhold must have written parameters around it or else "performance metrics will not be sufficiently measurable and enforceable as AB 1054 requires."[456] As PG&E explained, this argument conflates performance metrics with discretion to withhold incentive

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[453] *See* Decl. of John Lowe (PG&E Br. App'x D) at ¶ 10 (noting the importance to recruiting and retention that "executives and recruits [have] confidence that the determination [of whether to withhold compensation] will be as informed and fair as possible.").

[454] *See* TURN Br. at iv, 74, 84.

[455] *See* PG&E Br. at 157-59; *see also* Decl. of John Lowe (*id.* App'x D) at ¶ 19 (stating that withholding compensation in ways that "could be perceived as arbitrary and unfair … could have serious negative financial consequences for individuals who did not engage in any misconduct …. [and] would negatively impact PG&E's ability to attract and retain a talented executive team.").

[456] TURN Br. at 78; *see also id.* at 79.

compensation even if the metrics are met.[457] It also fails to appreciate that, as TURN's own witness acknowledged, the universe of relevant facts and circumstances that would inform any exercise of discretion cannot possibly be pre-defined.[458]

2. The Executive Compensation Structure Satisfies Section 8389(e)(6).

New or Amended Contracts. As noted in PG&E's Opening Brief, PG&E does not dispute that the requirements of Section 8389(e)(6) apply even though PG&E does not generally have written employment contracts with its executives.[459] As also noted, PG&E does not object to the ACR's proposal for "[w]ritten compensation agreements for executives"[460] insofar as this connotes the written shareholder-approved LTIP, the use of written award contracts under the LTIP, and public disclosure of the terms, features, and results of the compensation programs.[461] No party has contended that PG&E also should be required to have written employment contracts with its executives, and PG&E would not support a requirement of using such contracts.

Cash/Incentive Compensation Mix. No party disputes that PG&E's executive compensation structure complies with Section 8389(e)(6)(A)(i)(I)'s requirement to place "[s]trict limits on guaranteed cash compensation, with the primary portion of the executive officers' compensation based on achievement of objective performance metrics." As noted, the structure's only guaranteed cash compensation is base salary (plus a modest cash stipend in lieu of broader perquisites), which will constitute only about 36% of total compensation on average

[457] *See* PG&E Br. at 158.

[458] *See id.* at 159.

[459] *See id.* at 160, 164; *see also* Pub. Util. Code § 8389(e)(6) (applying its requirements to a structure for "any new or amended contracts.").

[460] ACR § 9, App'x A at 9.

[461] *See* PG&E Br. at 164.

at target levels.[462] The structure's remaining compensation—about 64% at target levels—will consist of incentive compensation payable through the STIP and the LTIP.[463] The structure thus places the vast majority of overall executive compensation "at risk."

No Guaranteed Monetary Incentives. PG&E showed in its Opening Brief that its executive compensation structure complies with Section 8389(e)(6)(A)(i)(II)'s prohibition on "guaranteed monetary incentives in the compensation structure."[464] Two parties' briefs, however, suggest or express concern that PG&E has selected metric achievement milestones that are unduly easy to meet such that incentive compensation can become "guaranteed" compensation. Neither party offers any evidentiary basis for this, and the record refutes it.

MCE argues that "PG&E's executive compensation metrics must be developed under the oversight of the Commission" because PG&E "[s]hould [n]ot [b]e [t]rusted to [d]evelop [t]hese on [t]heir [o]wn [sic]," as shown by the purported fact that the metrics are "easily achievable."[465] MCE offers no support for this assertion.

TURN is more reserved, merely expressing concern that the metrics *might* be too easily achievable.[466] TURN voiced this same concern in its testimony, and PG&E responded in its Opening Brief. As PG&E explained, TURN's concern is belied by Mr. Lowe's testimony, which shows that PG&E calibrated the milestones to strike an appropriate balance between being challenging on the one hand (so that they incentivize desired outcomes) and being reasonably achievable on the other hand (because if metrics "are perceived as out of reach, they will not

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[462] *See id.* at 160.

[463] *See id.*

[464] *See* PG&E Br. at 160-62.

[465] MCE Br. at 50.

[466] *See* TURN Br. at 64, 68-70.

have their desired incentive effect").[467] TURN's concern also is refuted by publicly available data showing that PG&E has selected metric achievement milestones that generally require progress over recent historical performance, and that thus by definition will be challenging to achieve.[468] Moreover, TURN's brief cites yet more evidence addressing its concern: the testimony of Ms. Brownell, who made clear that the Boards require PG&E's metric achievement milestones to be appropriately challenging.[469]

Equity Awards. No party disputes that PG&E's executive compensation structure complies with Section 8389(e)(6)(A)(iii)'s requirement to include "[a] long-term structure that provides a significant portion of compensation, which may take the form of grants of the electrical corporation's stock, based on the electrical corporation's long-term performance and value," with such "compensation … held or deferred for a period of at least three years." As PG&E has shown, the LTIP accomplishes this because: (1) all of its awards are equity awards; (2) those equity awards will comprise about 44% of total executive compensation at target levels; and (3) the equity awards must be held for three years after the grant date.[470]

Relatedly, a number of parties, including PG&E, have expressed general support for the ACR's nearly identical proposal for "[h]olding or deferring the majority or super-majority of incentive compensation, in [the] form of equity awards, for at least 3 years."[471] *No* party,

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[467] PG&E Br. at 161 (quoting PG&E-01 at 7-6 (opening testimony of Mr. Lowe)).

[468] *See id.*

[469] *See* TURN Br. at 68-69; *see also* Feb. 28, 2020 Tr. at 722-73 (cross-examination testimony of Ms. Brownell) ("Q. And what would happen if those achievement milestones … were too easy to achieve? A. I think the Board would not be fulfilling its responsibility to hold management accountable. Q. And it would not be a good situation if the milestones were set such that they could be so easily achieved that effectively the incentive compensation becomes guaranteed [compensation]? That would not be a good thing, right? A. It is not incentive compensation in those circumstances.").

[470] *See* PG&E Br. at 162.

[471] ACR § 9, App'x A at 9.

however, has specifically supported subjecting a "super-majority" of incentive compensation to such a requirement. As PG&E previously explained, the Legislature did not see fit to impose such a requirement in AB 1054, and PG&E would have concerns about the effect of such a requirement on its ability to recruit talented executives.[472]

Minimization of Ancillary Compensation. No party disputes that PG&E's executive compensation structure complies with Section 8389(e)(6)(A)(iv)'s requirement of "[m]inimization or elimination of indirect or ancillary compensation that is not aligned with shareholder and taxpayer interest."

3. The ACR's Proposal Regarding Severance Payments

Most of the ACR's proposals concerning executive compensation are closely related to the provisions of Sections 8389(e)(4) and (e)(6), and PG&E therefore addresses those proposals in the discussion above. Because the ACR's proposal regarding severance benefits is not tethered to the statute, PG&E addresses it separately here.

As PG&E previously explained, it maintains policies allowing for cancellation or recoupment of an executive's incentive compensation and severance payments in the event the executive engages in fraud, criminal activity, or the like.[473] PG&E's policies accord with best practices as evidenced by the policies of numerous other companies, including other California investor-owned utilities.[474] PG&E does not support the ACR's proposal to penalize *innocent* executives by cancelling or recouping *their* compensation just because someone else caused the company to engage in misconduct. PG&E is unaware of any precedent for such a policy, and

[472] *See* PG&E Br. at 165.

[473] *See id.* at 167-69; Decl. of John Lowe (*id.* App'x D) at ¶¶ 14-16 and Policies attached as Exs. 1-2 thereto.

[474] *See* Decl. of John Lowe (*id.* App'x D) at ¶ 18 & nn. 6-10.

believes it would substantially impair its ability to recruit. As PG&E's executive compensation professional John Lowe stated in his declaration:

> The Severance Proposal in the ACR …. would permit restriction, limitation, or cancellation based on events that executives may perceive as out of their control, and even arbitrary. I am not aware of any recoupment or severance policy of any major corporation that operates similarly. … [T]he Severance Proposal in the ACR, if adopted without modification, is likely to be perceived as an outlier. I believe that it also could be perceived as arbitrary and unfair, in that it could have serious negative financial consequences for individuals who did not engage in any misconduct. I believe that this would negatively impact PG&E's ability to attract and retain a talented executive team.[475]

TURN, however, appears to be indifferent to the proposal's impact on PG&E's ability to recruit and retain a talented executive team. TURN proposes striking from the ACR's proposal the sentence stating that "[i]mplementation of this policy should take into account PG&E's need to attract and retain highly qualified executive officers."[476] TURN "does not see a need for [this] sentence" because, it says, "an executive officer who is worried about leading the company into a[] criminal conviction is one that should not be hired," and "[e]xecutives should have confidence that the company will not engage in criminal conduct on their watch."[477]

This position, however, does not recognize the realities of executive compensation. A company that threatens to cancel material portions of its executives' compensation for reasons that are out of the executives' control, and that the executives therefore may perceive as arbitrary, is a company that is at a competitive disadvantage in the marketplace for talent vis-à-vis companies without such policies. Inasmuch as PG&E appears to be the only major corporation with such a policy, it would be at a competitive disadvantage vis-à-vis literally every other major corporation, including other investor-owned utilities. The ACR's proposal

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[475] *Id.* ¶¶ 17-19.

[476] ACR § 9, App'x A at 9.

[477] TURN Br. at 82.

necessarily would impair PG&E's ability to recruit and retain the talent it needs—especially if, as TURN advocates, implementation of the proposal were deliberately divorced from any concern for recruiting and retention.

But TURN would go even further. TURN would "extend" the proposal to cancel or recoup severance benefits in the event of a corporate criminal conviction "to include any violations of the conditions of PG&E's probation."[478] Consider the implications. One of the conditions of PG&E's probation is "full[] compl[iance] with all applicable laws concerning vegetation management and clearance requirements,"[479] including laws requiring a four-foot radial clearance around power lines in High Fire Threat Districts.[480] If PG&E performed all its vegetation management work perfectly, but the day after it properly trimmed a particular tree, a branch from 20 feet above happened to fall and lodge within four feet of a power line, one could argue that PG&E would be in violation of applicable regulations, and thus, the terms of its probation. Under TURN's proposal, all executives could lose their severance benefits as a result of this random event that is completely outside their control. TURN's proposal manifestly contravenes PG&E's need to attract and retain a qualified executive team, and should be rejected as contrary to the public interest.

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TCC asserts that "approval of the Plan [should] be conditioned on PG&E developing, in consultation with [a] nationally recognized independent consultant, and filing for Commission approval, an incentive compensation plan that ties compensation to safety performance."[481] That

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[478] *Id.*

[479] *United States v. Pacific Gas & Electric Co*., No. 3:14-CR-00175, ECF No. 1040, Order Adopting New Conditions of Probation (N.D. Cal. April 3, 2019).

[480] *See* General Order 95, Rule 35; Pub. Resources Code § 4293.

[481] TCC Br. at 31.

is precisely what PG&E has done in this proceeding.[482] TURN's similar demand for yet more discovery followed by an all-hands "workshop" to discuss an alternative compensation program misses the point of this proceeding.[483] The narrow question presented is whether PG&E's executive compensation structure, as proposed in its testimony, complies with Sections 8389(e)(4) and (e)(6). PG&E has shown that it complies, and it therefore should be approved by the Commission.

D. Enhanced Oversight And Enforcement Process (ACR § 10)

PG&E and other parties are united in their support of the Commission establishing an Enhanced Oversight and Enforcement Process (the "Process"). However, other parties' suggestions to place PG&E in higher steps of the Process automatically upon PG&E's emergence, to accelerate the Process, and to depart from the terms proposed in the ACR in various other ways are contrary to the purpose of the Process and would have negative consequences.

As PG&E explained in its Opening Brief, the Commission should clarify that the triggering events for the Process must be events that occur after the Effective Date of PG&E's Plan.[484] This requirement would ensure that the Process remains focused on the identification of safety and compliance issues as they arise and the prompt remediation of those issues through corrective actions. Yet some parties appear to view the Process as a way to inflict further consequences on PG&E for past actions.[485] This position is unnecessary and counterproductive.

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[482] *See* PG&E-01 at 7-7-7-8 (opening testimony of Mr. Lowe) (stating that PG&E used Willis Towers Watson, and the Compensation Committee used Pay Governance LLC, in developing the structure proposed in PG&E's testimony).

[483] TURN Br. at iv, 83.

[484] PG&E Br. at 146.

[485] *See* TURN Br. at 110; MCE Br. at 57.

PG&E's past actions have already led to many grave consequences, including proceedings for fines and penalties initiated by the Commission that have resulted in billions of dollars in financial penalties as well as non-financial remedies, PG&E's payment of $25.5 billion in settlement of wildfire claims, a guilty plea on criminal charges arising from the Camp Fire,[486] significant changes to PG&E's governance at the Board and Utility level, and PG&E's commitments to implement proposals in the ACR. Through its Case Resolution Contingency Process motion recently filed in the Bankruptcy Court, PG&E made the further commitment that an Operational Observer selected by the Governor's Office may observe PG&E's compliance and progress with regard to safety-related programs and report to the Governor's Office, providing additional oversight at the state level effective immediately.[487] The reforms that PG&E has undertaken to address past safety and compliance issues, and the broader transformation that PG&E has embarked on, should be given a chance to succeed. Thus, while PG&E acknowledges that the oversight provided by the Process may be warranted, the need for these specific oversight and enforcement actions should not be prejudged based on past behavior. It is therefore appropriate for the Process to focus on PG&E's future behavior following these reforms, and to serve as an early warning system that will allow the correction of future issues as they arise.

Accordingly, parties' proposals to place PG&E in the Process automatically upon PG&E's emergence from Chapter 11 as further punishment for past actions are misguided. TURN urges the Commission to place PG&E immediately into a step of the Process that entails the appointment of a third-party monitor, based on the occurrence of past events that, as TURN

[486] *See* Mar. 23, 2020 Form 8-K (Official Notice Motion Ex. 4) (attaching plea agreement).

[487] Resolution Motion (Official Notice Motion Ex. 1) at 15.

itself notes, were already addressed in three separate proceedings initiated by the Commission.[488] MCE argues that the Commission should immediately move to appoint a receiver under Step 5 of the Process based on PG&E's past conduct dating back to the 1950s.[489] These efforts to use the Process retrospectively would only distract from the purpose of identifying and remedying further issues as they arise.

In addition, proposals to initiate severe enforcement actions associated with higher steps of the Process immediately upon PG&E's emergence from Chapter 11 would have extremely negative consequences for PG&E's ability to access the capital needed to exit bankruptcy. As noted, MCE advocates for immediate placement in a receivership, which MCE acknowledges is a "remedy of last resort."[490] CCSF argues that the Commission should immediately initiate a review of PG&E's Certificate of Public Convenience and Necessity (CPCN), which is the enforcement action associated with the final step of the Process, in order to be prepared to revoke PG&E's CPCN without even progressing through the Process.[491] The prospect of these severe interventions affects financial market views of PG&E's regulatory environment, and consequently, their willingness to invest in the company. Investors are rational and have alternatives. They will not invest if they perceive a risk that PG&E could be put out of business. As explained in the Declaration of Jason Wells submitted with PG&E's Opening Brief, "if

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[488] TURN Br. at 110-14 (citing, as potential triggering events, events addressed in the Wildfire OII, the De-Energization Rulemaking (R.18-12-005), and the Locate and Mark OII).

[489] MCE Br. at 11-13, 56-57. Less drastically, MCE also calls for the Process to include a "Step 0" into which PG&E would be placed "immediately and indefinitely." *Id.* at 54.

[490] *Id.* at 11. MCE argues that appointment of a receiver for PG&E is warranted under certain standards that have been used to determine whether a receiver should be appointed under federal law. *Id.* at 11-17. This discussion is irrelevant, both because the merits of a motion to appoint a receiver are not within the scope of this proceeding, and because MCE does not explain why federal standards for a receivership are relevant to the Process when the ACR proposal specifies that, under Step 5 of the Process, "[t]he Commission will pursue the receivership remedy subject to then applicable law of the state of California." ACR, App'x A, at 16.

[491] CCSF Br. at 31-32.

investors believe that escalating enforcement could lead to the revocation of PG&E's CPCN within a relatively short period, they are less likely to invest capital in a company that may be unable to operate with limited notice."[492] This effect would be even greater if it is not just possible but rather certain that PG&E's CPCN will be reviewed shortly after PG&E's emergence from bankruptcy, or, similarly, if a receiver will be immediately appointed. The Commission should decisively reject such proposals. Instead, it should approve PG&E's Plan along with the ACR proposals as PG&E has recommended they be modified, signaling to investors that the California regulatory climate is stable, reasonable, and predictable.[493]

Proposals to accelerate the Process would have similar effects. TURN suggests condensing the Process to three steps, in part by cutting out the oversight process of the first two steps proposed in the ACR.[494] If one of the triggering events associated with those lower steps occurred—for example, if PG&E failed to obtain an approved Wildfire Mitigation Plan—PG&E would be placed in Step 1 of the Process proposed by TURN, which is equivalent to Step 3 of the ACR proposal, in that it would entail the appointment of a third-party monitor.[495] TURN's proposal would also effectively merge Steps 4 and 5 of the ACR proposal into a single step,[496] and, as noted above, TURN asks the Commission to place PG&E in the first step of TURN's proposed Process immediately upon PG&E's emergence from bankruptcy. For the reasons explained above and in PG&E's Opening Brief, a condensed process with just two steps (of unspecified duration) between PG&E's emergence from bankruptcy and the potential revocation of its CPCN would make investors less likely to invest capital in PG&E. Accordingly, PG&E

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[492] PG&E Br., App'x C (Decl. of Jason Wells).

[493] *Id.*

[494] TURN Br. at 96.

[495] *Id.* at 97.

[496] *Id.* at 96.

supports maintaining the six steps proposed in the ACR, and specifying that there must be at least 12 months between PG&E's entry into a step and being moved to the next step (for Step 3 and higher).

Several other suggestions by parties to modify the Process as set forth in the ACR are without merit. First, the TCC and PAO argue that triggering events for Steps 2 and 4 that are based on the occurrence of an incident that results in the destruction of 1000 or more buildings should use lower thresholds for the number of buildings destroyed.[497] While PG&E agrees that the destruction of a smaller number of buildings can be devastating, PG&E notes that lowering the threshold for Step 2 and Step 4 is not needed to ensure effective oversight and enforcement, since the Commission's existing authority and other triggers in the Process could appropriately address misconduct that resulted in the destruction of fewer buildings. Second, the PAO also recommends switching Steps 5 and 6 of the Process, on the ground that a receiver should be put in place after PG&E's CPCN is revoked, in order to facilitate a transition to new utility operators. This suggestion would undermine the Process's focus on remedying issues, because the point of the receiver is not to coordinate a sale, but rather to oversee additional remedial actions before PG&E's license to provide service could be revoked. Finally, MCE proposes expanding the Process in a variety of ways not contemplated by the ACR, such as by establishing a permanent independent oversight committee "endowed with special powers," applying the provisions of the Brown Act and Public Records Act to PG&E, appointing an examiner in addition to a monitor and chief restructuring officer in Steps 3 and 4, and allowing a receiver to dispose of PG&E's assets.[498] MCE does not provide a legal basis for taking any of these actions,

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[497] TCC Br. at 32-33; PAO Br. at 16-18.

[498] MCE Br. at 53-56.

and they are not needed in order to provide an appropriate level of oversight and additional enforcement.

The Process should be designed to ensure that PG&E will provide safe and reliable service following its emergence from Chapter 11. Efforts to use the Process to punish PG&E for past actions, or to engraft unwarranted conditions on the Process, threaten that goal, including by making it more difficult for PG&E to raise the necessary capital to emerge at all.

E. Consistency with State Climate Goals (Scoping Memo § 3.3)

The vast majority of parties agree or do not dispute that PG&E's Plan is consistent with the State's climate goals as required pursuant to the RPS program and other procurement requirements. NRDC set forth its strong support for PG&E's Plan as meeting this criterion in its opening testimony, and now other parties have joined NRDC's position through their post-hearing briefs. For example, TCC "submits that the effects of PG&E's Plan are consistent with California's climate goals and related California procurement requirements," in part through the assumption of all power purchase agreements (PPAs).[499] NextEra Energy Resources ("NEER") and the Center for Energy Efficiency and Renewable Technologies ("CEERT") also accept that PG&E's commitment to assume all PPAs justifies approval of the Plan prior to June 30 as consistent with the State's climate goals.[500] The Joint CCAs reiterate their position that PG&E's participation in electric procurement is not necessary to achieve the State's climate goals, but do not contest that the Plan meets the climate provision of AB 1054.[501]

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[499] TCC Br. at 7.

[500] Opening Brief of NextEra Energy Resources, LLC and Opening Comments on Assigned Commissioner's Ruling (NextEra Br.) at 3; CEERT Br. at 5-6, 9. These parties also request that the Commission codify and enforce the assumption of all PPAs in its decision in this OII.

[501] JCCA Br. at 13-14.

SBUA and Will Abrams raise concerns about the need for PG&E to remediate wildfire-related climate damage,[502] but PG&E's testimony is responsive to this concern. First, PG&E's testimony details comprehensive investments and efforts related to wildfire safety, as well as governance and structural changes that prioritize wildfire safety (such as executive compensation).[503] These initiatives actualize PG&E's recognition that greenhouse gas effects of wildfires can be addressed by preventing future wildfires.[504] Second, the testimony of Jessica C. Hogle addresses PG&E's robust climate-related policies and programs in detail.[505] The fact that these programs are not earmarked as "wildfire remediation" does not undermine their significant contributions to California's clean energy and climate efforts. Third, AB 1054 defines consistency with State climate goals in terms of procurement and RPS compliance, and no party contests that PG&E has met applicable procurement requirements.[506] Indeed, even SBUA addresses remediation of wildfire emissions as a miscellaneous non-financial issue relating to the public interest (Scoping Memo § 3.5), and does not state that PG&E has failed to satisfy the climate requirement of AB 1054 (Scoping Memo § 3.3).[507]

IV. <u>CONCLUSION</u>

PG&E submits that it has amply demonstrated that its Plan is in the public interest and complies with AB 1054. As indicated in the Governor's Support Statement, the Governor agrees that PG&E "submitted constructive responses to the ruling issued by the CPUC Assigned Commissioner," and the Governor agrees that, if the Resolution Motion is granted and the

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[502] SBUA Br. at 20; Abrams Br. at 8.

[503] PG&E-01 at Chapters 6 & 7.

[504] *See* Feb. 28, 2020 Tr. at 789-790 (cross-examination testimony of Ms. Hogle).

[505] PG&E-01 at Chapter 9, 9-1 – 9-16.

[506] § 3292(b)(1)(D)(i).

[507] SBUA Br. at 20.

Commission approves PG&E's Plan with the governance, financial and operational provisions submitted to the Commission by PG&E or otherwise agreed by PG&E, with any modifications the Commission believes appropriate or necessary, the Plan will, in the Governor's judgment, be compliant with AB 1054. Accordingly, PG&E respectfully requests that the Commission approve PG&E's Plan and grant the associated relief set forth in PG&E's Opening Brief at 177-180 (modified to reflect the final hedging determination[508]).

[508] Now that the Commission has issued D.20-03-008—the final decision approving PG&E's interest rate hedging application (A.19-11-002)—request number 12 (*see* PG&E Br. at 179) should be revised to state: "Direct PG&E, consistent with D.20-03-008, to include in the Tier 2 advice letter described above a showing regarding the reasonableness of any interest rate hedging costs incurred that it proposes to include in its updated cost of debt."

Dated: March 26, 2020

Respectfully Submitted,

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