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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for (1) Administration of Stress Test Methodology Developed Pursuant to Public Utilities Code Section 451.2(b) and (2) Determination That $7.5 Billion of 2017 Catastrophic Wildfire Costs and Expenses Are Stress Test Costs That May Be Financed Through Issuance of Recovery Bonds Pursuant to Section 451.2(c) and Section 850 *et seq.* (U 39 M)	Application 20-04-023 (Filed April 30, 2020)

PUBLIC VERSION

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S OPENING BRIEF

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SUMMARY OF RECOMMENDATION

A4NR recommends that the Commission deny the Application and offer guidance to PG&E for what a statutorily-compliant securitization will require.

I. INTRODUCTION AND SUMMARY OF POSITION.

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), and the briefing schedule confirmed at the December 16, 2020 evidentiary hearing by Administrative Law Judge Robert Haga,[1] the Alliance for Nuclear Responsibility ("A4NR") files its Opening Brief in the Application of Pacific Gas and Electric Company ("PG&E") for (1) Administration of Stress Test Methodology Developed Pursuant to Cal. Pub. Util. Code § 451.2(b) and (2) Determination That $7.5 Billion of 2017 Catastrophic Wildfire Costs and Expenses Are Stress Test Costs That May Be Financed Through Issuance of Recovery Bonds Pursuant to Cal. Pub. Util. Code §§ 451.2(c) and 850 *et seq.*

The Commission has assembled an exhaustive evidentiary record in A.20-04-023 that establishes beyond doubt the inability of PG&E's proposed financing structure to satisfy the statutory requirements of Cal. Pub. Util. Code §§ 3292 and 850.1. PG&E has also been unable to show that its proposed securitization would put the company on a path to investment-grade issuer status (post-bankruptcy, PG&E accesses the investment-grade markets by secured financing) within three years. The company asks the Commission to effectively abandon the Stress Test Methodology adopted in D.19-06-027, and to ignore the repeated written warnings communicated to PG&E by the rating agencies in 2020 that marginal improvement in financial ratios will not displace wildfire risk, management turnover, safety culture, and public reputation as determining factors of PG&E unsecured credit ratings for the foreseeable future. A4NR believes PG&E's fallback position, to refinance the $6 billion Temporary Utility Debt using the cashflows from its shareholder NOLs, is considerably superior to the proposed securitization because it avoids the exceptional complexity of the Customer Credit Trust, eschews the notional conversion of shareholder obligations (the 2017 Wildfire Claims Costs) into ratepayer liabilities, and is more likely to amortize such debt over a reasonable timeframe.

Notwithstanding the small army of outside lawyers and financial professionals assembled by PG&E, the securitization proposal shows unmistakable signs of incompleteness and inadequate stress-testing of its several key variables. PG&E's litmus for ratepayer

[1] *See* Transcript, p. 1540, lines 12 – 16.

neutrality is a momentary snapshot of the company's "expectation"[2] of a Customer Credit Trust residual surplus 30 – 32 years after bonds are issued. Such a snapshot is obviously influenced by assumptions (e.g., borrowing rates, NOLs realization, investment returns, etc.) that change with time. Thorough assessments of the interactive results of varying such assumptions is a common feature of sophisticated finance, and certainly would be expected to be a prerequisite for a prudent utility manager to enter into a multi-billion-dollar liability. PG&E's unwillingness or inability to produce clear evidence of the analytic rigor it applied to variables other than investment returns is a fundamental failure in meeting its burden of proof. If the securitization were a bridge, or an airplane, or a vaccine, it would be considered unready for public use at this premature, inadequately tested stage of development.

Because Cal. Pub. Util. Code § 3292 is uniquely applicable to PG&E, and the company may believe the off-balance sheet camouflage of securitization sufficiently attractive to merit further attempt(s) at meeting the statute's demanding requirements, the Commission should provide guidance on how to satisfy the "neutral, on average" standard of Cal. Pub. Util. Code § 3292(b)(1)(D) and the "compensate them accordingly" standard of Cal. Pub. Util. Code § 3292(b)(1)(E). A4NR's Opening Brief provides recommendations for doing so.

II. BACKGROUND.

After its second exit from bankruptcy in 16 years, PG&E is in transition at both the management and shareholder level. Based upon D.20-05-053, PG&E is subject to an escalating six-step Enhanced Oversight and Enforcement Process at the Commission's discretion and, for at least the next seven years, significant involvement by the Governor's Office in the selection of board members. This more intrusive role for state government coincides with an anticipated large turnover among PG&E's shareholders. As then holding company Chief Executive Officer William Johnson acknowledged to the Commission before PG&E exited bankruptcy, "our largest investors are not the typical utility investors," but instead "tend to be distressed asset investors, hedge funds that are in this space… I would expect, after we exit [bankruptcy] and

[2] PGE-01, p. 1-4, line 5.

refinance, that most of them would exit the stock… In the first year they [current shareholders] would exit and we would be heavily looking for the traditional utility investor."[3]

As communicated confidentially by Standard and Poor's Corporation ("S&P") to PG&E prior to the filing of A.20-04-023,

.[4]

Nearly all of the were subsequently replaced.

D.20-05-053, adopted just two months later, noted a particular quirk in PG&E's approach to satisfying the requirements of AB 1054 for approval of its Plan of Reorganization: "Somewhat oddly, PG&E's testimony in this proceeding simply does not address its safety history."[5] As the Commission reasoned,

> It is understandable that PG&E may want to shift the focus away from the history of its recent safety performance - which has ranged from dismal to abysmal - and instead seek to draw attention to its remedial efforts. At the same time, however, this is a cause for concern, as PG&E seems reluctant to take ownership of its own safety history and acknowledge

[3] A4NR-01, p. 14, lines 6 – 13, citing I.19-09-016 Transcript (PG&E – Johnson), p. 211, line 9 – p. 212, line 15. Mr. Johnson was appointed (along with ten new directors) after PG&E's bankruptcy filing, and departed the day before PG&E's Plan of Reorganization became effective. Thirteen new directors, replacing all but three incumbents, were named to PG&E's board after the exit from bankruptcy.

[4] A4NR-01-C, p. 11, lines 7 – 16, citing PGE-01-C, CONFIDENTIAL Exhibit 1.2, p. 1-Exh1.2-9.

[5] D.20-05-053, p. 17.

its failings.[6]

While the power of positive thinking may be a core tenet of corporate image repair, the self-hypnotic effect can distort situational awareness. PG&E's misplaced confidence that Commission approval of A.20-04-023 would materially improve the timing of a future S&P investment grade issuer rating (let alone one from Moody's) requires a willful blindness to the written feedback the company has consistently received from both rating agencies. To the extent this misfocus distracts PG&E from the actual improvements needed to regain investment grade issuer status, it is (as D.20-05-053 noted) "a cause for concern."[7]

III. ELIGIBILITY TO ACCESS THE STRESS TEST AND SATISFACTION OF ALL APPLICABLE LEGAL REQUIREMENTS (SCOPING MEMO §§ 1 AND SUBPARTS)

A4NR's Opening Brief addresses PG&E's failure to satisfy the requirements of AB 1054 in Section VI below at pp. 15 – 35.

A. Access to and Application of the Stress Test Developed Under Section 451.2(b)

1. Eligibility to access the Stress Test

A4NR's testimony noted that, on its face, PG&E's application is an impermissible collateral attack on D.19-06-027, Ordering Paragraph 3, which states: "An electrical corporation that has filed for relief under chapter 11 of the Bankruptcy Code may not access the Stress Test to recover costs in an application under Public Utilities Code Section 451.2(b)." As applied to a post-bankruptcy PG&E, the rationale for the D.19-06-027 proscription was unmistakable: "Any reorganization plan of an electrical corporation in a chapter 11 case confirmed by the Bankruptcy Court and approved by the Commission in the future will inevitably address all pre-petition debts, including 2017 wildfire costs, in the bankruptcy process."[8] As the Bankruptcy Court's Confirmation Order for PG&E's Commission-approved Plan of Reorganization states:

[6] D.20-05-053, p. 17.
[7] D.20-05-053, p. 17.
[8] D.19-06-027, p. 45.

> The resolution of these proceedings provides funding or establishes reserves for, provides for assumption of, or otherwise provides for satisfying all prepetition wildfire claims asserted against the Debtors in the Chapter 11 Cases … **in full and final satisfaction, settlement, release, and discharge of such claims**.[9] (emphasis added)

As PG&E acknowledged upon the Effective Date of its confirmed Plan of Reorganization, "the Plan and the Confirmation Order provide that **the sole source of recovery for holders of Fire Victim Claims shall be from the Fire Victim Trust**."[10] (emphasis added)

Rather than abide by D.19-06-027, or defer filing an otherwise null and void regulatory application until the Commission acts upon the previously filed request for rehearing that decision, PG&E seeks to turn the Stress Test on its head. Disparaging D.19-06-027's preclusion of bankruptcy-resolved obligations from the Stress Test as a mere "comment",[11] PG&E suggests this bar was nullified by the subsequent enactment of AB 1054's requirement that PG&E's Plan of Reorganization be rate-neutral. Conveniently, this argument omits any discussion of the fact that PG&E has expressly identified securitization as "(s)eparate from PG&E's Plan and the plan funding"[12] and argued that AB 1054 does not apply to securitization "because PG&E's Plan does not include securitization."[13]

Instead, PG&E feigns generosity to unilaterally offer what it claims is a rate-neutral securitization (including no uncompensated customer contributions[14]) and re-engineer the discretion Cal. Pub. Util. Code § 850.1 affords the Commission into a post-bankruptcy booster shot by converting fully discharged claims against shareholders into long-term obligations of ratepayers. PG&E's desire to discretionarily use securitization to convert permanently resolved shareholder obligations into ratepayer liabilities should be viewed through the lens of a core objective of the Stress Test Methodology: "to encourage utilities to maximize the share of

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[9] A4NR-01, p. 6, line 19 – p. 7, line 5, citing U.S. Bankruptcy Court Confirmation Order, ¶ 4(b).
[10] A4NR-01, p. 7, lines 9 – 10, citing PG&E Notice of Entry of Confirmation Order and Occurrence of Effective Date, ¶ 4.
[11] PG&E Reply to Protests and Responses to Application, p. 3.
[12] D.20-05-053, p. 82.
[13] D.20-05-053, pp. 83 – 84.
[14] D.20-05-053, p. 84.

disallowed costs they absorb and ensure utilities view the Stress Test as a financing mechanism of last resort."

Nevertheless, the Commission has allowed the Application to proceed and developed an extensive evidentiary record of the specious nature of PG&E's claims about rate neutrality. Simple pragmatism suggests averting PG&E's exaggerated state and federal statutory interpretations, and the implied threat of court challenge they contain, by applying the Stress Test Methodology to this deficient proposal.

2. Whether the proposed Securitization provides a sufficient path to an investment grade credit rating for PG&E

The path to an investment grade issuer rating identified by PG&E's application and testimony is far too attenuated and conjectural to satisfy the legal requirement of the D.19-06-027 Stress Test. Rather than address the severe qualitative obstacles that both S&P and Moody's indicate will take many years of consistent improvement to overcome, PG&E's analyses instead focus on mechanical projections of speculative cash flows to achieve modest gains within S&P's broad-gauged financial ratios. Where the prescribed Stress Test Methodology centers on a 3-year time horizon (including the current year), PG&E relaxes what should be a 2022 crucible (Year 3) to "as early as 2023"[15] (Year 4). PG&E claims the proposed securitization could accelerate achievement of "metrics consistent with an investment-grade issuer credit rating under S&P's methodology … potentially two years or more before it otherwise would …"[16] but makes no claim regarding Moody's methodology, which treats securitized debt as if it remains on PG&E's balance sheet.[17]

At best, this is ambiguous speculation about achieving a **<u>split</u>** rating (while baselessly assuming the interest rate savings attributable to an upgrade from **<u>both</u>** agencies). But even

[15] PGE-05, p. 5-29, line 2.

[16] PGE-01, p. 1-11, lines 15 – 18. PG&E admitted in a data response to TURN that the claimed acceleration might actually be only one year rather than two. TURN-01, Attachment D, p. 1.

[17] PG&E acknowledges this in PGE-05, p. 5-27, lines 2 – 3, but argues in footnote 78 on the same page: "**<u>To the extent securitization does not positively affect PG&E's quantitative metrics under Moody's methodology</u>**, the Commission can exercise its discretion to rely on S&P's methodology and assessment for purposes of PG&E's path to an investment-grade issuer credit rating." (emphasis added)

PG&E's professed optimism was belied, barely a month before the filing of A.20-04-023, by separate written analyses provided to PG&E by S&P and Moody's. S&P's March 23, 2020 confidential assessment to PG&E [18]

And PG&E's assertions that Commission approval of the securitization would demonstrate an improved regulatory climate for PG&E likely to raise S&P's qualitative assessment

[18] A4NR-01-C, p. 9, line 11 – p.10, line 1, citing PG-01-C, CONFIDENTIAL Exhibit 1.2, pp. 1-Exh1.2-1 -- 1-Exh1.2-2.

.[19]

Similarly, the March 18, 2020 confidential written assessment provided to PG&E by Moody's

[20]

Neither the S&P nor Moody's updated rating writeups of PG&E, published in June and July of 2020 and attached to PG&E's August 7, 2020 Revised Testimony, altered either agency's appraisal of the inconsequential role attributable to the proposed securitization in PG&E's rating prospects. Both rating agencies pointed to the ongoing risk of catastrophic wildfires -- "A large percentage (about two-thirds by land or about 50% by circuit miles) of the company's service territory operates within high fire-threat districts, which considerably increases the risks for Pac Gas compared with peers"[21] – and potential early depletion of the AB 1054 wildfire insurance fund as more salient credit factors. (The paramount influence of future wildfire risk was reinforced by S&P's September 16, 2020 announcement lowering the outlook for **all three** California investor-owned utilities to "negative" from "stable" due to unprecedented wildfire activity during the 2020 fire season.) S&P also reiterated its concern about the generosity of PG&E's settlement of claims from wildfire victims:

> We view the company's settling of its uncapped wildfire victims claims ($13.5 billion) at a multiple of the subrogation claims ($11 billion) as possibly increasing business risk. Our previous base case assumed that the wildfire victim claims would be settled at a fraction of the subrogation claims. Furthermore, the company's decision to settle claims with the Tubbs wildfire victims despite California's Department of Forestry and Fire Protection determining that Pac Gas was not the cause of the wildfire, also might increase risk. This is because, in our view, these settlements might set a precedent, possibly increasing future payments to wildfire victims and depleting the wildfire fund at a faster rate than previously expected.[22]

[19] A4NR-01-C, p. 10, line 5 – p. 11, line 4, citing PGE-01-C, CONFIDENTIAL Exhibit 1.2, pp. 1-Exh1.2-3 -- 1-Exh1.2-4.
[20] A4NR-01-C, p. 12, lines 1 – 9, citing PGE-01-C, CONFIDENTIAL Exhibit 1.3, p. 1-Exh1.3-3 – p. 1-Exh1.3-4.
[21] A4NR-01, p. 12, line 19, citing PGE-05, p. 5-Exh5.6-15.
[22] PGE-05, p. 5-Exh5.6-13.

The quantitative analyses from the two rating agencies cast cold water on PG&E's portrayal of securitization as a relevant step on the path back to an investment-grade issuer rating. Moody's, because it treats securitization as on-credit, performed the more stringent quantitative review. It readily conceded "relatively strong financial metrics"[23] to the post-bankruptcy PG&E holding company. "We acknowledge that PCG's credit metrics generally reflect a financial profile that is consistent with a low investment-grade rated utility holding company."[24]

, the Moody's updated analysis found

> Over the next three years, we expect PCG's ratio of cash flow from operations pre-working capital changes (CFO pre-W/C) to debt to be in the 12 – 15% range and utility PG&E's ration of CFO pre-W/C to debt to be in the 14 – 16% range, including planned wildfire claim securitization bonds as on-credit debt. We expect some improvement in the companies' financial profiles through increased cash flow generation and debt reduction, especially at the parent level … we expect holdco debt to steadily decline as the company expects to pay down this debt meaningfully over the next five years.[25]

S&P's base case analysis only reached out two years, assumed that the off-credit securitization financing was used to retire the Temporary Utility Debt in 2021, and projected a funds from operations (FFO) to debt ratio at the PG&E utility in the range of 15 – 18% in both 2020 and 2021. Although the two rating agencies utilized slightly different metrics, the trendlines and ranges of variability were similar.

The latest writeups from S&P (September 16, 2020) and Moody's (August 19, 2020), served by PG&E on October 7, 2020, merely reinforce the earlier absence of the proposed securitization from either agency's envisioned pathway back to a PG&E investment-grade issuer rating. S&P's assessment, which did not mention the proposed securitization at all, focused on 2020's implications for increased wildfire risks faced by all California investor-owned utilities, potential early depletion of the AB 1054 wildfire fund, and the possible negative impact of public safety power shutoffs on the utilities' collective "ability to consistently manage

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[23] PGE-05, p. 5-Exh5.7-2.
[24] PGE-05, p. 5-Exh5.7-2.
[25] PGE-05, p. 5-Exh5.7-2.

regulatory risk."[26] The Moody's evaluation pointed to the required contributions to the Customer Credit Trust to explain the "credit neutral" effect of PG&E's proposed securitization, adding that "We typically view a utility's use of securitization bonds as a credit positive."[27]

The unavoidable essence of either perspective, in terms of PG&E's ability to satisfy D.19-06-027's "pre-condition that it must demonstrate an ability (pathway) to achieving an investment grade credit rating to access the Stress Test,"[28] is the sheer uncertainties inhibiting either rating agency's willingness to model very far into the future. S&P would not project beyond 2021, Moody's would only extend to 2022. Both rating agencies' March 2020 confidential assessments , and neither has shown the slightest inclination to alter that stance. Moody's actually concedes that PG&E already has achieved "relatively strong financial metrics" that are "consistent with a low investment-grade rated utility holding company," [29] but both rating agencies are emphatic about the overriding influence of qualitative factors that require sustained attention over an extended period of time.

PG&E's attempt to quantitatively extend[30] both agencies' projections far beyond the time horizons embraced by their authors does nothing to address this analytic dilemma – instead merely demonstrating that spreadsheet modeling can reverse-engineer PG&E's desired result by adjusting financial ratios. PG&E's expert witness on rating considerations, Joseph Sauvage, Vice Chairman and Chairman of Global Power at Citigroup Global Markets, Inc., admitted that securitization will not impact PG&E's management and safety performance.[31] Using the umbrella term "industrial goals, which would include wildfire safety, et cetera",[32] Mr. Sauvage was clear: "If you don't demonstrate industrial performance, you're going to have delays [reaching investment-grade credit ratings] both with and without securitization."[33] Mr.

[26] PGE-14, Exhibit 5.10, p. 2.
[27] PGE-14, Exhibit 5.9, p. 1.
[28] D.19-06-027, Stress Test Methodology attachment, p. 13.
[29] PGE-05, p. 5-Exh5.7-2.
[30] PGE-05, p. 5-Exh5.5-1.
[31] Transcript (PG&E – Sauvage), p. 396, lines 19 – 25.
[32] Transcript (PG&E – Sauvage), p. 410, lines 15 – 26.
[33] Transcript (PG&E – Sauvage), p. 411, line 27 – p. 412, line 1.

Sauvage pointed out that his testimony assumed no change to S&P's negative modifier attached to PG&E's management governance,[34] but that "truthfully, the projections that we're using assume the company performs on an industrial basis. To be clear, there's no 4 billion-dollar wildfire cost in there. There's nothing there. These projections assume the company performs on an industrial basis."[35]

By Mr. Sauvage's assessment, securitization charts a quantitative pathway to investment-grade issuer status by removing $6 billion of Temporary Utility Debt from PG&E's balance sheet, thereby lifting S&P's FFO/Debt metric to 20% (within the range of 13 – 23% he identifies as consistent with a BB+ rating[36]) in 2023. That would be two years past S&P's forecasting horizon, and Mr. Sauvage is willing to extend his calculations to 2024 (but no further[37]). Crossing this 20% threshold, in Mr. Sauvage's judgment, establishes "the starting point for the opportunity to achieve an investment grade credit rating."[38] He emphasized, "the most important part of the testimony and the most important part of the merits of securitization are relative to not having the securitization."[39] That said, when asked what would drive PG&E's future credit rating, Mr. Sauvage ranked financial metrics last among three "principal factors":

> The first is its relationships with its key stakeholders, which would include the governor, its customers, the CPUC and the level of demonstrated support by particularly the CPUC for credit worthiness for both PG&E and by the way the other California utilities.
>
> Secondly, it will be determined by progress on the part of the PG&E in terms of its industrial and governance metrics. And finally it will be determined by financial metrics.[40]

Isolated from context, the every-little-bit-helps incrementalism of Mr. Sauvage's reasoning might seem superficially coherent. But is it material within the Stress Test

[34] Transcript (PG&E – Sauvage), p. 436, lines 26 – 27.
[35] Transcript (PG&E – Sauvage), p. 514, lines 11 – 17.
[36] Transcript (PG&E – Sauvage), p. 400, lines 2 – 5.
[37] Transcript (PG&E – Sauvage), p. 385, lines 21 – 23.
[38] Transcript (PG&E – Sauvage), p. 464, lines 14 – 16.
[39] Transcript (PG&E – Sauvage), p. 440, lines 18 – 20.
[40] Transcript (PG&E – Sauvage), p. 394, line 26 – p. 395, line 9.

Methodology's relevant 3-year timeframe? Mr. Sauvage acknowledged that "it will take time to demonstrate the company is being a safer company."[41] He admitted that S&P's September 16, 2020 "negative outlook" report identified a possible further ratings downgrade in the next 6 – 12 months if wildfire risks increase.[42] Confronted with the enduring forces behind PG&E's current plight, he offered no explanation for why the Commission should believe simple spreadsheet engineering can overcome them.

The credibility of Mr. Sauvage's purported accelerated pathway hinges entirely on the likelihood of PG&E resolving by 2023 the qualitative challenges identified by both S&P and Moody's; the arbitrary assumption that Moody's would reach conclusions similar to S&P despite keeping the $7.5 billion securitization debt on PG&E's balance sheet; and the belief that approval of A.20-04-023 would establish a regulatory ambience that outweighs any PG&E missteps in achieving resounding transformation on its qualitative fronts. The unrelenting stream of continued PG&E performance lapses cited by governmental authorities (including President Batjer's November 24, 2020 letter[43]) that have transpired since Mr. Sauvage's testimony was served erase the prospect that rating upgrades from either S&P or Moody's will take place on his predicted schedule.

3. Application of the Stress Test

(a) Maximum Debt Capacity

A4NR's Opening Brief does not address this issue.

(b) Excess Cash

A4NR's Opening Brief does not address this issue.

(c) Regulatory Adjustment

PG&E's desultory descriptions of what it claims as "approximately $1 billion on average per year in operational cost savings and efficiency initiatives through 2024"[44] makes it

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[41] Transcript (PG&E – Sauvage), p. 410, lines 24 – 26.
[42] Transcript (PG&E – Sauvage), p. 403, line 7.
[43] PG&E's policy witness, utility Chief Financial Officer ("CFO") David Thomason, (CONFIDENTIAL Transcript (PG&E – Thomason), p. 886, line 2) (CONFIDENTIAL Transcript (PG&E – Thomason), p. 901, line 28).
[44] PGE-05, p. 5-55, line 23 – 25.

impossible for the Commission to assess the degree to which "reducing or deferring discretionary spending"[45] could compel a regulatory adjustment to increase the Customer Harm Threshold. PG&E's testimony references the March 17, 2020 Disclosure Statement filed with the Bankruptcy Court, where the entire explanation consists of:

> The Consolidated Financial Projections assume the achievement of various efficiency initiatives, including, among other things, resource planning, contract management, monetization of excess renewable energy, and real estate optimizations. These efficiency initiatives reduce operating and capital expenditures by approximately $1 billion on average through 2024.[46]

Efforts by both A4NR and the Public Advocates Office to gain greater clarity about the calculation of these "various efficiency initiatives" were notably unsuccessful.[47] The credibility of PG&E's claimed "efficiency initiatives" or "cost efficiency targets" are problematic for two fundamental reasons. First, they are specifically aimed at "spending above what would be authorized"[48] in any Commission ratesetting proceeding, and intended to more generally "offset customer rate pressure created by unique cost increases required over the next five years to address safety and reliability concerns."[49] That means there is no empirical benchmark to measure against, the hypothetical targets are whatever PG&E imagines them to be, and the benefits from such "initiatives" may be largely illusory.

Second, these are efforts launched by previous management and board members that may hold little if any priority for the new board members, the just-arrived new holding company CEO, and whoever is functioning as a stand-in for the recently departed holding company CFO and utility CEO. PG&E declined to provide any documents in response to A4NR's request for "copies of any written communications with PG&E's boards of directors that identify or describe the operational cost savings and efficiency initiatives," objecting that the

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[45] D.19-06-027, Stress Test Methodology attachment, p. 12.
[46] PG&E Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization, p. 169.
[47] A4NR-01-C, p. 17, line 13 – p. 19, line 11.
[48] A4NR-01, p. 19, lines 14 – 15, quoting PG&E data response "Securitization2020_DR_PubAdv_001-Q01-29", p. 20.
[49] A4NR-01, p. 19, lines 16 – 17, quoting PG&E data response "Securitization2020_DR_A4NR_001-Q01-16UPDATED", p. 7.

request was overly broad, unduly burdensome, and sought information protected by the attorney-client privilege and/or attorney work product doctrine.[50]

The Commission is left with an evidentiary void in assessing how to weigh reductions or deferrals in PG&E discretionary spending as inputs to a potential regulatory adjustment. Even if PG&E does not deem such reductions or deferrals reasonable options, D.19-06-027 requires PG&E to "nevertheless include a detailed description of its analysis and the basis for the utility's conclusion that each potential opportunity is not reasonable."[51] Despite the direct challenge posed in A4NR-01 ("PG&E should be expected to fill this void with its rebuttal testimony."[52]), PG&E has remained in stonewall mode, questioning the relevance of such information, and expressing concern that it "would make this proceeding impracticably broad and threaten to duplicate or supplant PG&E's General Rate Case"[53] (contradicting the prior assurance that the measures address spending "above what would be authorized" in ratesetting proceedings.[54]). The Commission should find that PG&E has failed to meet its burden of proof regarding this aspect of the Stress Test Methodology.

IV. WHETHER PG&E HAS DEMONSTRATED THAT $7.5 BILLION OF 2017 WILDFIRE CLAIMS COSTS ARE ELIGIBLE FOR SECURITIZATION (SCOPING MEMO § 2 AND SUBPARTS)

A4NR's Opening Brief does not address any of the Scoping Memo §2 issues.

V. WHETHER PG&E'S PROPOSAL WILL ACCELERATE IMPROVEMENT IN PG&E'S CREDIT RATINGS AND RELATED ISSUES OF RATEPAYER BENEFITS (SCOPING MEMO § 1C)

[50] A4NR-01, p. 19, lines 16 – 17, quoting PG&E data response "Securitization2020_DR_A4NR_001-Q01-16UPDATED", p. 7.
[51] D.19-06-027, Stress Test Methodology attachment, p. 12.
[52] A4NR-01, p. 20, lines 7 – 8.
[53] PG&E Rebuttal Testimony, p. 5-17, lines 10 – 11.
[54] A4NR-01, p. 19, lines 14 – 15, quoting PG&E data response "Securitization2020_DR_PubAdv_001-Q01-29", p. 20.

A4NR's Opening Brief addresses the claimed acceleration in Section III above at pp. 4 – 14, and the asserted ratepayer benefits in Section VI immediately below.

VI. WHETHER PG&E'S PROPOSAL IS NEUTRAL, ON AVERAGE, TO RATEPAYERS, AS REQUIRED BY D.20-05-053 (SCOPING MEMO §§ 3, 4 AND 6 AND SUBPARTS)

A. Standard for Ratepayer Neutrality

D.20-05-053 requires PG&E's proposal to satisfy the ratepayer protections statutorily provided by Cal. Pub. Util. Code § 3292(b)(1)(D) – "neutral, on average, to the ratepayers of the electrical corporation" – and Cal. Pub. Util. Code § 3292(b)(1)(E) – "recognize the contributions of ratepayers, if any, and compensate them accordingly." As D.20-05-053 made clear:

> Even if … the Commission does not need to make a final determination here of the applicability of AB 1054 to potential future applications, it does not matter for PG&E's securitization application. The Commission will review the proposed nominally offset securitization application in light of PG&E's commitments made in its Bankruptcy Court filings, entered into the record here via its March 24, 2020 Motion for Official Notice. Given the close connection between the plan and the proposed securitization and PG&E's commitment that its securitization application will meet the requirements of AB 1054, including ratepayer neutrality, the securitization application should satisfy those requirements.[55]

The time-honored preference of both scientists and philosophers for simple answers whenever possible (often referred to as "Occam's razor") provides instructive guidance for the Commission's framing of the AB 1054 requirements:

- "neutral" means that ratepayers are financially indifferent to whether securitization proceeds or not.
- "on average" means this assessment is conducted from the perspective of the average PG&E customer, the same metric the utility commonly uses in its public announcements to quantify the rate impacts of Commission decisions.

[55] D.20-05-023, p. 85.

- "compensate them accordingly" means that the credit enhancement provided by ratepayers to monetize PG&E's NOLs is identified and credited back to ratepayers.

In contrast, PG&E's proposal invents a much more complex paradigm, which attempts to "average" the financial impacts over 30 years across the generic universe of "ratepayers." Neutrality over these three decades would be defined by the presence of a residual surplus in the Customer Credit Trust once all securitization bonds are retired. PG&E's testimony purports to identify the probabilistic risks of the projected residual surplus becoming a residual deficit, and to justify the proposal as a good investment for "ratepayers" in light of those probabilistic risks. How good an investment is determined by a present value of the anticipated residual surplus, with attendant disputes over the appropriate discount rate(s). PG&E does not attempt to quantify the value of the credit enhancement which the securitization structure forcibly extracts from ratepayers, but its willingness to credit future ratepayers with 25% of any residual surplus can be seen as an uncalibrated, backhanded attempt to "compensate them accordingly."

Because of its unwillingness to absorb the risk of deficits in the ratepayer reimbursement mechanism, or to guarantee the presence of a residual surplus after the securitization bonds have been retired, PG&E attempts to satisfy the ratepayer neutrality requirement by its "expectation"[56] as of a particular point in time. When this particular point in time is meant to occur, however, is left ambiguous – "Our view on ratepayer customer neutrality is from the perspective of expectations as of the filing date."[57]—and arguably that could be either the April 30, 2020 filing date of A.20-04-023 or the filing date of a related Financing Order. In either event, PG&E's proposal relies on a "single snapshot in time" perspective rejected by the Commission in D.20-05-053 as "overly narrow."[58] Significantly, AB 1054 makes no reference to "expectation" or intergenerational averaging as reliable guideposts to ratepayer neutrality.

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[56] PGE-01, p. 1-4, line 5.
[57] Transcript (PG&E – Thomason), p. 223, lines 25 – 27.
[58] D.20-05-053, p. 87.

B. Whether PG&E's Proposal Satisfies the Ratepayer Neutrality Standard and Reasonably Accounts for Risks to Ratepayers (Scoping Memo §§ 3a, 3b, 3e)

PG&E's proposal fails to satisfy AB 1054's ratepayer neutrality standard because it (1) does not properly compensate ratepayers for their credit enhancement of the NOLs monetization upon which the securitization is based, and (2) does not protect ratepayers from the multiple risks intrinsic to reliance on the Customer Credit Trust for reimbursement of Fixed Recovery Charges ("FRCs").

1. Failure to Properly Compensate Contributions from Ratepayers

PG&E's policy witness, utility CFO David Thomason, acknowledged .[59] As Mr. Thomason explained,

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[59] CONFIDENTIAL Transcript (PG&E – Thomason), p. 942, line 10 – p. 944, line 5.

[60] CONFIDENTIAL Transcript (PG&E – Thomason), p. 944, line 23 – p. 945, line 23.

Mr. Thomason testified that PG&E's securitization proposal would provide a "monetization" of the NOL cash flows by "indirectly" transferring those cash flows to ratepayers.[61] "It goes through the customer reserve," he said, "and [the] customer reserve is used to fund revenue credits that offset the securitization [FRCs]"[62] PG&E's expert witness on utility securitization, Stefan Lunde, a Director in Global ABS Financing and Securitization with Citigroup Global Markets, Inc., identified the value-added coming from ratepayers:

> **the real credit enhancement** comes from the right to impose, collect, and receive from the utility's electric customers, amounts necessary to pay principal and interest on the securitization bonds, and to pay the SPE's other ongoing costs, timely and in full, and including the ability to adjust the amounts of them securitization charges periodically through a 'true-up' mechanism.[63] (emphasis added)

Mr. Lunde said "credit enhancement is a concept that is used in securitization to provide extra assurances to investors that they will receive interest and principal,"[64] and said that "(t)he rating agencies will be looking to the credit enhancement to get to a AAA rating."[65] He testified that he did not know of any other way PG&E could monetize its NOLs that would earn a AAA rating.[66] Asked whether, without securitization, PG&E might find a private credit enhancer (such as a bond insurer or syndicate of letter-of-credit banks) for an NOLs monetization of $7.5 billion in size, Mr. Lunde replied, "Not in the world I operate [in], I don't think so …"[67]

As Mr. Thomason admitted, [68] But do PG&E's proposed shareholder contributions and 75-25 split of any residual surplus in the Customer Credit Trust properly compensate ratepayers for providing "the real credit enhancement" that rate for an uncertain

[61] Transcript (PG&E – Thomason), p. 322, lines 14 – 23. *See* also Transcript (PG&E – Thomason), p. 264, lines 16 – 17: "this structure is a way to monetize the NOL."
[62] Transcript (PG&E – Thomason), p. 322, lines 19 – 22.
[63] PGE-02, p 2-15, lines 19 – 24.
[64] Transcript (PG&E – Lunde), p. 1043, line 25 – p. 1044, line 1.
[65] Transcript (PG&E – Lunde), p. 1044, lines 15 – 17.
[66] Transcript (PG&E – Lunde), p. 1044, lines 22 – 28.
[67] Transcript (PG&E – Lunde), p. 1045, lines 1 – 8.
[68] CONFIDENTIAL Transcript (PG&E – Thomason), p. 947, lines 3 – 6.

maturity into a Citigroup-assumed 2.90% AAA-rated securitization fully amortized over 30 years? PG&E's determination that 25% of any residual surplus in the Customer Credit Trust is appropriate compensation for ratepayer contributions is not premised on any empirical attempt to value such contributions (e.g., what would AAA-rated commercial credit enhancement cost to absorb the same risks, assuming bids from interested providers could be obtained?).

Instead, the 75-25 split appears to be an exogenous assumption (along with the $7.5 billion transaction size, the $1.8 billion Initial Shareholder Contribution, and the $7.59 billion cap on Additional Shareholder Contributions[69]) underpinning the original testimony which accompanied PG&E's Application and has been retained notwithstanding significant changes in other financial assumptions. When asked by the Public Advocates Office to explain the basis for proposing a 25% share for ratepayers, and whether any other sharing percentages had been analyzed, PG&E replied:

> The 25% sharing of surplus is proposed as compensation for the potential risk of loss to customers. As set forth in the Chapter 6 testimony served **on April 30, 2020, the expected value of negative outcomes ($269 million, $32 million on a net present value basis) is approximately 10% of the expected value of the Trust surplus** ($2,685 million, $283 million on a net present value basis) and PG&E determined to provide 2.5 times that amount as the sharing (25%). That yields an expected rate-positive benefit to customers of approximately $469 million ($47 million on a net present value basis). As set forth in the updated prepared testimony served **on August 7, 2020**, PG&E has maintained this same surplus sharing proposal notwithstanding that **the expected value of negative outcomes ($152 million, $20 million on a net present value basis) is now only approximately 3.4% of the expected value of the Trust surplus** ($4.414 billion, $535 million on a net present value basis), which yields an expected customer benefit of approximately $990 million ($118M on a net present value basis). As explained in footnote 25 in Chapter 1, Introduction (D. Thomason), served August 7, 2020, the customer expected value of the surplus sharing 'is calculated by taking 25 percent of the [EV Positive Outcomes as shown on Line 21 of Table 6-7] ($1,142 million is 25 percent of $4,566 million) minus the [EV Negative Outcomes as shown on Line 22 of Table 6-7] ($152 million).' PG&E has not performed this

[69] PG&E's January 6, 2021 application for the securitization Financing Order, A.21-01-004, (at p. 6 of Attachment 7) acknowledges that "a change in state or federal law or a change in ownership under Section 382 of the Internal Revenue Code that limits the use of Shareholder Deductions on PG&E's federal or state tax returns at the time of the formula calculation to determine Additional Shareholder Contributions, will limit the amount of the Additional Shareholder Contributions." (internal footnote omitted)

same calculation for surplus sharing percentages other than 25%. The expected value of any particular sharing mechanism is simply that percentage of the positive expected value outcomes minus the negative expected value outcomes.[70] (emphasis added)

Despite PG&E's pretense of generosity in the face of a two-thirds decline in its own tunnel-visioned indicator of the securitization's risk to ratepayers, the proposed sharing percentage has no connection to any calculated value of what ratepayers would actually contribute to the securitization. With more transparency (or a truly bilateral negotiating process) a diversity of approaches to valuation might inevitably have arisen, but the end result would likely hew more closely to some calculational rationale than PG&E's unilateral arbitrariness. Cal. Pub. Util. Code §3292(b)(1)(E) requires a considerably stronger showing than PG&E has mustered.

Although A4NR does not consider PG&E's monotropic focus on the ending balance in the Customer Credit Trust to be an accurate measuring stick for ratepayer neutrality, for purposes of valuing the credit enhancement which the NOLs-monetizing securitization requires from ratepayers, PG&E's Reply Brief should address the following simplistic "thought experiment"[71] derived entirely from PG&E inputs:

- Ratepayers provide the "real credit enhancement" that reduces the borrowing rate from [redacted] to 2.90% ([redacted] basis points).
- Because the wildfire claims are non-transferable shareholder obligations, shareholders are responsible for $7.35 billion of securitization bond principal.
- Shareholder contributions fund investments expected to earn 6.93%, and returns above the 4.04% break-even rate (which will satisfy all remaining principal and interest requirements) contribute to a residual surplus (289 basis points).

[70] CCSF-06, p. 6.

[71] This useful, instructive technique was employed twice by Professor Emeritus Bradford Cornell in his responses to cross-examination. *See* Transcript (PG&E – Cornell), p. 608, lines 5 – 6, and p. 664, line 25.

- Ratepayers bear all risk of shortfalls during the 30-year (possibly 32-year) period the securitization bonds are outstanding, and shareholder contributions are capped.
- Why shouldn't any residual surplus be split [redacted] % to ratepayers and [redacted] % to shareholders, based on the ratio [redacted] : 289?

2. Failure to Protect Against Risk of a Customer Credit Trust Shortfall

(a) Is the proposed structure reasonable in the event there is ultimately a Customer Credit Trust shortfall?

PG&E's proposed structure cannot be considered reasonable (let alone "neutral, on average, to ratepayers") if there is a risk of shortfall in the Customer Credit Trust. PG&E is asking the Commission to make ratepayers involuntarily liable for what are indisputably shareholder obligations based upon a rationale that ratepayers will ultimately benefit from the asserted improvement in PG&E's financial profile. However, all of the available evidence from S&P and Moody's suggests no reliable connection between the securitization proposal and an upgrade to an investment grade issuer rating from either agency. While PG&E's testimony emphasizes the role of securitization in accelerating S&P's removal of negative rating modifiers, PG&E has admitted its unawareness of any written or verbal communications with S&P supporting such hopes.[72] Under such dubious circumstances, how can it be reasonable to force ratepayers to incur **<u>any risk of shortfall</u>** in PG&E's ill-constructed Customer Credit Trust FRC reimbursement mechanism?

(b) Does PG&E's proposal reasonably account for risks to ratepayers?

PG&E's proposal fails to reasonably account for several core risks it would force upon ratepayers. These include, but are not limited to, the various causes of a potential shortfall in the Customer Credit mechanism (e.g., amount and timing of NOLs, errors in forecast of taxable income, inadequate Initial Shareholder Contribution, change in tax laws, etc.); the responsibility of ratepayers to reimburse PG&E "for any computed tax liability" caused by shortfalls during

[72] A4NR-01, p. 23, lines 11 – 12, citing Securitization2020_DR_CCSF_003-Q01-11, p. 3.

any period when the Fixed Recovery Charges exceed the Customer Credit;[73] and the uncertain ramifications of a future PG&E bankruptcy (e.g., legal ability to transfer funds from the Customer Credit Trust to pay the Customer Credit, source and sufficiency of funds to reimburse elevated costs owed any Replacement Servicer, etc.).

Because a fair reading of the multiple written reports from the rating agencies makes clear that future improvements in PG&E's issuer rating will be driven by developments other than the proposed securitization, no tangible ratepayer benefit could be confidently attributed to the securitization transaction if it went forward. The 25% share of an unguaranteed residual surplus of uncertain size, which PG&E holds out to a future generation of ratepayers in three decades hence, bears no relationship to the financial value of the credit enhancement compelled from ratepayers across the entire 30 – 32-year period. The projected reduction in cost of capital is dependent upon the evidence-free premise that – by moving from a pre-securitization, S&P-assumed FFO/Debt ratio of 15 – 18% in 2020 to a post-securitization 20% level in 2023 – PG&E can induce S&P to abandon concerns about management and safety deficiencies. The size of any such cost of capital benefit hinges on whether Moody's would be caught up in the same momentum, despite refusing to remove securitization debt from its balance sheet analysis, as well as whether such rating upgrade(s) take place earlier than they otherwise would without securitization.

Protecting ratepayers from the risk that transfers from the Customer Credit Trust will not fully reimburse all FRCs as they become due is a statutory necessity, uniquely applicable to PG&E under AB 1054. PG&E's reliance on Cal. Pub. Util. Code § 850.1(a)(3)(A)(ii)(III) to craft its multi-generational, present-valued "expectation" of ratepayer benefit – Mr. Thomason was clear: "If the NPV of the transaction is expected to be positive, then we would argue that is rate neutral."[74]— does not satisfy the requirements of Cal. Pub. Util. Code § 3291, expressly identified as applicable to this proceeding by D.20-05-053. PG&E is required to guarantee against Customer Credit shortfalls whenever FRCs come due, and its insistence that doing so

[73] PGE-06, p. 6-28, footnote 18.
[74] Transcript (PG&E – Thomason), p. 340, lines 24 – 26.

will encounter a credit rating "barrier"[75] reflects the inadequate (or perhaps incomplete) refinement of PG&E's work-in-progress proposal.

PG&E's rebuttal testimony was categorical: "In the event that PG&E were to guarantee the Customer Credit mechanism, S&P would likely treat it as an enforceable contractual commitment and, therefore, the Securitization would be on-credit and the forecasted improvement in financial metrics would not occur."[76] This perspective overlooks the substantial difference in size between a guarantee of the entire amount borrowed through securitization and a commitment to fill occasional deficiencies in the Customer Credit Trust's ability to periodically reimburse ratepayers for FRCs. It reflects either (1) inadequate appreciation of the credit difference between a contingent liability and a direct liability (e.g., a standby letter of credit vs. a direct pay letter of credit); or (b) a lack of confidence in the ability to persuade S&P of the veracity of PG&E's probabilistic projections that potential deficiencies will be extraordinarily limited; or, worse, (c) profound doubts about the accuracy of the projections themselves.

Mr. Sauvage, familiar with rating agency guidelines for the elaborately structured credit arrangements in project finance ("I am going to use the term "structured financing" or project financing. And those are relatively complicated guidelines. And they -- and they're often -- in a prior life, I ran a project finance business, so I had a lot of experience with exactly where those bright lines were."[77]) knew better:

> Yes. I would say that in transactions like this -- I will go back to my project finance days, **<u>you can move some of the pieces around and still maybe not have all the impact you want, but have considerable impact</u>**. I think, again, it's heavily dependent upon facts and circumstances. Because the structured ratings are really dependent on -- the above-the-line part of the securitization transaction has to look a certain way to get to a AAA credit rating. It is, as I told my securitization partners, if it's a duck, it has to look like a duck, walk like a duck and quack like a duck.

[75] Transcript (PG&E – Thomason), p. 687, lines 25 – 27.
[76] PGE-14, p. 5-12, lines 2 – 6.
[77] Transcript (PG&E – Sauvage), p. 483, lines 7 – 13.

> **Below the line is where the ambiguity is**. One point is clear. If there were no customer credit, that would be one clear answer. If there was a guarantee, that would be one clear answer. Between those two spots, I think the company settled on a continuum that was -- S&P was amenable to. As you move off of that continuum, you really I think have to assess the total risk reward allocation and **you perhaps would want to go back and visit with the rating agencies, visit with S&P particularly. It's an incredibly gray area and it's enormously dependent upon the facts and circumstance**.[78] (emphasis added)

A necessary feature of navigating this "incredibly gray area" to simultaneously satisfy both the statutory requirement for rate neutrality and the envisioned S&P FFO/Debt metrics would be proper sizing of the Initial Shareholder Contribution. The $1.8 billion amount is another critical input to PG&E's securitization structure that appears to have been hard-coded from exogenous sources rather than mathematical derivation, and Mr. Thomason was unable to provide a quantitative rationale for the sizing.[79] Why is it 1.8 billion? Why not 1.78? 1.82? 1.7? 1.9? Why is it fixed at 1.8? From the very outset of this proceeding, A4NR and CLECA urged that PG&E be required to analyze NOLs supply scenarios with comparable rigor to that which it applied to Customer Credit Trust investment portfolio returns.[80]

Instead of the 2,000 Monte Carlo simulations and evaluations of successive 30-year periods used to review potential investment portfolio returns, PG&E postulated a single projection of taxable income whose robotic growth rate (and avoidance of loss) is a radical departure from PG&E's recorded history over the past 25 years. PG&E informed the Public Advocates Office that, in order to achieve a 95% chance of residual surplus in the Customer Credit Trust, the Initial Shareholder Contribution would need to be increased by $867 million,[81] a stark indicator of the magnitude of under-examined risk embedded in PG&E's posited assumption about the timing of NOLs realizations. NOLs timing drives PG&E's "confidence that the credit trust would be funded sufficient to allow for a full offset [of FRCs] at a high degree of certainty to customers."[82] In fact, PG&E's investment portfolio modeler projected an 84%

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[78] Transcript (PG&E – Sauvage), p. 488, line 24 – p. 489, line 24.
[79] *See* Transcript (PG&E – Thomason), p. 871, line 1 – p. 873 line 22.
[80] Joint Prehearing Conference Statement, Attachment, p. 1 of 3.
[81] CalAdvocates-01, p. 10, Table 1, line 3.
[82] Transcript (PG&E – Thomason), p. 224, lines 13 – 16.

chance of residual surplus and admitted that the risk of residual shortfall was the very same one-in-six chance associated with negative outcomes in Russian roulette.[83]

As discussed above, A4NR disputes that a residual surplus (or PG&E's snapshot "expectation" thereof) satisfies the neutrality requirement of Cal. Pub. Util. Code § 3291 – e.g., would a ratepayer liable for an unreimbursed FRC in Year 5 be "neutral" about accepting as sufficient recompense some other ratepayer's potential receipt of surplus in Year 30? – but it does provide a metric by which to evaluate an increased Initial Shareholder Contribution vs. the likelihood that a contingent PG&E backstop of FRC reimbursements would be drawn upon. Knowingly increasing one knowingly reduces the other. PG&E offered no evidence that it has examined such tradeoffs in even a perfunctory scenarios analysis, and Mr. Thomason confirmed that the company has not evaluated the impact an Initial Shareholder Contribution larger than $1.8 billion would have on rating agency credit metrics.[84]

Mr. Thomason went so far as to say that PG&E's net present value calculations of a residual surplus in the Customer Credit Trust enabled the company to **reduce** the Initial Shareholder Contribution and still achieve rate neutrality, but that it had chosen not to do so:

> We could have. There is a cushion. The NPV for our forecast to customers – this is excluding interest savings. This is just the reserve account, and the surplus relative to the risk of the downside is $118 million. And then the interest savings -- on an NPV basis, the interest savings is another $213 million. So you have essentially that cushion. The sum of those two amounts is 331. Essentially a cushion that we could have used to reduce contributions. We have chose not to.[85]

If PG&E actually believes it has such a substantial "cushion," but apprehension about S&P financial metrics inhibits it from offering a standby commitment to absorb what it regards as the small risk of shortfalls in the Customer Credit Trust, why not use some of that "cushion" to purchase a AAA-rated guarantee from a third-party provider? Mr. Thomason's rebuttal testimony seemed inviting:

[83] Transcript (PG&E – Allen), p. 160, lines 5 – 7.
[84] Transcript (PG&E – Thomason), p. 252, lines 9 – 11.
[85] Transcript (PG&E – Thomason), p. 345, lines 4 – 15.

> Professor Cornell's analysis of the Monte Carlo simulation outcomes for Additional Shareholder Contributions shows that the risk to customers is approximately $30 million on an NPV basis using a discount rate of 7.34 percent. Stated differently, the compensation an investor would require to provide a guarantee of payment in the event the customer credit is insufficient would be approximately $30 million.[86]

After some initial uncertainty, PG&E expert witness Bradford Cornell confirmed on redirect examination that Mr. Thomason had accurately interpreted the analysis.[87] "Assuming that the 7.34 is a fair rate of return," Professor Cornell stated, "someone willing to accept that rate of return would charge 30 million dollars right now to take the risk of covering all the negative outcomes but not getting the surplus at the end."[88] Professor Cornell indicated that a $30 million guarantee fee would still leave a surplus with a net present value of $121 million.[89] Professor Cornell testified that, "You'd probably have to go to someone like Berkshire Hathaway that prices unique risk and they would, you know – they would charge it – because the market isn't perfect, they would charge you a pretty penny to bear that risk."[90] Arithmetically grossing up a guarantor's hypothetical annual return to the 15 – 20% often attributed to such investors would result in an upfront guarantee fee of $61 – 82 million, still leaving a projected surplus with a net present value of $39 – 60 million.

So, in order to satisfy the statutory requirement for rate neutrality with no effect on the FFO/Debt ratio, why wouldn't PG&E's proposal incorporate a third-party guarantee? Only two explanations appear plausible. Either PG&E has tried and been unsuccessful in persuading potential guarantors of the credibility of its probabilistic calculations. Or its proposal remains far more preliminary and incomplete than what is ordinarily expected of a complex $7.5 billion financing with multiple moving parts, and PG&E simply hasn't gotten around to soliciting prospective guarantors yet.

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[86] PGE-15, p. 6-18, lines 15 – 20.
[87] Transcript (PG&E – Cornell), p. 656, lines 24 – p. 657, line 1.
[88] Transcript (PG&E – Cornell), p. 657, lines 11 – 16.
[89] Transcript (PG&E – Cornell), p. 658, lines 21 – p. 659, line 4.
[90] Transcript (PG&E – Cornell), p. 587, lines 27 – p. 588, line 4.

PG&E attempts to sidestep Cal. Pub. Util. Code § 3291's year-by-year requirement of zero shortfalls with a snapshot "expectation" the company subjected to only the most limited of stress testing:

> PG&E forecasts and expects that the Initial Shareholder Contribution, the Additional Shareholder Contributions, and the Customer Credit Trust Returns will be sufficient for the Customer Credit Trust to fund Customer Credits that equal the FRCs, **such that the net cost to customers each year and over the life of the Recovery Bonds** will be zero.[91] (emphasis added)

But the only variable tested by PG&E's Monte Carlo simulations was the investment return on the Customer Credit Trust,[92] not uncertainties in PG&E's annual taxable income or the level of annual Additional Shareholder Contributions,[93] or potential changes in tax rates or tax law,[94] or different assumed interest rates for securitization bonds,[95] or (NOLs-dependent) Additional Shareholder Contributions aggregating to less than $7.59 billion,[96] or possible delays of significant Additional Shareholder contributions beyond their projected 2024 start date.[97] The *de minimis* alternative cases featured in PG&E's rebuttal testimony – a single-year's absence of taxable income in 2029, a uniform reduction of 20% in projected taxable income across the entire 30 years – suggest an exercise in cherry-picking, and PG&E's refusal to disclose the full range of scenarios it reviewed[98] supports the logical inference that unfavorable results have been suppressed.

The extreme divergence between PG&E's historical experience and its forecast of steadily growing taxable income is a red flag warning of risk in the assumed amount and timing of NOLs realization. PG&E's unwillingness to provide any evidence that it has systematically

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[91] PGE-06, p. 6-2, lines 7 – 11. PG&E's January 6, 2021 application for the securitization Financing Order, A.21-01-004, (at p. 6 of Attachment 7) acknowledges that "a change in state or federal law or a change in ownership under Section 382 of the Internal Revenue Code that limits the use of Shareholder Deductions on PG&E's federal or state tax returns at the time of the formula calculation to determine Additional Shareholder Contributions, will limit the amount of the Additional Shareholder Contributions." (internal footnote omitted)
[92] Transcript (PG&E – Allen), p. 136, line 24.
[93] Transcript (PG&E – Allen), p. 136, line 26 – p. 137, line 3.
[94] Transcript (PG&E – Allen), p. 137, line 4 – line 8.
[95] Transcript (PG&E – Allen), p. 137, line 18 – line 22.
[96] Transcript (PG&E – Allen), p. 138, line 10 – line 13.
[97] Transcript (PG&E – Allen), p. 138, line 23 – line 28.
[98] *See* Transcript, p. 109, line 26 – p. 110, line 1.

assessed this risk and stress-tested multiple scenarios, with rigor equal to its history-based analysis of investment returns, is a second red flag. The historical data provided by PG&E reveals a radical volatility to taxable income[99] that the long-term averaging utilized by PG&E's proposal conveniently buries:

PG&E Corporation & Subsidiaries
Taxable Income/(Loss) before NOL carryover

Year	Federal Adjusted Taxable Income (Loss)	Annual Growth (Decline)		California Adjustable Taxable Income (Loss)	Annual Growth (Decline)
1995	2,553,103,523			2,160,219,907	
1996	1,607,722,316	(37.0%)		1,482,058,363	(31.4%)
1997	1,615,113,562	0.5%		1,117,752,427	(24.6%)
1998	1,553,844,752	(3.8%)		831,133,722	(25.6%)
1999	2,064,319,166	32.9%		1,154,896,503	39.0%
2000	(3,095,563,610)	(250.0%)		(1,878,493,901)	(262.7%)
2001	727,633,531	123.5%		252,976,249	113.5%
2002	2,217,461,068	204.7%		1,398,482,234	452.8%
2003	285,928,102	(87.1%)		745,979,522	(46.7%)
2004	460,944,733	61.2%		1,223,161,727	64.0%
2005	2,862,306,646	521.0%		2,521,374,037	106.1%
2006	2,305,567,492	(19.5%)		2,438,435,355	(3.3%)
2007	1,024,182,508	(55.6%)		1,123,027,834	(53.9%)
2008	(657,847,502)	(164.2%)		123,461,020	(89.0%)
2009	(338,311,604)	48.6%		968,563,126	684.5%
2010	(476,346,505)	(40.8%)		1,309,015,741	35.2%
2011	(1,733,434,831)	(263.9%)		318,818,059	(75.6%)
2012	(585,271,403)	66.2%		208,270,732	(34.7%)
2013	(1,278,437,127)	(118.4%)		(339,847,480)	(263.2%)
2014	(762,922,789)	40.3%		(412,879,626)	(21.5%)
2015	(740,273,752)	3.0%		84,490,014	120.5%
2016	(602,371,164)	18.6%		58,080,613	(31.3%)
2017	894,034,912	248.4%		763,201,102	1,214.0%
2018	296,273,414	(66.9%)		7,418,237	(99.0%)
2019	(1,904,345,320)	(742.8%)		Not yet filed	

[99] A4NR-01, pp. 28 – 29, citing 2020Securitization_DR_A4NR_004-Q04Atch01.xlsx. The change in taxable income from the prior year has been calculated as a percentage by A4NR.

Measured against PG&E's flawed paradigm that rate neutrality is determined by a score card that isn't tallied for 30 – 32 years, it is theoretically possible that peaks in taxable income might sufficiently fill in valleys to produce a residual surplus in the Customer Credit Trust. But measured against the statutory requirement of Cal. Pub. Util. Code § 3291, the timing and dimensions of peaks and valleys are major determinants of whether ratepayers experience shortfalls in FRC reimbursement at any point during the time the securitization bonds are outstanding. Thorough analysis of such volatility (and review of multiple scenarios) would seem a critical input to proper sizing of the Initial Shareholder Contribution and the cap on Additional Shareholder Contributions, as well as a key factor in crafting a workable third-party guarantee or contingent dollar-for-dollar rate credit backstop.

(c) Are there alternatives to PG&E's securitization transaction available that strike a better balance of benefits and detriments?

A4NR believes that a quantitatively-determined combination of enhanced Initial Shareholder Contribution, third-party guarantee, and/or PG&E contingent dollar-for-dollar rate credit backstop would better address the statutory requirement to eliminate the potential for shortfalls in the Customer Credit Trust. Arguably, a method that used actual value-added to calculate the ratepayer share of any residual surplus might satisfy the statutory requirement to properly compensate ratepayers for the credit enhancement they provide, although A4NR is doubtful that the intergenerational transfer intrinsic to such an arrangement would be just and reasonable or in the public interest. Credit enhancers are ordinarily paid specified amounts upfront (e.g., bond insurers) or on an ongoing basis (e.g., letter of credit banks), not a fixed percentage of an uncertain residual at the end of a 30 – 32-year credit enhancement period.

From a ratepayer perspective, the only upside to securitization is potentially reduced interest cost on that subset of PG&E's debt that would be issued during the period between receipt of a securitization-driven rating upgrade and the point in time when such an upgrade would occur without securitization. This speculative benefit is entirely dependent upon PG&E's supposition that securitization will accelerate a return to investment-grade issuer status by some material period of time. The size of any hypothesized benefit depends on whether both

rating agencies choose to act, the degree of rating upgrade(s), the measurable effect on borrowing rates, and the amount of timeframe acceleration that can credibly be attributed to securitization. As discussed earlier, PG&E's pollyannish supposition is contrary to repeated written feedback during the past year from S&P and Moody's, and the magnitude of any purported savings is heavily disputed. The Commission should attach little weight to claims that this is a quantifiable benefit rather than a vaguely conceptual one.

A better balance of benefits and detriments, to both PG&E and ratepayers, would be achieved by turning to the backup already identified by PG&E and incorporated into its Plan of Reorganization: using the cash flows from the shareholder NOLs to pay debt service on a refinancing of the Temporary Utility Debt.[100]

C. Issues Related to the Customer Credit Trust (Scoping Memo §§ 4 and 6 and subparts)

1. What are the risks related to the amount and timing of PG&E's realization of NOLs and does PG&E's proposal sufficiently address the risks? (Scoping Memo §§ 4a, 4c, 4d)

A4NR's Opening Brief addresses the primary risk related to the amount and timing of NOLs realization (i.e., the likely error in and inadequate stress-testing of PG&E's postulated forecast of future taxable income) in VI. B. 2. (b) above at pp. 21 – 29. Forecast error is a sufficiently large umbrella to cover the plethora of precipitating causes identified in this proceeding's evidentiary record for why PG&E's forecast may be wrong.

Because ratepayer risks under PG&E's proposed structure are reduced as Additional Shareholder Contributions increase, allowing more time for investment earnings to accumulate, earlier realization of NOLs is more beneficial to ratepayers than later realization. PG&E's insistence that Additional Shareholder Contributions be capped at $7.59 billion,[101] rather than

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[100] Transcript (PG&E – Thomason), p. 834, lines 13 – 15.

[101] PG&E's January 6, 2021 application for the securitization Financing Order, A.21-01-004, (at p. 6 of Attachment 7) acknowledges that "a change in state or federal law or a change in ownership under Section 382 of the Internal Revenue Code that limits the use of Shareholder Deductions on PG&E's federal or state tax returns at the time of the formula calculation to determine Additional Shareholder Contributions, will limit the amount of the Additional Shareholder Contributions." (internal footnote omitted)

trueing-up the calculation periodically as it does every three years with the Nuclear Decommissioning Trusts (a parallel to the Customer Credit Trust repeatedly invoked by PG&E's investment portfolio expert witness, Gregory Allen[102]), exacerbates this ratepayer risk. PG&E's offhand dismissal of such adjustments ("for the avoidance of doubt"[103]) indicates this risk mitigation mechanism has been swept into the same dustbin of unexamined alternatives as a dollar-for-dollar contingent rate credit backstop or third-party guarantee. Prudent financial managers would not rush uninformed into such consequential judgments.

PG&E's failure to convincingly demonstrate that it has thoroughly assessed the risks inherent in its projected amount and timing of NOLs realization – and that it has exhaustively explored all reasonable mitigation alternatives – is an indicator of an unripe, incomplete proposal not yet ready to create a $7.5 billion liability.

2. Does the Commission Have Sufficient Information to Determine the Amount and Timing of NOLs that Will Be Available to Fund the Customer Credit Trust? (Scoping Memo § 4)

For the reasons identified in VI. B. 2. (b) and VI. C. 1. at pp. 21 – 31 above, it is clear that the Commission lacks the evidentiary record to determine the amount and timing of NOLs realization within an acceptable range of uncertainty.

3. Whether PG&E's Projected Investment Returns and Criteria for Allocating the Customer Credit Trust Are Reasonable and Appropriate (Scoping Memo § 6)

PG&E's testimony concerning investment returns is influenced by its flawed forecast of taxable income, which determines the realization of NOLs and thereby the amounts and timing of funds available for investment. Based on projections of taxable income that appear overly exuberant – in their annual amounts, in their steady growth, and in their immunity from losses – when compared to the volatility experienced over the past 25 years, PG&E calculates a

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[102] *See* Transcript (PG&E – Allen), p. 78, line 7 – p. 83, line 22; p. 144, lines 1 – 5; p. 161, line 26 – p. 162, line 1; p. 202, lines 13 – 17; p. 209, line 16 – p. 211, line 21.
[103] PGE-05, p. 5-26, lines 28 – 30.

breakeven geometric return requirement of 4.04% and states that there was not a single 30-year period since 1926 when its assumed investment portfolio would have generated an annualized return below 7.49%. This is a substantial margin in terms of return, but three of the underlying assumptions suggest that the size is smaller than PG&E claims:

- First, the 4.04% breakeven floor is derived from the dubious assumption of steadily ascending growth in taxable income – in contrast to the hyper-volatility experienced in this accounting construct at PG&E over the last three decades – and thus is likely to be understated.
- Second, PG&E has acknowledged[104] that the weighted average length of time the Initial Shareholder Contribution, and returns thereon, remains invested may be 8.3 years rather than 30 years. A similar calculation for the Additional Shareholder Contributions yields a weighted average of 15.3 years rather than 30 years. One doubts that PG&E would say that there was not a single 8.3-year or 15.3-year period since 1926 where its assumed investment portfolio would have generated an annualized return below 7.49%.

  As documented by the 2020 Survey of Capital Market Assumptions by Horizon Actuarial Services, LLC included in PG&E's rebuttal testimony, "As we have seen in prior surveys, expected returns are noticeably lower over the short term [up to 10 years] than over the [20 years or more] long term."[105] By confining its assessment of portfolio returns to a 30-year time horizon despite acknowledging much shorter weighted average lives for the Customer Credit Trust investments, PG&E has likely overstated its return assumptions by ignoring what the Horizon Actuarial survey identified as "significant differences in expected returns over the short term and the long term."[106]
- Third, holding the 80% equities/20% fixed income asset allocation constant over the entire 30 years is an oversimplification that places excessive weight on equities and, consequently, overstates return. Because of the established cash outflows created by the debt service on the securitization bonds, the actual portfolio may be more likely to resemble a series of target date funds. To hedge against the higher volatility of equities,

[104] Securitization2020_DR_A4NR_002-Q01-19, p. 2.
[105] PGE-15, p. 6-Exh6.2-2.
[106] PGE-15, p. 6-Exh6.2-4.

such funds habitually increase their fixed-income allocations over time as payment dates grow nearer. PG&E's rebuttal testimony responded to this criticism with a circular admission, corroborating the linkage between volatility and return:

> Reducing the assumed equity exposure for the Customer Credit Trust would reduce expected return, but it would also reduce the expected volatility of return. This, in turn, would reduce the magnitude of the worst case outcomes (they would be less negative). It would not make sense in the context of the model to simply reduce return without reducing the associated volatility. Reducing assumed equity exposure at some point in the life of the Trust would likely reduce the size of the surplus in the expected case, but that does not mean that it would reduce the probability of success given the corresponding reduction in the volatility of return.[107]

PG&E offered no evidence to establish what level of reduced volatility of return, and resulting reduction in absolute return, could be absorbed by the Customer Credit Trust portfolio and not "reduce the probability of success." PG&E's portfolio modeling expert witness, Gregory Allen, testified that the 80% equity share had been selected because that level is the limit allowed for the Nuclear Decommissioning Trusts[108] but that the outside investment committee "may not be comfortable with an 80/20 mix. They may want to go with something less risky, you know, 70/30, 65/35. That would reduce the expected return and it would certainly reduce the expected surplus."[109]

Mr. Allen admitted that the Nuclear Decommissioning Trusts are periodically trued-up to reflect projected expenditures and investment returns;[110] that when PG&E began spending the money in the Humboldt Bay Nuclear Decommissioning Trust "they pursued a more conservative asset allocation, you know, increasing the fixed income exposure,"[111] consistent with the advice his firm typically provides Nuclear Decommissioning Trusts;[112] because, "naturally, when you have a shorter time horizon,

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[107] PGE-15, p. 6-21, lines 13 – 21.
[108] Transcript (PG&E – Allen), p. 161, lines 26 – 28.
[109] Transcript (PG&E – Allen), p. 162, lines 4 – 8.
[110] Transcript (PG&E – Allen), p. 78, line 20; p. 80, line 17.
[111] Transcript (PG&E – Allen), p. 210, lines 20 – 22.
[112] Transcript (PG&E – Allen), p. 210, line 27.

you will generally employ less equity. A longer time horizon, you employ more equity."[113]

Mr. Allen confirmed that, with the proposed Customer Credit Trust, PG&E's objective of maximizing the residual surplus (and excusing any shortfalls in contemporaneous FRC reimbursements if a residual surplus was still the end result) had dictated the investment portfolio composition:

> So, you know, we chose 80/20 because within the confines of the nuclear decommissioning trust investment policy limits, that was the mix that maximized the expected value. It would be very reasonable for an investment committee to say, Well, you know, maybe that's not our objective. Maybe the objective is to minimize the size of the worst-case outcomes. They might be inclined to pursue the less aggressive mix with, you know, a 60/40 or 70/30 or something along those lines.[114]

Within PG&E's paradigm of long-term averaging, indifference to interim shortfalls, and exclusive focus on the Customer Credit Trust's ending balance, the determinant of "success" in Mr. Allen's judgment was a portfolio return in excess of the long-term averaged breakeven rate of 4.06%.[115] Mr. Allen provided no indication of the long-term averaged returns associated with any of the "less aggressive" investment portfolio mixes.

4. Does PG&E's proposal sufficiently ensure that ratepayers receive the entirety of tax benefits and investment returns that PG&E estimates will be used to fund the Customer Credit Trust? (Scoping Memo § 6a)

As A4NR suggests in response to VI. C. 2. and discussion of VI. C. 3. at pp. 31 – 34 above, it is clear that PG&E's estimates of tax benefits and investment returns are based upon placing excessively optimistic return expectations on top of a non-credible forecast of taxable income for NOLs realization. Reliance upon long-term averaging and avoidance of proper stress testing conceals the disruptive consequences of volatility in either taxable income or investment returns, as well as the cumulative consequences of volatility in both. PG&E has not provided

[113] Transcript (PG&E – Allen), p. 211, lines 12 – 15.
[114] Transcript (PG&E – Allen), p. 202, lines 13 – 24.
[115] Transcript (PG&E – Allen), p. 203, lines 3 – 6. This breakeven rate was identified as 4.04% in PGE-06, p. 6-21, lines 24 – 26.

sufficient assurance that ratepayers will receive the entirety of what PG&E anticipates will be used to fund the Customer Credit Trust.

5. How should the Customer Credit Trust be allocated between different investment securities and what impacts would any proposed changes have on the ability of the Customer Credit Trust to fully satisfy all obligations related to securitization? (Scoping Memo §§ 6b, 6c)

A4NR declines to prescribe a specific portfolio mix, but considers imprudent PG&E's choice to ignore volatility in selecting a mix with the sole objective of maximizing the expected ending balance in the Customer Credit Trust. PG&E cannot ignore the risk of interim shortfalls in FRC reimbursements and still achieve ratepayer neutrality, and it has not produced evidence that shows its maximization of the expected ending balance will avoid such shortfalls in the absence of a re-sized Initial Shareholder Contribution, third-party guarantee, or contingent dollar-for-dollar rate credit backstop. A4NR agrees with Mr. Allen's admission that "It would be very reasonable for an investment committee to say, Well, you know, maybe that's [i.e., maximization of the expected ending balance] not our objective."[116] Without one or more of the FRC reimbursement protections A4NR's Opening Brief has identified, a "less aggressive mix"[117] may be more suitable. Unfortunately, PG&E's dearth of stress-testing alternate scenarios has prevented that assessment.

VII. WHETHER SECTION 451 APPLIES, AND IF SO, WHETHER PG&E HAS MET ITS BURDEN UNDER SECTION 451 (SCOPING MEMO § 5)

The "just and reasonable" requirements from Cal. Pub. Util. Code § 451 effectively apply to PG&E's proposed securitization even if the Commission were to determine the entire $7.5 billion to be allocable to ratepayers under Cal. Pub. Util. Code § 451.2. Cal. Pub. Util. Code § 850.1(a)(1)(A)(ii)(I) requires the Commission to condition issuance of any associated financing order on a determination that all material terms and conditions of the bonds, including the imposition and collection of Fixed Recovery Charges, are just and reasonable. As applied to a financing order, this is the same standard as Cal. Pub. Util. Code § 451. The Customer Credit and

[116] Transcript (PG&E – Allen), p. 202, lines 17 – 19.
[117] Transcript (PG&E – Allen), p. 202, line 22.

the Customer Credit Trust are integral parts of PG&E's proposed financing order, and consequently subject to the just and reasonable standard (in addition to the "in the public interest" requirement of Cal. Pub. Util. Code § 850.1(a)(1)(A)(ii)(II).

PG&E has fallen considerably short of meeting its burden to show that its securitization proposal is just and reasonable. Assuming, *arguendo,* that its collateral attack on D.19-06-027 could be ignored and its failure to comply with the Stress Test Methodology could be absolved, PG&E's post-bankruptcy status – unique among California electricity corporations – still subjects the proposed securitization to the "neutral, on average" and "compensate them accordingly" requirements of Cal. Pub. Util. Code §§ 3292(b)(1)(D) and 3292(b)(1)(E), respectively. The applicability of these statutory requirements was corroborated by D.20-05-053 but is not solely derived from it.

PG&E has chosen to meet the Cal. Pub. Util. Code § 3292(b)(1)(D) test by resort to its previously discredited "snapshot" perspective,[118] basing expansive assurances of rate-neutrality on its current "expectation"[119] while declining to offer any backstop guarantee. The brittleness of this expectation, premised on obviously disputable assumptions that are not immune from involuntary change, cannot be characterized as just and reasonable. Issuing PG&E's proposed securitization bonds under such circumstances would not be in the public interest.

Additionally, the 30 – 32-year delay in – and arbitrary undervaluation of – compensation required by Cal. Pub. Util. Code § 3292(b)(1)(E) for the credit enhancement extracted from ratepayers is a core structural feature of PG&E's proposal. The very existence of a residual surplus in the Customer Credit Trust from which to pay such compensation is not guaranteed, but merely projected by a "snapshot" quantifying PG&E's current "expectation." The failure to ensure properly-sized compensation on a timely basis, as any commercial credit enhancer would demand, cannot be considered just or reasonable. Issuing PG&E's proposed securitization bonds under these circumstances would not be in the public interest.

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[118] D.20-05-053 rejected this "single snapshot in time" approach and criticized PG&E's arguments on its behalf as "overly narrow." *Id.,* p. 87.
[119] PGE-1, p. 1-4, line 5.

VIII. WHETHER THE COMMISSION SHOULD ADOPT CONDITIONS OR ALTERNATIVES TO PG&E'S PROPOSAL (SCOPING MEMO §§ 3B, 3C, 3D, 3E, 6A, 6B, 6C)

As structured, PG&E's proposal fails to satisfy the applicable legal requirements – e.g., Cal. Pub. Util. Code for Commission §§ 850.1(a)(1)(A)(ii)(I), 850.1(a)(1)(A)(ii)(II), 850.1(i)[120], 3292(b)(1)(D), and 3292(b)(1)(E); as well as D.19-06-027 and D.20-05-053 – necessary for approval of the securitization. The most serious of these deficiencies stems from three fundamental premises of PG&E's proposal: (1) that a 30 – 32-year averaging that produces any Customer Credit Trust residual surplus based upon a "snapshot" of PG&E's current "expectation" can be considered acceptably "neutral" to ratepayers; (2) that "compensation" for the credit enhancement commandeered from ratepayers need not be valued by commercial standards nor paid contemporaneously, and an arbitrarily calculated 25% share of a speculative residual surplus after 30 – 32 years is sufficient; and (3) that the Commission requirements for a credible 3-year pathway back to investment grade issuer status and use of the Stress Test Methodology only as a "last resort" will be abandoned or waived. These are not deficiencies that can be easily corrected by a conditional approval of PG&E's proposal.

That said, the Commission can readily identify the required elements of a satisfactory approach to the Cal. Pub. Util. Code §§3292(b)(1)(D) and 3292(b)(1)(E) statutory tests: (1) legally enforceable assurance that there will be no shortfalls in FRC reimbursements to ratepayers from the Customer Credit Trust, whether from a third-party guarantee, dollar-for-dollar contingent rate credit backstop, or some combination thereof; (2) transparent calculation of the fair market value of the credit enhancement provided for the securitization bonds by ratepayers and contemporaneous payment therefor, as would be demanded by a bond insurer or letter-of-credit bank.

Proper sizing of the Initial Shareholder Contribution and any cap on Additional Shareholder Contributions (and whether to subject such cap to any true-up) will likely require

[120] PG&E's witness on rate impacts admitted that, under PG&E's proposal without a dollar-for-dollar rate credit, CARE and FERA customers will experience bill increases whenever FRCs are not fully reimbursed from the Customer Credit Trust, despite the clear prohibition in Cal. Pub. Util. Code § 850.1(i). Transcript (PG&E-Pease) p. 529, lines 7 – 11, 20 – 24; p. 530, lines 21 – 24; p. 535, lines 22 – 23.

considerably more robust stress-testing than PG&E placed in the record of this proceeding. PG&E's ability to attract a third-party guarantor, or persuade S&P of the low likelihood and immaterial impact of any dollar-for-dollar contingent rate credit being triggered, will require no less. This effort may be more palatable to PG&E after its April 2021 choice of tax treatment for its contribution of common stock to the Fire Victim Trust (i.e., whether to use the fair market value of the stock as of July 1, 2020 or as of the subsequent date(s) of disposition by the Fire Victim Trust).[121] Mr. Thomason testified that the roughly $9.50 share price on July 1, 2020 would reduce PG&E's tax deduction by some $2.25 billion below the $6.75 billion previously assumed,[122] but the stock price has appreciated by nearly 30% since July 1, 2020 – potentially freeing up some portion of the additional deductions of $320 million per year between 2021 and 2034 ($4.48 billion in all) that PG&E has committed to backfill any shortfall.[123]

Although of lesser concern as the risk of ratepayer exposure is reduced by the measures described above (the uncertainties associated with a future bankruptcy means such risk will never be zero), the Commission should also provide guidance about the appropriate amortization schedule for securitization bonds associated with the 2017 wildfire claims costs. In light of the fact that PG&E amortized the costs of its earlier bankruptcy in a securitized financing with a weighted average life of less than nine years,[124] is it just and reasonable to spread the costs of a single year's wildfire claims settlements over multiple decades when climate conditions suggest continued (and perhaps worsening) wildfire risks in the future? Where do the Commission's intergenerational equity policies draw the just and reasonable line?

IX. ISSUES RELATING TO PG&E'S PROPOSED FINANCING ORDER (SCOPING MEMO § 7 AND SUBPARTS)

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[121] A4NR-01, p. 31, lines 4 – 7.
[122] Transcript (PG&E – Thomason), p. 355, line 27 – p. 356, line 3.
[123] PGE-6, p. 6-8, lines 14 – 21. PG&E's January 6, 2021 application for the Financing Order, A.21-01-004, (at p. 3 of Attachment 7) states: "This change only reduces the risk of insufficient deductions (or NOLs). It does not change any other factor that impacts whether the actual amount of Additional Shareholder Contributions will be $7.59 billion."
[124] A4NR-01, p. 26, lines 12 – 13.

1. **Whether the Commission should determine that the conditions set forth in Section 850.1(a)(1)(A)(ii) are satisfied (Scoping Memo § 7a)**

As discussed in VII and VIII at pp. 35 – 38 above, the Commission cannot make either the "just and reasonable" or the "in the public interest" required determinations regarding the proposed financing order included in PG&E's testimony.

2. **What role should the Commission play in structuring the securitization, including the selection of underwriters and asset managers (Scoping Memo § 7b)**

Were the Commission to approve PG&E's proposed securitization, it should promptly retain an independent financial advisor to assist in the structuring, marketing, and pricing of the bond issuance(s). Because large issuances of securitized utility bonds have been infrequent in recent years, and because comparisons to ubiquitous asset-backed securities can often prove misleading due to difference in credit types, the Commission should prioritize actual experience with utility securitizations in selecting an advisor. The extraordinary volume of such bond issuances expected from California electricity corporations in the near future means the first several transactions will likely establish important structuring, marketing, and pricing precedents in the fixed-income markets. Focusing the Commission role on the engagement of a well-qualified financial advisor should reduce the need for intrusion into the utility's selection of underwriters. Requiring Commission approval of appointments to the Customer Credit Trust management committee, as well as the retention agreements with asset managers, should provide sufficient oversight of the investment process.

PG&E's testimony regarding a "financing team" is incongruous[125] in light of the Commission's past practice and recent D.20-11-007. It should be afforded little weight.

3. **Other aspects of PG&E's proposed Financing Order that require Commission guidance.**

[125] Transcript (PG&E – Becker), p. 1244, lines 5 – 10: "We did not propose a financing team, such as is suggested, I think, in the Southern California Edison case. But we expressed an openness, if that is the Commission's preference to use that same structure on our transaction."

Several features of PG&E's proposed Financing Order are sufficiently problematic that Commission guidance would be beneficial even if the Application is denied, and imperative if it is approved:

- All securitization bonds issued under the authority of the Financing Order should be required to be issued within six months of the issuance date of the first series. PG&E's rebuttal testimony said the company "anticipates that the full $7.5 billion of Recovery Bonds would be issued in one or more series in 2021, assuming a final decision in the second quarter of 2021."[126] PG&E's Treasurer, Mari Becker, indicated an intention "to issue the securitization promptly if it is approved"[127] and that "it's reasonable to think that the period between two issuances would be roughly three months, not a long period of time."[128] Nevertheless, the company requests that the authorization extend to December 31, 2035 (meaning the final maturity of the bonds would be extended as well: "there would be no change from what we proposed here. We expect the final life to be up to 30 years."[129])

  The inter-dependent nature of the assumptions (from securitization borrowing rates to investment portfolio returns to the timing and amounts of NOLs realization) render PG&E's snapshot "expectation" of a residual surplus subject to unpredictable changes over time. Ms. Becker was unable to identify any alternative to simply refinancing the Temporary Utility Debt if the NOLs were realized sooner than the hypothesized second series could ultimately be issued.[130] That would not be a bad outcome, in A4NR's judgment, but nothing in the proposed Financing Order would prevent PG&E from instead issuing securitization bonds without the prospect of sufficient NOLs to reach the $7.59 billion cap on Additional Shareholder Contributions, let alone reconfirm its "expectation" of a residual surplus in the Customer Credit Trust.

[126] PGE-13, p. 3-2, lines 14 – 16.
[127] Transcript (PG&E – Becker), p. 1244, lines 15 – 16.
[128] Transcript (PG&E – Becker), p. 1243, lines 24 – 27.
[129] Transcript (PG&E – Becker), p. 1254, lines 12 – 14.
[130] Transcript (PG&E – Becker), p. 1257, line 24 – p. 1258, line 4.

With no requirement for ratepayer neutrality or compensation, or any Customer Credit Trust from which to reimburse FRCs, the securitization financing of PG&E's first bankruptcy exit had significantly fewer moving parts. Rather than extend potential maturities out as long as 30 years beyond 2035, the Commission instead confined the amortization to nine years and restricted the issuances to two series up to one year apart.[131] A similar sense of financial discipline should be summoned here.

- Ms. Becker confirmed[132] that PG&E's proposed Financing Order, once approved by the Commission, would enable securitization bond issuance(s) to proceed whether or not PG&E had kept its commitment to make the Initial Shareholder Contribution.[133] These provisions needlessly expose ratepayers to a risk (downplayed by PG&E) that a third bankruptcy filing by PG&E, after a Financing Order had been approved but before all of the series of securitization bonds had been issued (potentially as late as December 31, 2035), could jeopardize the availability of the Initial Shareholder Contribution while allowing – and perhaps even encouraging as part of a bankruptcy exit plan – the issuance of more securitization bonds. PG&E's reliance on "expectation" as its primary guide to risk assessment, a persistent cultural trait at the root of many of the company's management and safety problems, encourages imprecise drafting that skirts unintended financial consequences.

In Mr. Thomason's words,

> If the securitization proposal is approved, then there's no reason we wouldn't make that contribution. I wouldn't say there's zero risk because you just never know. I suppose there's a scenario in which, for whatever reason, we can't make that contribution, but it's really not a plausible -- really not a plausible risk.[134]

Acknowledging A4NR's concern, Mr. Thomason testified that PG&E would be willing to make its timely funding of the requisite Initial Shareholder Contribution a condition of the Commission's approval of securitization.[135] Notwithstanding that

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[131] D.04-11-015, p. 23 citing D.03-12-035.
[132] Transcript (PG&E – Becker), p. 1222, lines 11, 16 – 18, and p. 1223, line 6.
[133] *See* PG&E-50, p. 3-Exh3.1-47, paragraph 1.v. subsection (iii); p. 3-Exh3.1-58, paragraph 22, subsection (iii); and p. 3-Exh3.1-80, Ordering Paragraph 15.
[134] Transcript (PG&E – Thomason), p. 248, lines 6 – 13.
[135] Transcript (PG&E – Thomason), p. 249, line 8 – p. 250, line 14.

commitment, PG&E's January 6, 2021 application for the securitization Financing Order, A.21-01-004, makes no changes to the problematic wording cited above and, as a consequence, one of the most easily corrected bankruptcy exposures of the Customer Credit Trust remains unaddressed. Even the extensive effort to correct Mr. Thomason's misconception that PG&E would fund the Initial Shareholder Contribution with $1.8 billion upfront,[136] rather than pro rata contributions each time a series is issued, remains plagued by errant drafting. Ignoring the effect of any principal amortization, new language in A.21-01-004 mistakenly says "shall be pro-rated to equal the same percentage as the percentage of the total $7.5 billion of Recovery Bonds that **are outstanding**"[137] (emphasis added) when "have been issued" may be what is actually intended.

- And in light of PG&E's unique status among regulated electric utilities as a repeat visitor to Chapter 11, it would seem ill-advised for the Commission to rely exclusively on what PG&E "believes" or "understands" about the protections that would be extended to the Customer Credit Trust in the event of another PG&E bankruptcy.[138] While Ms. Becker testified that PG&E's legal counsel will provide true sale and non-consolidation opinions to "provide [bankruptcy] assurance to the credit rating agencies"[139] regarding SPE assets, she was unsure whether the Commission would be a named recipient entitled to rely upon these opinions.[140] Mr. Thomason testified that, although PG&E hadn't to his knowledge requested a formal opinion, the company would be "happy to explore" asking for a legal opinion regarding the impact of PG&E bankruptcy on the Customer Credit Trust. The Commission should make clear that it will require such an opinion if securitization with a Customer Credit Trust moves forward, and that it expects to be expressly named as a recipient entitled to rely upon such opinion (as should be the case with the true sale and non-consolidation opinions as well).

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[136] Transcript (PG&E – Thomason), p. 250, lines 5 – 9; p. 315, lines 4 – 9.
[137] A.21-01-004, pp. 1-5 and 1-78.
[138] *See* PGE-06, p. 6-17, line 20 – p. 6-18, line 13; Transcript (PG&E – Thomason), p. 358, lines 10 – 22.
[139] *See* PGE-03, p. 3-5, line 28 – p. 3-6, line 30.
[140] Transcript (PG&E – Becker), p. 1214, line 20.

X. IF THE SECURITIZATION IS APPROVED, WHETHER THE COMMISSION SHOULD AUTHORIZE PG&E'S PROPOSED ADJUSTMENTS TO ITS RATEMAKING CAPITAL STRUCTURE (SCOPING MEMO § 8)

A4NR's Opening Brief does not address this issue.

XI. IMPACTS ON MUNICIPAL DEPARTING LOAD (SCOPING MEMO § 9)

A4NR's Opening Brief does not address this issue.

XII. CONCLUSION

PG&E's proposed securitization fails to meet the applicable statutory requirements for Commission approval despite the company's intense effort to engineer a trajectory through the narrow crevices of SB 901 and AB 1054. It is no coincidence that PG&E's attempt includes the blatant flouting of D.19-06-027's Stress Test Methodology, because PG&E seems to consider Commission strictures the smallest of hurdles to its pursuit of an opportunity to convert shareholder obligations into ratepayer liabilities. The Commission should deny A.20-04-023 and admonish PG&E to pay closer attention to the written guidance from S&P and Moody's that wildfire risk, management turnover, safety culture, and public reputation will likely be the determinants of PG&E's unsecured credit ratings for the foreseeable future. Demonstration of sustained progress by the company in these areas is imperative.

Because the Legislature's generosity has arguably made it possible for PG&E to seek authorization repeatedly through 2035 to "refinance" the 2017 Wildfire Claims Costs it discharged in bankruptcy, A4NR suggests the Commission decision offer guidance to PG&E for what a statutorily-compliant securitization will require.

Respectfully submitted,

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