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. (U39E)	Application 20-04-023 (Filed April 30, 2020)

WILD TREE FOUNDATION

OPENING BRIEF

April Rose Maurath Sommer
Executive and Legal Director

Wild Tree Foundation
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
April@WildTree.org
(925) 310-6070

Dated: January 15, 2021

TABLE OF CONTENTS

INTRODUCTION 5

ARGUMENT 8

I. ELIGIBILITY TO ACCESS THE STRESS TEST AND SATISFACTION OF ALL APPLICABLE LEGAL REQUIREMENTS (SCOPING MEMO §§ 1 AND SUBPARTS) 8

A. The Application Should Be Denied Because It Is A Prohibited Attempt To Relitigate D.19-06-027, In Which The Commission Ruled That PG&E Is Not Eligible For SB 901 Stress Test Treatment 8

B. PG&E Has Ignored the Stress Test Methodology Requirement that disallowed costs first be determined by the Commission prior to the Commission calculating a customer harm threshold 10

C. PG&E Has Not Demonstrated That It Requires A Bond To Prevent Harm To Ratepayers Or Provide Adequate And Safe Service 14

1. Securitization Is Supposed To Be A Last Resort And PG&E Has Approval For A Ratepayer Neutral Plan To Issue Debt A.20-05-005 For The Costs It Seeks To Have Securitized 15

II. WHETHER PG&E HAS DEMONSTRATED THAT $7.5 BILLION OF 2017 WILDFIRE CLAIMS COSTS ARE ELIGIBLE FOR SECURITIZATION (SCOPING MEMO § 2 AND SUBPARTS) **17**

A. PG&E Has Not And Cannot Demonstrate That The $7.5 Billion Of Costs Are Recovery Costs 17

1. Interest Rate Payments are Not Recovery Costs 18

2. PG&E Cannot demonstrate $7.5 billion is Attributable to 2017 Fires 21

1. SB 901 Did Not Create a Mechanism to Bail Out PG&E For the Costs of Settling Claims for a Fire PG&E Did not Cause 23

III. WHETHER PG&E'S PROPOSAL WILL ACCELERATE IMPROVEMENT IN PG&E'S CREDIT RATINGS AND RELATED ISSUES OF RATEPAYER BENEFITS (SCOPING MEMO § 1C) 24

IV. 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)....................... 26

A. Standard for Ratepayer Neutrality....................26

B. Whether PG&E's Proposal Satisfies the Ratepayer Neutrality Standard and Reasonably Accounts for Risks to Ratepayers (Scoping Memo §§ 3a, 3b, 3e)....................29

1. PG&E's Proposal To "Share" 25% Of Any Surplus With Ratepayers Does Not Offset The Risk Of Loss And Would Wrongly Enrich Shareholders....................29

2. PG&E's Prediction of a 16% Risk of Ratepayer Loss is An Underestimate 31

C. Issues Related to the Customer Credit Trust (Scoping Memo §§ 4 and 6 and subparts) ..33

1. PG&E has not Proposed A reasonable Plan for Trust Management....................33

V. WHETHER SECTION 451 APPLIES, AND IF SO, WHETHER PG&E HAS MET ITS BURDEN UNDER SECTION 451 (SCOPING MEMO § 5) 35

VI. WHETHER THE COMMISSION SHOULD ADOPT CONDITIONS OR ALTERNATIVES TO PG&E'S PROPOSAL (SCOPING MEMO §§ 3B, 3C, 3D, 3E, 6A, 6B, 6C) 36

A. Ratepayer Backed Bonds are by Design Not Ratepayer Neutral 36

B. Proposed Alternative 37

VII. ISSUES RELATING TO PG&E'S PROPOSED FINANCING ORDER (SCOPING MEMO § 7 AND SUBPARTS) 38

A. PG&E's Proposed Financing Order Is Contrary To The Code, Commission Precedent, And Best Practices....................38

B. Best Practices 44

C. SCE's Plan to Rely Entirely on Underwriters to Ensure Maximum Ratepayer Present Value Savings is Unreasonable Because Underwriters Represent Interests Adverse to the Ratepayers 48

D. PG&E Amendments to its Draft Financing Order Are Problematic 50

1. Pro-rata shareholder contributions will increase risk for ratepayers 51

2. Ratepayers 25% "Share" is Actually Less than 25% 51

3. The Bond Will Not Be Used To Pay $1.35 Billion Cash To Wildfire Victims Funds And Will Result In Little If Any Acceleration Of Cash Payments 52

VIII. IF THE SECURITIZATION IS APPROVED, WHETHER THE COMMISSION SHOULD AUTHORIZE PG&E'S PROPOSED ADJUSTMENTS TO ITS RATEMAKING CAPITAL STRUCTURE (SCOPING MEMO § 8) 53

IX. IMPACTS ON MUNICIPAL DEPARTING LOAD (SCOPING MEMO § 9) 53

CONCLUSION 54

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. (U39E)	Application 20-04-023 (Filed April 30, 2020)

WILD TREE FOUNDATION

OPENING BRIEF

In accordance with the provisions of Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Wild Tree Foundation ("Wild Tree") respectfully files this opening brief opposing the Application of Pacific Gas and Electric Company ("PG&E") 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.[1] ("Application").

INTRODUCTION

If the Commission grants this application and permits PG&E to utilize ratepayers as unwitting risk-holding lenders of $7.5 billion of costs for the stated purpose of covering Wildfire Victim Claim settlements PG&E incurred for the death, pain, and destruction it caused by its felonious prioritization of profits over public safety, it would permit PG&E shareholders to benefit from the PG&E exceptionalism that led to the fires in the first place and to profit off of the damages. There are many requirements under the Public Utilities Code, Commission precedent, and the Stress Test Methodology regarding securitization of recovery costs from catastrophic utility-caused fires in 2017 and PG&E's application basically fails them all.

Wild Tree strenuously objects to PG&E's application for a Stress Test Methodology administration and issuance of $7.5 billion in recovery bonds for 2017 catastrophic wildfire costs and expenses as Stress Test costs pursuant to SB 901, codified in Public Utilities Code section 451.2. While the statute and Commission view application of the Stress Test Methodology be used as a "last effort," PG&E has applied for the methodology at its own convenience, to the detriment of ratepayers.

The Commission has already undertaken a proceeding in which it developed a Stress Test Methodology and determined that PG&E was not eligible for stress test treatment. Due to its Chapter 11 bankruptcy and its junk credit ratings, PG&E does not satisfy the Stress Test

[1] All further statutory references will be to the Public Utilities Code unless otherwise noted.

requirement. Yet, with this Application, PG&E attempts to relitigate the Commission's previous decision that it is ineligible for a recovery bond stress test. PG&E also seeks special exceptions to the Stress Test Methodology including review of utility financial status at some other time then when the application was filed and waiver of the regulatory adjustment. PG&E has not and cannot demonstrate that $11.2 billion of the settlement that was made for all 2017 and 2018 fires settlement can be attributed to the 2017 North Bay Wildfires.

Even if PG&E were eligible for stress test treatment, the application fails the statutory mandate that cost allocation for the 2017 Fires be driven by minimizing ratepayer harm. PG&E's ratepayer protection measures do not sufficiently protect customers as the proposed Ratepayer Protection Measure provides no guarantee that ratepayers will be reimbursed for the costs of the bonds.

PG&E's proposal violates the terms of PG&E's bankruptcy plan that requires PG&E to cover 100% of the approximately $7.5 billion in wildfire liabilities and that requires ratepayer neutrality as a prerequisite for PG&E participation in the AB 1054 wildfire insurance fund. PG&E's proposal puts ratepayers at risk of paying a significant portion of those liabilities.

Additionally, PG&E's securitization does not fulfill the requirements of AB 1054 because it is not rate neutral on average. Regarding PG&E's anticipated securitization to pay approximately $7.5 billion in wildfire liabilities, the Commission stated in Decision 20-05-053 that it "finds that the potential for ratepayers to bear the cost of those claims without nominal cost offsets provided by utility shareholders has been removed from PG&E's reorganization plan." PG&E agreed that "The Securitization structure is anticipated to yield a full (nominal) offset each year to securitized charges." AB 1054 - which was enacted after SB 901 – expressly

requires PG&E to resolve all prepetition wildfire claims in a manner that is "neutral, on average, to ratepayers" to be eligible for participation in the wildfire insurance fund.

For all the reasons described herein, PG&E's proposed securitization should be rejected and PG&E's shareholder should thereby be required to pay for the full $7.5 billion in wildfire liabilities. Should the Commission nonetheless decide to grant PG&E a bond, it should be for far less, certainly no more than $1.35 million, and should include the following requirements:

- Ratepayers will be guaranteed 100% of any surplus that exists in the shareholder assets of the Trust;
- The Commission – not PG&E management or its board of Directors - will select and approve the members of the Customer Credit Trust management committee. The members will owe ratepayers a fiduciary duty and will make decisions on a majority basis;
- The Customer Credit Trust ("Trust") will be fully funded by shareholder contributions at the outset, not subject to contributions over time to make up the full shareholder contribution;
- Trust management should be required to notify the Commission in the event of a deficit or shortfall. Once notified, the Commission will conduct an independent review at that time to determine whether and how much PG&E shareholders should be required to contribute to the Trust so as to meet the requirements of ratepayer neutrality and to ensure that ratepayers not pay for the costs of the 2017 fires;
- Managers of the Trust would have the authority to distribute any accumulated surplus to ratepayers at their professional discretion anytime;
- The Commission will retain oversight of the bond following the issuance of a financing order and will utilize a pre-issuance financing team process to determine the structure,

marketing and pricing of the bond so as to meet the requirements of Pub. Util. Code sections 850 et seq.

ARGUMENT

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

A. The Application Should Be Denied Because It Is A Prohibited Attempt To Relitigate D.19-06-027, In Which The Commission Ruled That PG&E Is Not Eligible For SB 901 Stress Test Treatment

In D.19-06-027, the Commission correctly ruled that PG&E is ineligible for the stress test during bankruptcy because its financial condition cannot be assessed and, that PG&E is ineligible following bankruptcy because "treatment of all of PG&E pre-petition debt, including PG&E's wildfire liabilities for 2017 as well as 2018, must be addressed in a confirmed chapter 11 plan, subject to Commission regulatory approvals."[2] The confirmed chapter 11 plan did address treatment of PG&E's wildfire liability for 2017 and did not include securitization of any amount. This application should therefore be dismissed on the grounds that, as established in D.19-06-027, PG&E's bankruptcy makes it ineligible for a stress test bailout.

Critically, In D.19-06-027the Commission ordered that the Stress Test Methodology would be unavailable for utilities that have filed for chapter 11 bankruptcy:

[2] D.19-06-027 at p. 44.

> We note that for PG&E to emerge from chapter 11, the treatment of all of PG&E's pre-petition debt, including PG&E's wildfire liabilities for 2017 as well as 2018, must be addressed in a confirmed chapter 11 plan, subject to Commission regulatory approvals. The Stress Test may be available to utilities that had catastrophic wildfires with an ignition date in 2017,78 but 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 Section 451.2(b), because the Commission cannot determine the corporation's "financial status," which includes, among other considerations, its capital structure, liquidity needs, and liabilities, as required by Section 451.2(b) as well as its capacity to take on additional, and all cash or resources that are reasonably available to the utility. 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.[3]

The decision specifically mentioned PG&E as a utility that had filed for chapter 11 bankruptcy after the rulemaking was initiated.[4] In the discussion of PG&E's bankruptcy, the Commission noted it cannot determine the corporation's "capacity to take on additional, and all cash or resources that are reasonably available to the utility."[5] PG&E filed an application for rehearing of D.19-06-027 on August 7, 2019. That application has not been ruled on. Yet, in this application, PG&E attempts to relitigate its application for rehearing, which is itself nothing more than an attempt by PG&E to relitigate R.19-01-006.

When it filed this application, PG&E had not emerged from its voluntarily-filed chapter 11 bankruptcy. Thus, this application is directly contrary to the Commission's decision that PG&E is not eligible for stress test during bankruptcy. But, PG&E seeks an exception to this requirement, along with most all other stress test methodology requirements, on the grounds that this requirement is somewhat fluid and PG&E's status should be evaluated as time goes on. PG&E was allowed in this case to file supplemental testimony following its emergence from

---

[3] D.19-06-027 at pp. 44-45.
[4] D.19-06-027 at p. 56.
[5] D.19-06-027 at p. 45.

bankruptcy. Even assuming PG&E's application is permitted based upon updated testimony, PG&E is still ineligible for the stress test because the reorganization plan did address PG&E's 2017 wildfire liabilities and did not include securitization and otherwise addressed these debts.

In both D.19-06-027 and its decision on the bankruptcy D.20-05-052, the Commission made it clear that the PG&E 2017 wildfire liability would be addressed in the bankruptcy. According to PG&E, the PG&E reorganization plan, designed by PG&E, is not dependent upon securitization of any of the 2017 Fire costs. If the reorganization plan were dependent upon the Commission approving an application for securitization prior to the application being filed and subject to reasonableness review, the plan would not sufficiently position PG&E to emerge financially healthy from bankruptcy. On the flip side, the reorganization plan is intended to ensure that PG&E emerges from bankruptcy financially healthy. In such circumstances, stress test application would not be necessary to ensure that PG&E remains financially healthy. PG&E could have addressed securitization as part of its reorganization plan but chose not to and urged the Commission to leave consideration of securitization until a later application.

B. PG&E Has Ignored the Stress Test Methodology Requirement that disallowed costs first be determined by the Commission prior to the Commission calculating a customer harm threshold

The Application should be denied because PG&E has completely ignored the procedural directives in section 451.2 and in D.19-06-027 that the Commission determine the amount of disallowed costs as the first step in the process for seeking stress test costs. This makes it impossible for the application to be evaluated pursuant to the Stress Test Methodology. Section 451.2 establishes a clear procedure:

> (a) In an application by an electrical corporation to recover costs and expenses arising from, or incurred as a result of, a catastrophic wildfire with an ignition date in the 2017 calendar year, the commission shall determine whether those costs and expenses are just and reasonable in accordance with Section 451. (b) Notwithstanding Section 451, when allocating costs, the commission shall consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service. The commission shall ensure that the costs or expenses described in subdivision (a) that are disallowed for recovery in rates assessed for the wildfires, in the aggregate, do not exceed that amount.[6]

In D.19-06-027, the Commission established the following process based upon 451.2 for application of the stress test: 1.) the utility requests an application of the Stress Test to determine wildfire costs allocated to ratepayers, either by a second phase within an existing application or filing a new application following the Commission's determination of all or some wildfire costs are disallowed;[7] 2.) the Commission applies the "Customer Harm Threshold" (CHT), "a three-factor framework to determine the maximum amount the utility can pay."[8] The Stress Test Cost is calculated by the total disallowed wildfire costs presented in the application for recovery minus the CHT amount.[9] Finally, the Commission considers required ratepayer protection measures, which are "intended to mitigate ratepayer impacts given that the determination of Stress Test Costs will be final and not subject to future revision"[10] and applies a regulatory adjustment based upon the disallowed costs.

PG&E did not follow these directives instead applying for a bond for an amount they have uni-laterally predetermined as being favorable to PG&E instead of being based upon costs the Commission has disallowed following a reasonableness review of claimed costs and a

---

[6] Pub. Util. Code § 451.2.
[7] D.19-06-027 at *Stress Test Methodology* p. 3.
[8] D.19-06-027 at *Stress Test Methodology* p. 3.
[9] D.19-06-027 at *Stress Test Methodology* p. 3.
[10] D.19-06-027 at *Stress Test Methodology* p.3.

determination of the customer harm threshold. There has been no application to recover costs and there has been no request for an allocation of costs that have been disallowed. Instead, PG&E arbitrarily determined it wanted a $7.5 billion bond and applied for that amount without a shred of evidence as to what any one single one dollar is a cost for. PG&E seeks to have the Commission conduct no reasonableness review on the grounds that it states that all costs would be disallowed. PG&E states:

> For purposes of this application, PG&E does not contend that the claims costs at issue are just and reasonable, and further stipulates that all such costs should be deemed "disallowed" and reviewed for cost recovery and eligibility for securitization solely pursuant to the Stress Test Methodology adopted by the Commission to implement Section 451.2(b).Accordingly, the Commission can treat the costs as not just and reasonable, and as disallowed, and proceed to evaluate the recoverability of these disallowed costs under the Stress Test pursuant to Section 451.2(b).[11]

In D.19-06-027 the Commission rejected PG&E's argument that disallowed costs could be determined following determination of the customer harm threshold:

> The Staff Proposal contemplates a utility seeking to recover Stress Test Costs must request application of the Stress Test, either as a second phase within an existing application to recover 2017 catastrophic wildfire costs or by filing a new application with the Commission requesting an allocation to ratepayers of wildfire costs the Commission has disallowed. Parties generally supported the order in which the Commission would consider these costs. However, the utilities and investors would prefer to have the Customer Harm Threshold calculated before a § 451.2(a) determination is made as to what costs, if any, are not just and reasonable. The Commission is not convinced that the process proposed by the utilities could work, nor do we believe it is consistent with the purpose and language of § 451.2.[12]

Now, PG&E has taken its failed argument one step farther and claims that the stress test can be applied and a recovery bond approved with no reasonableness review of claimed costs

[11] Application at p. 7.
[12] D.19-06-027 at pp. 50-51.

ever having been conducted and without the Commissions making any determination on the amount of disallowed costs. Instead, PG&E has made an uncompelling attempt to reverse engineer an amount they have arbitrarily decided they would like securitized and call it the disallowed costs. The $7.5 billion bond is based upon on the assertion of PG&E that it has been able to attribute $7.5 billion to 2017 fires out of the en masse settlements for 2015, 2017, and 2018 fires.

PG&E's failure to make any attempt to demonstrate that the costs they seeks would be covered under section 451.2 and would be disallowed thus making the costs eligible for securitization is a not just a pesky procedural failure. This attempt to sidestep step one of the stress test process makes it impossible for the Commission to conduct the stress test and the application must, therefore, be denied. For example, as explained in the Stress Test Methodology, the regulatory adjustment calculations rely upon a specific amount of disallowed costs:

> To ensure the Commission retains the ability to apply a meaningful Regulatory Adjustment in this scenario, the minimum Regulatory Adjustment of the Customer Harm Threshold will be up or down a minimum of 5% of the disallowed 2017 catastrophic wildfire liability considered by the Stress Test. In sum, maximum Regulatory Adjustment is the greater of up or down 20% of the Customer Harm Threshold or 5% of the disallowed wildfire liability.[13]

PG&E would avoid this problem by having the Commission except them from the regulatory adjustment requirement altogether.

As discussed further below, if disallowed costs have not been determined following a Commission review, PG&E can try and sneak in costs as recovery costs that are not intended to be covered under section 451.2 such as interest on loans taken as part of the bankruptcy

[13] D.19-06-027 at *Stress Test Methodology* p. 13.

reorganization plan and costs for settling claims for fires that have been determined by the regulators to not be caused by PG&E.

C. PG&E Has Not Demonstrated That It Requires A Bond To Prevent Harm To Ratepayers Or Provide Adequate And Safe Service

PG&E has not met its burden of proof that it requires securitization of $7.5 billion to prevent ratepayer harm and to provide adequate and safe service, a showing required by section 451.2. The Bankruptcy Court and the Commission approved PG&E's reorganization plan, not only without approving any securitizations but also with significant discussion of the treatment of Wildfire Victim Claim costs should PG&E's securitization application be *denied*. The Commission concluded, "PG&E's current position on the issue of the 2017/2018 wildfire claims is that it will not seek cost recovery for wildfire claims *except* in connection with the proposed securitization (and not in the alternative if the Commission rejects it), and the Commission intends to hold PG&E to its promise."[14]

PG&E was permitted to emerge from bankruptcy with the understanding that it would be capable of providing adequate and safe service without harming ratepayers under the bankruptcy plan, which does not include securitization of any amount. If PG&E truly, nonetheless, requires the securitization of $7.5 billion to prevent ratepayer harm and to provide adequate and safe service than it has demonstrated that as a transformed utility it "fails to meet its duty to provide safe, reliable, and affordable energy services" and should be put into a receiver and converted into the Golden State Energy pursuant to sections 3400 et seq.

[14] D.20-05-052 at pp. 81-82.

1. Securitization Is Supposed To Be A Last Resort And PG&E Has Approval For A Ratepayer Neutral Plan To Issue Debt A.20-05-005 For The Costs It Seeks To Have Securitized

In the decision approving the Stress Test Methodology, the Commission requires ratepayer protection measures to act "as a safeguard to encourage utilities to maximize the share of disallowed costs they absorb and ensure utilities view the Stress Test as a financing mechanism of last resort."[15] As a financing mechanism of last resort, the Commission should not permit PG&E to rely upon securitization when it already has a ratepayer neutral financing mechanism approved by the Commission for addressing the costs it seeks to securitize.

PG&E has already gained Commission approval to address $6 billion of wildfire claim costs in D.20-05-053 by refinancing $1.5 billion issued as short term debt as long term debt and in D.20-12-025 by refinancing $4.5 billion in long term debt to longer term debt. On December 21, 2020, after hearings were completed in this case, the Commission issued D.20-12-025 approving PG&E's request to issue "up to $4.5 billion of new Debt Securities, if and to the extent its request for $7.5 billion securitization that PG&E has requested in A.20-04-023 is not

[15] D.19-06-027 at p. 47.

approved or is not fully approved."[16] Although no explanation is offered for the $150 million discrepancy between $1.5 billion and $1.35 billion, D.20-12-015 states that:

> [R]egarding the remaining amount of $1.5 billion (or the difference between the requested $7.5 securitization and the $6 billion of temporary utility debt), PG&E states that this difference represents PG&E's request in A.20-04-023 to fund $1.35 billion post-emergence deferred payments to the Fire Victim Trust.48 PG&E explains in this Application that, should the Commission deny its request for the $1.35 billion in A. 20-04-023, it would still need to pay $1.35 billion due to the Fire Victim Trust but that PG&E is not requesting additional long-term debt authorization in this Application for that purpose."[17]

This $150 million discrepancy, as explained further below, is for financing costs as well as interest payments on the $6 billion temporary debt that PG&E claims somehow qualify as recovery costs. But for PG&E including interest costs in its application for a recovery bond, ratepayers would not pay for these costs. This would be appropriate given that PG&E has represented to the Commission that this $6 billion of temporary debt "will be the financial responsibility of shareholders, not customers.[18]

In D.20-12-015, the Commission accepted PG&E's argument that it would remain in compliance with D.20-05-053 capital structure waiver requirement that it deleverage over time if the Commission grants PG&E's contingent request for $4.5 billion in long-term debt and denies the proposed $7.5 billion securitization requested in A.20-04-023. D.20-12-025 makes it clear that PG&E has a ratepayer-neutral plan ready to go to address all the costs it seeks to have securitized. PG&E therefore does not need to resort to a "financing mechanism of last resort"

---

[16] D.20-12-025 at p. 29.
[17] D.20-05-005 at p. 16.
[18] D.20-12-025 at p. 13 quoting I.19-09-016, PG&E-01 (PG&E Prepared Testimony) at p. 2-15.

and has failed its burden of proving that it requires securitization to prevent harm to ratepayers or to provide adequate and safe service.

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

A. PG&E Has Not And Cannot Demonstrate That The $7.5 Billion Of Costs Are Recovery Costs

PG&E has failed to meet its burden of proof that $7.5 billion is eligible for securitization as recovery costs pursuant to sections 451.2 and 850 et seq. PG&E has arbitrarily picked a number, $7.5 billion, that bears no relation to recovery costs as defined by the Code for which it might be eligible to securitize. PG&E argues that the Commission should apply the Stress Test Methodology without a "separate reasonableness review of the 2017 North Bay Wildfires costs at issue."[19] Reasonableness review is needed not only because the Code and Commission precedent require it, but also because it is necessary to root out issues like PG&E including interest rate payments as recovery costs on debt issued as part of PG&E's emergence from bankruptcy. These interest rate payments are plainly not recovery costs as defined by sections 451.2 and 850 and are thus ineligible to be securitized and should not be included in the application.

PG&E cannot with any kind of precision tease out costs just for 2017 from the settlements it entered into. PG&E filed bankruptcy for the purpose of paying the least amount

---

[19] Application at p. 7.

possible to wildfire victims. In furtherance of this interest, it chose to settle wildfire claims for the dozens of fires it caused in 2015, 2017 and 2018 en mass with no specific amount attributable to any individual or even to any individual fire. PG&E's application states that its expert's analysis shows that $11.2 billion could be reasonably attributable to 2017 North Bay Wildfires:

> PG&E's application establishes over $7.5 billion of claims costs attributable to the 2017 North Bay Wildfires. As described above, PG&E will pay or contribute approximately $25.5 billion at Plan Value in settlement of Fire Claims, including claims arising from the 2017 North Bay Wildfires, the 2018 Camp Fire, and the 2015 Butte Fire.[21] The analysis set forth in Chapter 4, Allocation of Settlements to 2017 Wildfires (D. Fischel) shows that approximately $11.2 billion[22] of the approximately $25.5 billion at Plan Value that PG&E will pay or contribute in settlement of Fire Claims is reasonably attributable to the 2017 North Bay Wildfires and therefore eligible for securitization pursuant to SB 901.[23] This approach is consistent with Commission precedent authorizing prior securitization transactions.[24]

PG&E's expert's attempt at re-engineering the desired recovery costs that were provided to him by PG&E are not credible evidence that $11.2 billion or $7.5 billion or any other amount is "reasonably attributable to the 2017 North Bay Wildfires and therefore eligible for securitization pursuant to SB 901."

Furthermore, costs for claims from the Tubbs Fire are wrongly included as recovery costs. Because the Tubbs Fire claimed the most lives and homes of any in 2017, its removal from calculations regarding eligible recovery costs will significantly decrease the proportion of other 2017 fires. PG&E, Cal Fire, and this Commission all agree that neither PG&E nor its equipment was responsible for igniting the Tubbs Fire or committing any violations in regards to the Tubbs Fire. Section 451.2 does not grant PG&E the right to recover costs for settlements it entered into for claims for a fire that PG&E is not officially responsible for in any way.

1. **Interest Rate Payments are Not Recovery Costs**

PG&E should not be able to securitize interest rates on debt incurred as part of its emergence from bankruptcy. PG&E has included in its claimed recovery costs an unspecified amount of around $100 million for interest payments on the debt it incurred as part of its emergence from bankruptcy. PG&E witness Mari Becker stated on the stand:

> The other component we are seeking recovery for is interest on the $6 billion of temporary debt. We paid claims of $6 billion on July 1, 2020, at emergence. We financed those claims with $6 billion of what we call temporary debt, and we are paying interest on that debt until hopefully, we hope, they are retired with the proceeds of the future securitization. And so, the additional use of the proceeds of the 7.5 billion of securitization will be the paid and accrued interest on that temporary debt, and we -- it depends how long the debt is outstanding, but we estimate if it's outstanding for a year, that that interest total cost will be over $140 million on its own. So using approximately $140 million of interest on the temporary debt and then adding to that the issuance costs you referenced, the $36 to $57 million, we expect those two will be comfortable above the $150 million number that you referenced.[20]

The $6 billion debt was incurred as part of the bankruptcy, not as costs and expenses related to a catastrophic wildfire ignited by PG&E in 2017. The interest on this debt is not a recovery cost and is thus ineligible for securitization.

Even if interest on debt taken to as part of the emergence from bankruptcy was an appropriate recovery cost, PG&E has not and cannot prove exactly how much was accrued just for 2017 wildfire costs. As describe further below, the 2017 wildfire costs cannot be precisely isolated from the en masse settlements for the fires PG&E caused in 2015, 2017, and 2018.

---

[20] Reporter's Transcript, at 1250:5-27 (Vol. 7) (PG&E - Becker); See also 1248:12 – 1251:17.

PG&E also has not and cannot demonstrate that is specifically used dollars from the $6 billion of temporary utility debt to pay off 2017 wildfire victim clams rather than dollars from some of the other $23.775 billion of debt which the Commission approved in D.20-05-052, described by PG&E as "a historic amount of new equity and low-cost debt."[21]

The $6 billion of temporary utility debt was just one of a variety of debt types PG&E was granted approval for:

> PG&E states that its financial plan will be funded by a historic amount of new equity and low-cost debt. (PG&E Brief at 31) PG&E requests Commission authorization to issue the following debt:
> 1. $11.85 billion in long-term RSA refinanced debt.
> 2. $11.925 billion of long-term debt, including:
> a. $5.925 billion of new long-term debt.
> b. $6 billion of temporary utility debt.
> 3. $11.925 billion of short-term debt to temporarily finance the exit from Chapter 11 (see bullet 2 above).
> a. At any time, bullets 2 and 3 in aggregate will not exceed $11.925 billion.
> 4. Increase PG&E's post-emergence short-term debt authorization from $4 billion to $6 billion. (PG&E Brief at 72.)[22]

The different types of debt and different loans will not all have the same interest rate. The amount of interest PG&E tries to sneak in as recovery costs in this application is therefore dependent upon which pool of money PG&E elects to claim as having been used for pay 2017 wildfire victim claims. The Commission points out in D.20-12-025 that "PG&E further stated that this $6 billion of temporary debt, 'will be the financial responsibility of shareholders, not customers.'"[23] Directly contrary to this representation, PG&E has specifically selected this $6 billion plus its interest to become the financial responsibility of ratepayers, not shareholders.

---

[21] D.20-05-052 at p. 71.
[22] D.20-05-052 at pp. 71-72.
[23] D.20-12-025 at p. 13 quoting I.19-09-016, PG&E-01 (PG&E Prepared Testimony) at p. 2-15.

2. PG&E Cannot demonstrate $7.5 billion is Attributable to 2017 Fires

PG&E tried to convince the Commission in the litigation of R.19-01-006 that the Stress Test Methodology should be expanded to include additional years past 2017 despite the explicit statutory language to the contrary. The Commission was not convinced and explicitly stated in D.19-06-027 that it only applied to 2017 fires. Here, PG&E is effectively asking for another exception to be made, hoping the Commission will turn a blind eye to the fact that it is asking for stress test application for an amount that it cannot prove only includes 2017 fires.

PG&E's only evidence that $7.5 billion can be attributed to 2017 fires and is therefore recovery costs for which it can get a recovery bond is the testimony of Daniel Fischel. The witness admits that his survey was results oriented around $7.5 billion, a figure provided to him by PG&E, "I have been asked by counsel for Pacific Gas and Electric Company (PG&E) to evaluate from an economic perspective, for purposes of an application to securitize settlement-related costs, whether at least $7.5 billion of the sum that PG&E will contribute in settlement of Fire Claims as described in its plan of reorganization is reasonably attributable to the fires in PG&E's service territory in 2017 (the North Bay Wildfires or North Bay)."[24]

Witness Fischel's testimony draws unsupportable conclusions from a survey of some information related to some of the fires included in the settlements. It lacks scientific rigor, is

[24] PGE-04 at p. 4-1.

based upon flawed assumptions, and omits critical data.[25] It ignores the most important piece of data - that at some point, the insurance companies will divide up the subrogation settlement and the Trust will distribute funds to the individual claims and how the money ultimately came to be attributed to different fires will be known.[26] Prior to that point, any attempt to attribute costs is pure speculation. Some of the other problems with the survey include:

- The 2015 Butte Fire was left out of the study entirely, despite the witness estimating $212 million of remaining claims[27]
- Some of the "metrics approximating the share of the fire victim settlement attributable to north bay" do not provide any valuable information on how damages will be divided such as acreage of fire perimeter or population of fire perimeter[28]
- Excluding 1000s of homes in the Camp Fire from the calculation approximating share[29]
- Failing to include quantified, readily available relevant metric in the survey such as insurance proceeds. Witness Fischel states in his testimony that "I understand that PG&E expects to receive $2.2 billion in insurance proceeds in connection with settlements for the 2017 and 2018 Wildfires, $807.5 million of which will be paid in connection with PG&E's settlements of the 2017 North Bay Wildfires"[30] but then does not include this information in a metric approximating shares.
- Not conducting any analysis of the cost of wrongful death, injuries, pain and suffering or commercial property and multi-story homes which results is biased towards a larger share

[25] Reporter's Transcript, at p.1160-1200 (Vol 7) (PG&E – Fischel).
[26] Reporter's Transcript, at p.1166: 12-18 (Vol 7) (PG&E – Fischel).
[27] PGE-04 at p. 4-6fn8.
[28] PGE-04 at Table 4-3.
[29] *Ibid.*
[30] PGE-04 at p. 4-8:18.

for the 2017 fires. There were far more deaths in the Camp Fire than the 2017 Fires and payments for wrongful deaths will be larger than most, if not all, payments for property damage especially since insurance proceeds will decrease property damage apportionments.

1. SB 901 Did Not Create a Mechanism to Bail Out PG&E For the Costs of Settling Claims for a Fire PG&E Did not Cause

Cost for settling claims for the Tubbs Fire are not recovery costs eligible for securitization. Wild Tree advocated in I.19-06-015, the Commission's enforcement actions against PG&E for violations that PG&E committed regarding 2017 and 2018 fires, that PG&E should be subject to enforcement actions for causing the Tubbs Fire and for destroying evidence of the cause of the Tubbs Fire. But the Commission found that PG&E had not committed any violations in regards to the ignition of the Tubbs Fire.[31] When PG&E sought to have its wildfire victim claim settlements finalized in June 2020, Cal Fire had already released a report stating that the fire was caused by facilities on private property and the Commission had already completed its enforcement action proceeding.[32] Wild Tree believes that Tubbs Fire victims should be compensated and is glad that they were included in the settlements. But, this does not

[31] D.20-05-019.
[32] D.20-05-019.

mean ratepayers should be on the hook for PG&E deciding to settle with victims of a fire it claimed it did not start especially when it could have met its June 2020 deadline and allowed the state court trial that the bankruptcy judge had coordinated proceed to a determination of the cause of the Tubbs Fire.[33] Section 451.2 does not grant PG&E the right to recover costs for settlements it entered into for claims for a fire that PG&E has not been found officially responsible for in any way. Any costs claims to be for Tubbs should not be securitized.
The inclusion of Tubbs in Witness Fischel's calculation heavily skews the results towards larger share for 2017 fires. The Tubbs Fire claimed more than half of lives and homes lost of the 2017 North Bay Fires and its removal from calculations regarding eligible recovery costs will significantly decrease the proportion of other 2017 fires.

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

At the time PG&E filed the application, of which PG&E had complete control, PG&E had a junk credit rating. The Stress Test Methodology requires analysis of the financial stratus of the applicant utility at the time of application and makes the stress test ineligible for a utility without investment grade credit rating. Therefore, PG&E is ineligible for the stress test. But, in its application PG&E seeks an exception to this requirement, along with most all other stress test

[33] NDCA, Bankruptcy Case No. 19-30088-DM, *MEMORANDUM DECISION REGARDING MOTIONS FOR RELIEF FROM STAY* (August 16, 2019).

methodology requirements, on the grounds that this requirement is somewhat fluid and PG&E's status should be evaluated as time goes on.

PG&E was permitted to submit supplemental testimony following the approval of its bankruptcy reorganization plan. PG&E's credit rating is still junk and it cannot and has not proven that it is on a pathway to investment grade status which requires both Moody's and S&P Global investment grade ratings. While PG&E claims that the proposed Securitization provides a path back to an investment-grade issuer credit rating from S&P Global Ratings it makes no such claim in regards to Moody's; PG&E states:

> And while the Securitization will be treated as on-credit for Moody's Corporation ("Moody's"), it will be treated as off-credit for S&P Global Ratings ("S&P") based on the structure of the proposed Securitization.[48] The latter situation will result in improved financial metrics . . .[34]

PG&E's securitization proposal substantially departs from traditional securitization financing and significantly increases financial risk to ratepayers.[35] PG&E's proposal would force ratepayers to make an investment into a "Trust" in which ratepayers would carry all the risk of loss but would benefit from only a small slice of potential, but not guaranteed, profits. Normally, with traditional securitized financing, there is 100% assurance that ratepayers would pay for the obligation being financed. For example, utility securitized bonds have been used to finance stranded costs associated with deregulating generation stations. These stranded generating assets were determined to be recoverable from ratepayers whether or not they were securitized.[36] In this case, however, PG&E's Reorganization plan specifically protects ratepayers from being responsible to pay for the obligations proposed to be financed (PG&E's wildfire liabilities).

[34] Application at p. 19.
[35] WTF-01 at p. 6:10 – 7:8.
[36] WTF-01 at p. 6:10 – 7:8.

Nonetheless, in PG&E's own words, "the consumer would bear some risk that the Trust could experience a shortfall in some period(s) or become exhausted prior to the repayment of the recovery bonds or associated financial costs."[37]

At the same time, PG&E has proposed to establish a Customer Credit Trust funded by "Shareholder Contributions" and "Customer Credit Trust Returns" that would "share" with ratepayers receiving only 25% of any "surplus" in the Customer Credit Trust, "to be distributed at the end of the life of the Trust."[38] The benefits claimed by PG&E, which include accelerating a return to investment grade credit rating and lowering PG&E's future cost of debt, are purely speculative. The overall cost to ratepayers significantly outweighs any such speculative benefits.[39]

IV. 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

In PG&E's own words, it has not put forth a plan that will be ratepayer neutral. In the Application PG&E admits, "PG&E recognizes that customers would bear some risk that the

[37] Application at p. 10.
[38] Application at p. 4.
[39] WTF-01 at pp. 6:10 – 7:8.

Customer Credit Trust could experience a shortfall in some period(s) or become exhausted prior to the repayment of the Recovery Bonds and associated financial costs."[40] The intention of SB 901 was to prevent ratepayer harm yet ratepayers will be harmed by being forced to bear the risk of a plan that may not be ratepayer neutral and will certainly be harmed should ratepayers not be credited the increased rates they already paid.

Ratepayer Protection Measures must be included in a utility's Stress Test application to mitigate harm to ratepayers.[41] These measures "are intended to provide ratepayers with an opportunity to participate in a utility's financial upside as the utility's long-term financial health improves - which is expected as a result of the Commission shifting otherwise disallowed costs from the utility onto ratepayers pursuant to SB 901 (2018)."[42] The Commission ordered "explicit proposals for ratepayer protections are needed to achieve the Legislative directive of determining the maximum amount an electrical corporation can pay without materially impacting its ability to provide adequate and safe service OR harming ratepayers."[43] Further, the use of these measures is intended to encourage a utility to "maximize the share of disallowed costs they absorb and ensure utilities view the Stress Test as a financing mechanism of last resort."[44]

---

[40] Application at p. 10.
[41] D.19-06-027 at *Stress Test Methodology* p. 14.
[42] D.19-06-027 at *Stress Test Methodology* p. 14.
[43] D.19-06-027 at p. 47.
[44] D.19-06-027 at *Stress Test Methodology* p. 14.

The Commission adopted two options for utilities to implement ratepayer protections as part of the Stress Test Application. Ratepayer Protection option 1 states a utility should "increase the percentage of ratepayers' benefit from the utility's equity value from the time of the application's filing by 1% for every $500 million-dollar block of securitized wildfire liability, capped at 15%."[45] Option 2 allows a utility applying for the Stress Test to indicate "its own Ratepayer Protection Measures that offer equivalent or greater protection to ratepayer when compared to the equity warrants concept. . . . The analysis of Ratepayer Protection Measures will take into consideration the implications of such Ratepayer Protection Measures on a utility's ability to obtain capital and the impact such a proposal could have on the cost of capital, access to capital for other California utilities, and ability to maintain or achieve an investment grade credit rating."[46] By implementing option 2, a utility indicates its own measures as equivalent or greater protection for ratepayers compared to the Commission's option 1 of the provided equity warrants concept. PG&E has not met this standard in this application.

---

[45] D.19-06-027 at *Stress Test Methodology* p. 15.
[46] D.19-06-027 at *Stress Test Methodology* pp. 15-16.

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 is premised upon ratepayers carrying a financial risk and therefore is not ratepayer neutral. PG&E states that it has calculated that there is a 16% chance the Trust will have a deficit.[47] Such forecasting relies upon assumptions of financial conditions over the next 30 years including the performance of the stock market.[48] As discussed further below, the assumptions underlying PG&E's forecasting are flawed and it has therefore underestimated the risk to ratepayers.[49] Setting aside whether or not PG&E's prediction is based upon a sound methodology, PG&E's plan to address this risk provides no guarantees and does not, therefore, eliminate the risk to ratepayers. PG&E states that other than the Initial Shareholder Contribution, Additional Shareholder Contribution, and Customer Credit Trust Returns, "PG&E will not be obligated to make any contributions to the Customer Credit Trust."[50] The customer credit returns are dependent upon successful investment of a portfolio of risk assets consisting of stocks and bonds, which is never certain.[51] The "Additional Shareholder Contributions" are capped, unguaranteed, not planned to commence until 2024 and dependent on future performance and various corporate metrics that are presently uncertain.

1. PG&E's Proposal To "Share" 25% Of Any Surplus With Ratepayers Does Not Offset The Risk Of Loss And Would Wrongly Enrich Shareholders.

[47] PG&E-06 at p. 6-29.
[48] WTF-01 at p. 7:13-14.
[49] WTF-01 at p. 7:14-17; see also pp. 6:10 – 7:8.
[50] PG&E-03 at Exhibit 3.1: Form of Financing Order at p. 5.
[51] WTF-01 at p. 8:5-7.

Under PG&E's proposal, its shareholders would receive 75% of any upside for the Trust yet would bear no risk on the downside, while ratepayers must fund any shortfall in full at their own expense. PG&E's plan to give shareholders 75% of any surplus in the Trust and "share" a measly 25% with ratepayers 30 years down the road would allows shareholders to profit off of the deaths and destruction that PG&E caused by its felonious prioritization of profits over safety that resulted in so many catastrophic fires.

Should the Trust produce a loss, ratepayers will be on the hook 100% even in the event that PG&E is able to make the payments. On the other hand, in the case of a surplus in the Trust, ratepayers would receive only 25% with PG&E retaining the remaining profit. Under PG&E's proposed structure, should PG&E need or decide to file for bankruptcy in the future, contributions to the Trust could conceivably stop completely and permanently. Ratepayers would be unprotected and forced to cover any Trust deficit, even though the bankruptcy reorganization decision stipulates that PG&E cannot recover, and ratepayers cannot be charged for wildfire related debt.

This determination is an arbitrary methodology developed by PG&E to allow its shareholders to profit from the financing of liabilities resulting from its negligence that caused extensive damage and loss of life.[52] Moreover, shareholders would profit at three times the amount that would be "shared" by ratepayers. If securitization is approved despite the lack of ratepayer neutrality, at the very least, given the proposed structure, ratepayers should be entitled to 100% of any surplus in the Trust.

The Commission previously determined that ratepayer protection measures are necessary:

[52] WTF-01 at pp. 8:18 – 9:3.

> Utilities should expect the Commission will condition the authorization to recover Stress Test Costs on utility implementation of meaningful measures or mechanisms to ensure the utility's shareholders do not obtain a windfall of future upside as the utility recovers its financial health. Requiring ratepayer protection mechanisms is therefore a reasonable condition for approving utility recovery of stress test costs and is within the Commission's authority to implement Section 451.2 in order to mitigate harm to ratepayers from the allocation of imprudent catastrophic wildfire costs.[53]

Here PG&E has proposed a ratepayer protection measure that not only fails to mitigate harm to ratepayers from forcing them to become unwitting risk-bearing investors in PG&E, but also would provide a windfall to PG&E shareholders. The ratepayer protection measure thus totally fails to achieve the purpose of protecting ratepayers. The plan to allow shareholders to profit at 3 times more than ratepayers from the supposed ratepayer protection measure would unquestionably provide shareholders "a windfall of future upside as the utility recovers its financial health."

2. PG&E's Prediction of a 16% Risk of Ratepayer Loss is An Underestimate

Witness Greg Allen's analysis underestimates the risk to consumers because he assumes stock price returns are normally distributed in his Monte Carlo Simulation. Mr. Allen stated in his Rebuttal Testimony that he removed "highly unlikely tail events (both positive and

[53] D.19-06-027 at pp. 45-46.

negative)"[54] from the calculation of the expected value of the Consumer Credit Trust to Consumers. He claims this is conservative because "generally speaking the magnitude of positive tail events exceeds the magnitude of negative tails events when simulating the behavior of investment portfolios."[55] This is not true. As explained in SBBI's 2020 Yearbook "The distribution of stock prices is significantly skewed to the left"[56]. In other words, large decreases in stocks are more likely than large increases. It is possible that the results of his Monte Carlo simulation would not change if he had included tail events because he used the wrong probability distribution in his Monte Carlo Simulation. He used a probability distribution that is not appropriate for measuring the risk to consumers that the Consumer Credit Trust will have a deficit because it does not match the probability distribution of stock price returns. Under cross examination he stated, "stock returns are modeled as a normal distribution."[57]

Stock price returns are not normally distributed and assuming they are in Monte Carlo Simulation, as Mr. Allen has done, will understate risk of owning stocks.

Measures of risk that are based on a normal distribution are appropriate for a game of chance like dice or flipping a coin because each event (roll or flip) is independent of the other. After flipping a coin thousands of times you can expect there will be approximately 50% heads and 50% tails. Large deviations are rare. Therefore, it is unlikely that an investor will lose all their money. Using a normal distribution in a Monte Carlo simulation to measure the risk of playing a game of dice or flipping a coin is appropriate. However, large stock price drops are not like coin flips. Large stock price drops are far more common than you would expect. Mr.

---

[54] PGE-15 at p. 6-31, Table 6-14, fn 29.
[55] Ibid.
[56] WTF-04 at p. 164.
[57] Reporters Transcript at 57: 17-18 (Vol. 1) (PG&E – Allen)

Allen's resource for his historical stock price return data states "historical stock returns are not exactly normally distributed, and a slightly different method needs to be used to make accurate probabilistic forecasts"[58]. The book explains that "various alternatives have been put forth…that [take] into account the non-normal features of return distributions."[59]

The results of Mr. Allen's Monte Carlo simulation indicate that there is a 16% chance that the Consumer Credit Trust will be underfunded, and consumers will have to contribute to paying the Fixed Recovery Charges for the Securitized Bonds.[60] However, if he had used the correct probability distribution in his Monte Carlo simulation it would have higher.

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

1. PG&E has not Proposed A reasonable Plan for Trust Management

The proposed Trust structure would fail to protect ratepayers interests and the assets of the Trust in the normal course of business as well in the event of bankruptcy and dissolution or transfer of ownership. An arrangement where investors in a fund/portfolio bear 100% of losses but receive only 25% of gains can create conflicts and/or distorted incentives for the Trust managers, whether intended or not. [61] For example, if Trust managers are biased toward PG&E, there is a risk they will structure the Trust's investment portfolio in a manner that may not be in the best interest of ratepayers. Yet, PG&E proposes that its own management and board of

---

[58] WTF-04 at p. 125.
[59] *Id*. at p. 139.
[60] Mr. Allen's Direct Testimony, page 6-29, Table 6-7, line 24. Probability of Surplus = 84%. Therefore, a probability of a deficit is 16% (100%-84%)
[61] WTF-01 at p. 9:13-15.

directors will select the Trust management committee members with only three of five members nominations subject to Commission confirmation thereby further increasing risk to ratepayers. PG&E's plan also does not allow for sufficient management control regarding if and when available surplus funds would be distributed to ratepayers. As proposed, ratepayers would not receive any upside from the Trust until the end of the life of the Trust, 30 years down the road. The managers of the Trust should have the authority to distribute a Trust surplus earlier than the end of the life of the Trust.

Ratepayers would be better served if all managers of the Trust had primary fiduciary responsibility to ratepayers - not to PG&E, and all members of the management committee were confirmed by the Commission only, not by PG&E management or by its Board of Directors. The Commission should have authority to terminate managers and to approve all compensation, management fees, etc. Actions taken by the management committee, including any amendments to fundamental provisions, should be approved by a majority, not a super-majority of members as proposed by PG&E.

PG&E's proposal to structure the Trust as a grantor Trust further increases risk to ratepayer by putting too much control in the hands of PG&E. The Internal Revenue Service explains the issues with a grantor trust: " 'Grantor trust' is a term used in the Internal Revenue Code to describe any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. If a grantor retains certain powers over or benefits in a trust, the income of the trust will be taxed to the grantor, rather than to the trust. (Examples, the power to decide who receives income, the power to vote or to direct the vote of the stock held by the

trust or to control the investment of the trust funds, the power to revoke the trust, etc.)"[62] Under PG&E's proposal it would be the grantor that would select the Trust managers; PG&E has not demonstrated that such a structure would be in the best interest of ratepayers.[63]

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

As discussed in detail above in sections I and II, section 451 does apply. Reasonableness review is needed not only because the Code and Commission precedent require it, but also because it is necessary to determine if the costs PG&E are claiming are actually recovery costs eligible to be securitized as defined by sections 451.2 and 850.

---

[62] WTF-01 quoting Internal Revenue Service, *Abusive Trust Tax Evasion Schemes - Questions and Answers*, https://www.irs.gov/businesses/small-businesses-self-employed/abusive-trust-tax-evasion-schemes-questions-and-answers.
[63] WTF-01 at pp.10:15 – 11:7.

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

A. Ratepayer Backed Bonds are by Design Not Ratepayer Neutral

The Commission should deny PG&E's proposal securitization and PG&E's shareholder should pay for the full $7.5 billion in wildfire liabilities because, by design, it is not ratepayer neutral and because it seeks to impose costs for the 2017 wildfires on ratepayers, many of whom are themselves victims of the PG&E-ignited fires. PG&E's proposal to issue a securitized bond, also known as a ratepayer backed bond, cannot simultaneously meet the requirements of ratepayer neutrality and support its path to an investment-grade issuer credit rating; ratepayer neutrality and the ratepayer backed bond structure are mutually exclusive.[64] To be a ratepayer-backed bond, ratepayers must back the bond. That is, ratepayers must assume the risk of loss. PG&E itself relies upon this inherent conflict as justification for why its plan can't truly be ratepayer neutral: "The structure of the Customer Credit cannot require a guarantee from PG&E. 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. This would preclude accelerating PG&E's path back to an investment-grade issuer credit rating."[65] PG&E has not proposed a ratepayer protection measure that mitigates the inherent risk for ratepayer in a ratepayer backed bond. For these reasons and for the many other fatal deficiencies in PG&E's

---

[64] WTF-01 at p. 12:16-19.
[65] PG&E-01 at p. 1-4.

application described above, Wild Tree urges the Commission to deny the application with prejudice.

B. Proposed Alternative

As described above, PG&E already has Commission approval for an alternative to refinance temporary debt into longer term debt and it should implement that plan. According to PG&E, the issuance of $4.5 billion of temporary debt puts it in a position to meet the D.20-05-053 requirement that it execute its plan to de-leverage over time and continuing to increase its equity ratio, on average, following emergence.[66] Should the Commission nonetheless decide to grant PG&E a bond, it should be for far less, certainly no more than $1.35 billion, and should not include any costs for interest payments.

The bond should be issued only under the following conditions:

- Ratepayers will be guaranteed 100% of any surplus that exists in the shareholder assets of the Trust;
- The Commission – not PG&E management or its board of Directors - will select and approve the members of the Customer Credit Trust management committee. The members will owe ratepayers a fiduciary duty and will make decisions on a majority basis;
- The Customer Credit Trust will be fully funded by shareholder contributions at the outset, not subject to contributions over time to make up the full shareholder contribution;
- Trust management should be required to notify the Commission in the event of a deficit or shortfall. Once notified, the Commission will conduct an independent review at that

[66] D.20-12-025 at p. 12.

time to determine whether and how much PG&E shareholders should be required to contribute to the Trust so as to meet the requirements of ratepayer neutrality and to ensure that ratepayers not pay for the costs of the 2017 fires;

- Managers of the Trust would have the authority to distribute any accumulated surplus to ratepayers at their professional discretion anytime;
- The Commission will retain oversight of the bond following the issuance of a financing order and will utilize a pre-issuance financing team process to determine the structure, marketing and pricing of the bond so as to meet the requirements of Pub. Util. Code sections 850 et seq.

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

A. PG&E's Proposed Financing Order Is Contrary To The Code, Commission Precedent, And Best Practices

PG&E's proposed financing order ignores the requirements of Code as interpreted in recent and long-standing Commission precedent that a pre-issuance finance team review process to is necessary determine the structure, marketing and pricing of securitized bonds. Although PG&E states in its rebuttal testimony that "if requested, PG&E will work with the Commission, including a financing team set up by the Commission, if any, throughout the structuring and pricing process to ensure timely final approval of the Recovery Bond transaction"[67] its proposed

[67] PGE-13 at p. 3-2:2.

financing order inexplicably does not include a finance team review process. If the Commission issues a financing order in this proceeding, it must establish continuing Commission oversight over the material terms of the recovery bond. There is no other way that PG&E can demonstrate that the requirements of sections 850 et seq. can be met in this proceeding. This can be accomplished by including language in the financing order that sets-up a financing team composed of the utility, Commission and its staff, and any necessary outside financial and legal experts that will provide approvals of the material terms of the bond in a pre-issuance review process to create a bond with material terms that can meet the statutory requirements, in particular, minimization of ratepayer cost.

The Code requires that the "issuance of the recovery bonds, including all material terms and conditions of the recovery bonds, including, without limitation, interest rates, rating, amortization redemption, and maturity, and the imposition and collection of fixed recovery charges as set forth in an application satisfy all of the following conditions:" be just and reasonable, be in the public interest, and maximize ratepayer savings.[68] PG&E has not determined what the material terms and conditions of the recovery bonds will be including interest rates, maturity, and the imposition and collection of fixed recovery charges. PG&E has not and cannot, therefore, demonstrate that the proposed recovery bond is just and reasonable, in the public intertest, or will maximize ratepayer savings. Instead, PG&E would have the Commission approve its Application and issue a proposed financing order based upon its plan to let the underwriters determine the material terms of the bonds after approval of the irrevocable financing order with no Commission oversight.

---

[68] Pub. Util. Code, § 850.1.

The plain language of the statute requires that the Commission be able to make a determination of the reasonableness of the material terms of the recovery bond and if the terms will create maximum present value savings for ratepayers. In this case, approval based upon PG&E's proposed recovery bond would be done in the shadows, with the Commission not even knowing what the material terms will be until after it has made it decision, much less having conducted a thorough review of the terms and their impacts on ratepayers.

PG&E, like SCE before it would not have the Commission retain any oversight over bond terms other than to make a "yes/no" determination on the bond offering within four business days of the pricing of the bonds with only "updates" on what it has decided: "The initial Fixed Recovery Charges, any FRTAs and final terms of the series of Recovery Bonds set forth in the Issuance Advice Letter shall automatically become effective at noon on the fourth business day after pricing unless before noon on the fourth business day after pricing the Commission issues an order finding that the proposed issuance does not comply with the requirements . . ."[69] Obviously, no record can be developed during the four days after pricing and the Commission will not, therefore, have the evidence upon which to make an informed decision regarding bond terms. The Commission cannot ensure that the statutory mandate to minimize ratepayer costs will be met unless, as proposed by PG&E, the Commission essentially delegates its decision making power to PG&E's underwriters. If the Commission does not think the PG&E bond offering fulfills California statutory requirements it has only two options: stop the entire transaction after it has been structured, marketed and priced or approve a transaction that does not fulfill the statutory requirements. This is a classic "Hobson's Choice" - the illusion of a choice with two bad outcomes.

---

[69] PG&E-50 at p. 3-Exh3.1-64.

Similar four day review period schemes have been proposed to this Commissions before and turned it down in favor of financing team review. The Commission rejected this exact same 4 day Hobson's Choice plan in D.20-11-007. In I.02-07-015, "PG&E propose[d] to submit its interest rate hedges as advice letters, subject to an extremely expedited and truncated review and approval process."[70] The Commission declined to modify the existing "financial decision-making structure" whereby "The Commission has vested authority to negotiate and place securities in the hands of its Financing Team. For the purpose of approving the interest rate hedges authorized by this decision, the Commission's Financing Team shall be the General Counsel and the Director of the Energy Division."[71] The proposed four day review period was most emphatically deemed unreasonable: "PG&E proposed a "death-march" schedule where it would file an advice letter leaving the Energy Division only four business days to review it. PG&E wanted its filing "deemed approved" if not rejected within those four days. Four days is simply inadequate for a thorough review and precludes meaningful review by other interested parties."[72]

Ensuring that the bond is structured correctly, at the outset, is therefore, critical. Once the bonds are sold the Commission gives up all further review of the Recovery Bonds charge and cannot alter PG&E's other rates for any reasons related to the financing order. Because the

[70] D.03-09-020 at p. 10.
[71] D.03-09-020 at p. 11.
[72] *Ibid.*

financing order will be irrevocable it is necessary to ensure from the outset that clear standards and effective measures are in place to safeguard the interests of consumers. Instead of proposing a plan wherein the interest of ratepayers are safeguarded, PG&E would have the wolf guarding the hen house, relying on the underwrites to ensure cost minimization for ratepayers.

In 2004, the Commission also utilized a financing team, advised by an outside expert, in the securitization of costs related to PG&E's first bankruptcy.[73] D.04-11-015 was based upon a less stringent standard than that as issue here. In 2004, the standard for limitations on the Recovery Bonds costs was pursuant to the 2004 version of Public Utilities Commission section 848.1(a) that states that the Commission may issue a financing order for Recovery Bonds if doing so "would reduce the rates on a present value basis that consumers within the recovery corporation's service territory would pay if the financing order were not adopted."[74] The legislative standard applicable to this securitization and others to come is much clearer and more favorable to consumers than that applied in 2004. The standard that present value savings to customers must "reduce rates to the maximum extent possible"[75] is the toughest standard ever applied by this or any other state utility commission and can only realistically be met through the use of a pre-issuance finance team review process.

In 2020, in D.20-11-007, the Commission found the use of a pre-issuance finance team review process was necessary under Public Utilities Code sections 850 et seq. to determine the material terms of SCE's recovery bond securitization. The decision is so precisely on point -

[73] A.04-07-032.
[74] D.04-11-015.
[75] Pub. Util. Code Div. 1, Ch. 4, Art 5.6 (Senate Bill 772) bonds to refinance PG&E's bankruptcy-related regulatory asset; *See also* D. 04-11-015.

PG&E seeks to use the same review process that SCE unsuccessfully sought to utilize - that it bears quoting at length:

> The task of ensuring the sale of a Recovery Bond issued pursuant to this Financing Order so as to reduce rates on a present value basis to the maximum extent possible compared to the use of traditional utility financing mechanisms therefore entails a process that is optimized for transparency and in line with best practices. Wild Tree provides a process solution, which most parties support.
>
> We acknowledge party criticisms that SCE's underwriter does not have a vested interest in maximally reducing the Recovery Bond's interest rate, that the Commission would only be provided notice of the details of the process but not engaged in the process, and that SCE is proposing a process that would not be in keeping with Commission past practice (here, we expressly note D.04-11-015, our past Financing Order decision for a similar utility bond securitization). Also, we are mindful of the requirement for a solution that does not offend the underlying purpose of the legislature's intentions of AB 1054 and is in line with the statutory mandate to reduce Consumer rates on a present value basis to the maximum extent possible.
>
> For these reasons, we will adopt Wild Tree's proposal for the creation of a Finance Team. Wild Tree writes as follows:
>
> > This can be accomplished by including language in the financing order that sets-up a financing team composed of the utility, Commission and its staff, and any necessary outside financial and legal experts that will provide approvals of the material terms of the bond in a pre-issuance review process to create a bond with material terms that can meet the statutory requirements, in particular, minimization of ratepayer cost. (Wild Tree Opening Brief at 27, and drafted in its proposed Financing Order.)
>
> The Finance Team can review and address details regarding the Recovery Bond's structuring, credit rating agency review, and underwriter marketing. It would review all fees and costs associated with all aspects of the Recovery Bond. It would help reduce rates on a present value basis to the maximum extent possible pursuant to AB 1054's directives. The cost of the team would not be expected to meaningfully differ from the costs that SCE has assigned for the work it would do to marshal the oversight of the Recovery Bond. Given that this Financing Order addresses SCE's initial AB 1054 CapEx Recovery Bond, we are persuaded to adopt the approach now, with the option of finding it to be unnecessary and changing course later, rather than waiting and adding a Finance Team review later if concerns develop.
>
> Commission precedent for such a Finance Team exists in D.04-11-015. Not coincidentally, that Decision was the last time the Commission authorized a Financing Order for the issuance of securitized bonds. Additionally, we note that, as per the testimony of Wild Tree's expert, of the 16 similar utility securitized bonds issued nationally over the past 10 years, 14 have employed a financing team supported by

> independent financial advisors, with a pre-issuance review process to help ensure minimization of both the upfront bond costs and the ongoing bond costs (primarily, the interest rates on the bonds).(Wild Tree expert Rothschild at Exhibit WTF-1 14:18 – 15:5.)[76]

Commission precedent clearly demonstrates that PG&E proposed financing order is contrary to law, precedent, and best practices and that a financing order could be issued in compliance with the law, precedent, and best practices only if the Commission utilizes a pre-issuance finance team review process to determine the structure, marketing and pricing of the bond.

B. Best Practices

While further inquiry is not needed beyond the Commission's decision, a brief review of best practices from state utility commissions across the country further illuminate the deficiencies with PG&E's plan. Public utility securitizations are relatively infrequent; there have been only 16 such transactions nationwide over the past 10 years.[77] Prior to its December 2020 decision, the Commission has not issued a financing order in about 16 years.[78] However, of the 16 transactions in the past 10 years, the vast majority - 14 transactions or 87.5% - have had active commission oversight, utilizing a financing team supported by independent financial

[76] D.20-11-007 at pp. 46-48.
[77] WTF-01 at p. 18:10-16.
[78] A.04-07-032.

advisors, with a pre-issuance review process for approving final upfront and most importantly to ratepayers ongoing costs primarily the interest rates and credit spreads on the bonds.

A securitization, while lower in cost than traditional utility financing mechanisms, will not necessarily produce the *lowest* costs to the consumer when the bonds are priced or the maximum present value savings.[79] Substantial amounts of consumer dollars will be "left on the table" in interest costs, fees and more without proactive oversight by someone with a direct duty to the real obligor in this transaction, the consumer.[80] Ensuring that the bond is structured correctly, at the outset, is therefore, critical. Once the bonds are sold the Commission gives up all further review of the Recovery Bonds charge and cannot alter PG&E's other rates for any reasons related to the financing order.

Key best practices from other state utility commissions are exemplified by financing orders issued by the Florida Public Services Commission's in 2006 and 2015.[81] The Florida Commission utilized a financing team, termed a "bond team," that advised the commission on structuring the financing order, participated in the negotiation process with potential underwriters, and participated in the negotiation and drafting of agreements related to the securitization. The Florida commission concluded that to "achieve a lowest cost to the consumer" and the "greatest customer protections" the commission should be "actively and

[79] WTF-01 at p. 16:1-5.
[80] *Ibid.*
[81] WTF-01 at pp. 18:3-19:4.

integrally involved in the bond issuance [process]" and should secure the advice of experts who are independent of the underwriters and are able to evaluate proposals and structure the safeguards that will "ensure that the processes are competitive."[82] The "bond team" concept utilized in Florida included active involvement in the bond issuance by the Commission and its staff, the Commission's independent financial advisor and outside legal counsel as joint decision makers with the utility.[83]

Other states have utilized similar bond or financing teams.[84] For example, the Texas Commission included a similar provision as Florida establishing a bond team in 2001, 2002, 2004 and 2005 financing orders as it sought to establish the Texas program in the marketplace and the New Jersey Board of Public Utilities utilized a negotiating team as part of the process to authorize securitized bonds related to stranded cost recovery by Public Service Electric and Gas Co. in 2005.[85]

In a complex legal arrangement such as a utility securitization, terms, conditions, representations and warrantees concerning all contracts need to be evaluated from an arm's–

---

[82] WTF-01 at pp.19-20 quoting Public Service Commission, Petition for issuance of nuclear asset recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. Docket no. 150171-EI, *Financing Order* (November 19, 2015) at ¶ ¶ 92-93. Since 2005, the public service commissions in multiple states – Florida, New Jersey, Texas, West Virginia, Ohio, Maryland and Louisiana -- have issued securitization financing orders with similar provisions ensuring expert, independent oversight of the process.
[83] WTF-01 at pp. 18:3-19:4.
[84] WTF-01 at p. 19:5-10.
[85] *Ibid.*

length, dispassionate perspective. The risks, costs and liabilities should be independently evaluated, and policies should be independently developed. In addition, the sponsoring utility and the special purpose entity (SPE) will enter into a servicing agreement under which the sponsoring utility will bill, collect and remit the securitized charge to a bond trustee for the account of the SPE. Like any other contracts for services, that servicing agreement will have provisions concerning performance, care, liabilities, and indemnities. Pursuant to best practices, the utility should indemnify ratepayers for any negligent acts.[86] All these could affect ratepayers during the life of the securitized utility bonds. Yet, the servicing agreement is essentially between affiliated parties with all the liabilities associated with the agreements falling to ratepayers under the securitized charge and the true-up mechanism.

The financing order should not allow PG&E to receive an economic windfall as a result of the time lag in assessing and collecting the charges, the SPE could have collected in excess of the bonds after the bonds have been paid off. This consumer protection can be achieved by crediting ratepayers after the last bonds are repaid.[87] Regulatory oversight should be preserved concerning the servicing agreement and other transaction documents for the life of the securitized utility bonds. Ever-changing corporate structures need scrutiny by the Commission because capital markets are likely to change over the life of the bond. Other commission have retained this authority consistent with similar statutes.[88]

[86] WTF-01 at p. 23:2-6.
[87] WTF-01 at p. 23:7-10.
[88] WTF-01 at p. 23:11-15.

C. SCE's Plan to Rely Entirely on Underwriters to Ensure Maximum Ratepayer Present Value Savings is Unreasonable Because Underwriters Represent Interests Adverse to the Ratepayers

In the last two securitization bonds approved by the Commission, separated by 16 years, the Commission utilized a financing team to make critical determination on the material terms of the bond, rather than leaving it up to an underwriter.[89] As established in Commission precedent and best practices from other state utility commissions, the Commission should not approve a financing order that relies on underwriters to determine the material terms of the bonds after the financing order is issued. Reliance upon underwriters to determine material terms of a recovery bond put an unreasonable risk of dollars left on the table, thereby failing to maximize present value savings for ratepayers.

Underwriters have an inherent conflict of interest in determining the cost of the bonds.[90] The interests of underwriters are fundamentally adverse to the interests of ratepayers; underwriters are motivated to negotiate for relatively high rates of interest so that their sales forces will be able to sell the bonds with the least effort, satisfying the desires of their investor clients for high interest rates.[91] Higher interest rates results in higher bond costs to be born by

[89] D.04-11-015.
[90] WTF-01 at pp. 23:21 – 25:14.
[91] *Ibid.*

ratepayers. PG&E misconstrues the duty or lack thereof that underwriters have, stating, "Citi, as both financial advisor and underwriter, is accountable to its utility clients to achieve the best terms, especially under the unique terms of this transaction, as well as being accountable for reputational risk associated with any negative outcome of a transaction"[92] and "underwriters are not conflicted and are focused on executing the best deal and ultimately achieving the lowest bond interest rate available."[93] But the underwriters have no fiduciary duty to ratepayers or the Commission. This lack of a fiduciary duty has led state utility commissions to conclude that the advice they receive should not be from financial advisors who also underwrite the utility's debt and equity with conflicting loyalties but from those solely with a duty of loyalty and care to the commission and its ratepayers.[94]

The underwriter's conflict of interest is well known. Under Dodd-Frank, an underwriter cannot lawfully be both the advisor to a state or local government on the structure, marketing and pricing of government bonds and also serve as the underwriter of those bonds.[95] While underwriters of private bonds are not subject to this prohibition, the inherent conflict is the same. Indeed, underwriters make clear in all written engagement agreements that they have no fiduciary duty to act in the best interests of those responsible for paying back the bonds.[96] The

---

[92] PG&E-12 at p. 2-3:6-9.
[93] PG&E-12 at p.2-3:14-16.
[94] WTF-01 at p.25:11-14.
[95] WTF-01 at pp. 24:21-23.
[96] WTF-01 at p. 25:11-14.

fact that underwriters hold no fiduciary duty to ratepayers or state utility commissions has led commissions to conclude that the advice they receive should not be from financial advisors who also underwrite the utility's debt and equity with conflicting loyalties, but from those solely with a duty of loyalty and care to the commission and its ratepayers.[97] But in this case, PG&E has apparently already selected Citi to be both an advisor and underwriter in this case thus compounding the problem it has created by unreasonably relying upon underwriters in the first place.

Even underwriters with a track record of integrity and transparency must be expected to act in their own economic interests. Like the real estate agent who acts on behalf of the seller not the buyer, the underwriter's interest is in obtaining the *highest* yield for the bonds and in structuring a transaction for the quickest and easiest sale in the market at the lowest possible risk to their capital.[98] Indeed, they would prefer never to have to actually "underwrite" any portion of the bonds but instead sell all the bonds at the yield that is attractive to their customers not the utility's consumers.[99] The use of a finance team addresses both (1) the inherent conflict in having the utility rely on the same entity to advise it on the transaction and to serve as underwriter and (2) the inadequate incentive of the utility – given its insulation from risk – to drive the hardest bargain with the underwriter and maximize present value savings to customers.

D. PG&E Amendments to its Draft Financing Order Are Problematic

[97] See, e.g., Direct Testimony of Aaron Rothschild on Behalf of Wild Tree at p. 10:11-15.
[98] WTF-01 at p.24:14-20.
[99] *Ibid.*

PG&E filed an amended version of its proposed financing order on December 11, 2020 in the middle of the hearing in this proceeding. PG&E has provided no explanation for why the amendments support that application and why it filed amendment months after intervenor testimony was due. The proposed amendments create more risk for ratepayers and are against the interests of Wild Tree and other parties should be afforded the opportunity to provide testimony on the draft financing order amendments. Without the benefit of testimony, Wild Tree provides the following brief comments regarding the amendments:

1. Pro-rata shareholder contributions will increase risk for ratepayers

The PG&E amended draft financing order would have the initial $1.8 billion shareholder initial contribution be deposited into the Trust on a pro-rata basis of the total $7.5 billion securitization if the Recovery Bonds are issued in multiple series.[100] This increases risks to consumers that PG&E will not be able to fully fund the CCT. If the Commission approves a recovery bond, the Trust must be fully funded at the outset, not on a pro-rata basis.

2. Ratepayers 25% "Share" is Actually Less than 25%

PG&E amended its draft financing order to state, "Consumers will receive 25 percent of any funds remaining in the Customer Credit Trust after payment of the Customer Credit Trust expenses, including computed taxes." [101] Thus Consumers will not really receive 25 percent

[100] PGE-51 at p. 3-Exh3.1-5.
[101] PGE-50 at p. 3-Exh3.1-85.

because their "share" will be reduced by expenses and taxes. Why should consumers bear this costs when it benefits shareholders 3 times more than ratepayers?

3. The Bond Will Not Be Used To Pay $1.35 Billion Cash To Wildfire Victims Funds And Will Result In Little If Any Acceleration Of Cash Payments

The application, testimony, and Dec 11 amendments to proposed financing order statement regarding payments to the Fire Victim Trust are contradictory and factually incorrect. The December 11 amendments to PG&E draft financing order remove the statement make the following changes: As a result of the transaction, PG&E will retire the $6 billion of temporary utility debt and ~~accelerate the second deferred cash payment of $700 million~~ pay or reimburse the $1.35 billion in cash payments to the Fire Victim Trust." [102] The amended version reads: "As a result of the transaction, PG&E will retire $6 billion of temporary utility debt and pay or reimburse the $1.35 billion in cash payments to the Fire Victim Trust."[103] A different amendment add language about payment acceleration: "The Recovery Bonds ~~also~~ will allow PG&E to retire the temporary utility debt that helped enable PG&E to reorganize and emerge from bankruptcy, and facilitate and accelerate the payment of $1.35 billion to the Fire Victim Trust." PGE-51 at p. 3-Exh3.1-49; PGE-50 at p. 3-Exh3.1-48.

Both these amendments result in factually incorrect statements. On the filing date of this brief, January 15, 2021, PG&E is due to pay $650 million cash payment to the Fire Victims Trust and the second payment of $700 million is due January 15, 2022. Since the January 15[104], 2021

[102] PGE-51 at p. 3-Exh3.1-15.
[103] PGE-50 at p. 3-Exh3.1-15
[104] Application at p. 13fn 28.

payment is a part of the total $1.35 billion in cash payments and will have been made long before any bond will be issued, the Recovery Bond will not “pay or reimburse the $1.35 billion in cash payments to the Fire Victim Trust” and it will also not “accelerate the payment of $1.35 billion to the Fire Victim Trust” as PG&E has claimed in its amended draft financing order. If the Commission granted PG&E a Recovery Bond, the earliest date there would be a decision would be in May 2021. The bond will not issue immediately and thus, at most, perhaps $700 million of the $1.35 billion in cash payments might be accelerated by a few months. The risk benefit analysis fails here – the risk imposed upon ratepayers for the potential for part of the payment to the wildfire victims to be “accelerated” by a few months.

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

Wild Tree does not have any comments on this section at this time. Wild Tree reserves the right to address this topic in its reply brief and in other further filings.

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

Wild Tree agrees with the position that the City of San Francisco and others have taken that legitimate offers made by municipalities to purchase existing infrastructure from PG&E should be considered in the evaluation of PG&E’s financial status as excess cash as it represents potential income that it has not pursued.

CONCLUSION

For the reasons stated herein, the Commission should deny the application with prejudice. If it does move ahead with a recovery bond it should be for much less and as recommended herein.

/s/ April Rose Maurath Sommer
April Rose Maurath Sommer
Executive and Legal Director

Wild Tree Foundation
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
April@WildTree.org
(925) 310-6070

Dated: January 15, 2021