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

APPLICATION OF THE CITY AND COUNTY OF SAN FRANCISCO FOR REHEARING OF DECISION 21-04-030

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the City and County of San Francisco ("San Francisco") submits this application for rehearing of Decision 21-04-030 ("D.21-04-030") issued on April 23, 2021. In D.21-04-030, the Commission determined that Pacific Gas & Electric Company ("PG&E") had satisfied the Stress Test Methodology adopted by the Commission, pursuant to Public Utilities Code section 451.2(b), and that PG&E could finance $7.5 billion of 2017 catastrophic wildfire costs and expenses through the issuance of recovery bonds pursuant to Public Utilities Code sections 850 et. seq. ("Recovery Bonds"), which costs would be repaid by ratepayers on their bills ("Fixed Recovery Charges") for 30 years ("Securitization").

As shown herein, the Commission should grant rehearing because the Commission erred in approving PG&E's plan. PG&E did not meet its burden of proving that its Securitization application met both the requirements of the Commission's *Stress Test Decision*[1] and the Commission's requirement in the *Bankruptcy OII Decision*[2] that any such Securitization plan be ratepayer neutral.

As this Commission has found, securitization is an extraordinary remedy that should be granted only in limited circumstances and as a last resort where needed to prevent harm to ratepayers.[3] For a utility like PG&E, which currently has a below investment grade issuer credit rating, the utility must "demonstrate an ability (pathway) to achieving an investment grade

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[1] *See* Decision ("D.") 19-06-027*, Order Instituting Rulemaking to Implement Public Utilities Code Section 451.2 Regarding Criteria and Methodology for Wildfire Cost Recovery Pursuant to Senate Bill 901 (2018)* (July, 8, 2019) ("*Stress Test Decision*").

[2] *See* Pub. Util. Code § 3292(b)(1)(D). In approving PG&E's Plan of Reorganization, the Commission determined that the rate neutrality obligation of section 3292(b)(1)(D) would apply to PG&E's Securitization application. D.20-05-053, *Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas and Electric Company, pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company*, *Case No. 19-30088*, *slip op*., at 78-79 (June 1, 2020) ("*Bankruptcy OII Decision*").

[3] *Stress Test Decision*, *slip op*., at 48.

credit rating."[4] The Commission's finding in D.21-04-030 that PG&E met *Stress Test Decision's* "pre-condition" is erroneous. PG&E failed to meet its burden of proving that the slight improvement in its quantitative metrics that might result from its use of Recovery Bonds, and in its qualitative metrics that might result from the Commission's approval of this application, could somehow overcome the overwhelming evidence that the rating agencies' lingering concerns over PG&E's management and governance, and the increased risk of wildfires in the State of California, will be significant barriers to any substantial improvement in PG&E's credit rating in the coming years. Moreover, as discussed below, the Commission adopted certain modifications to PG&E's Securitization plan that could deter S&P from treating PG&E's plan as off credit, which will likely negatively impact S&P's determination whether to upgrade to PG&E's credit rating after PG&E issues the Recovery Bonds.

The most egregious error in D.21-04-030, however, is the Commission's finding that PG&E's Securitization would be "neutral, on average, to the ratepayers**.**" In order to make that finding, the Commission had to first modify the Securitization plan PG&E had submitted in its application and that was tested by the parties during a hearing. The Commission could only find that PG&E's original plan was "arguably" ratepayer neutral. Rather than denying the application for this reason, as it should have, the Commission went on to approve PG&E's Securitization plan by adopting certain modifications to the Customer Credit Trust that were proposed only after the hearing was closed.

The Commission's approval of the plan with these modifications is legal error, because there is nothing in the record showing that PG&E's modified Securitization plan would be ratepayer neutral. The Commission's approval of PG&E's modified plan sets a dangerous precedent. The Commission has allowed an applicant to wait until post-hearing briefing to make significant, untested modifications to its proposal. By using those modifications to approve a proposal that the Commission might otherwise have denied, the Commission is

[4] *Id*., *slip op*., Stress Test Methodology, Attachment A at 13.

notifying applicants in the future that they can hold back on certain aspects of their applications and wait to see how the proceeding is going. This is not the type of process the Commission should sanction. The Commission cannot make reasoned decisions in matters that went to an evidentiary hearing if it considers evidence that is not in the record.

For these and other reasons, the Commission should grant rehearing and disapprove the application. At the very least, the Commission should reopen the proceeding to require PG&E to prove that the modified Securitization plan the Commission approved satisfies the *Stress Test Decision* and is neutral to ratepayers.

II. THE COMMISSION COMMITTED LEGAL AND FACTUAL ERRORS IN FINDING THAT PG&E HAS SATISFIED THE REQUIREMENT THAT IT WILL ACHIEVE AN INVESTMENT GRADE ISSUER CREDIT RATING THROUGH THE STRESS TEST PROCESS

A. The Commission Failed to Properly Implement the *Stress Test Decision's* Requirement for Achieving an Investment Grade Issuer Credit Rating

In the *Stress Test Decision*, the Commission unambiguously found that "[a] utility that has a credit rating below investment grade at the time of a Stress Test application *must demonstrate how it will achieve an investment grade rating through the Stress Test process*."[5] In finding in D.21-04-030 "that PG&E has shown that the securitization provides a sufficient path to an investment grade credit rating"[6] the Commission disregarded the plain language of the *Stress Test Decision*. Rather than following the language and intent of the *Stress Test Decision*, the Commission explains in D.21-04-030 that the "requirement was not established to compare whether through application of the Stress Test Methodology an electric utility could achieve an investment grade rating or even if the application would accelerate its achievement of an investment grade rating. The requirement was that the electric utility establish a path toward financial health."[7] The Commission then finds the "issue for us to determine is whether

[5] *Stress Test Decision*, *supra*, *slip op*., at Finding of Fact 20 (emphasis added).

[6] D.21-04-030 at 36.

[7] *Id*. (footnote omitted).

PG&E has a plan and that the securitization is a component that will aid in the achievement of that plan."[8]

The Commission should not have based its approval of PG&E's Securitization plan on this watered-down view of the *Stress Test Decision's* clear guidance. If the Commission had properly applied the Stress Test Methodology, it would have found that PG&E failed to prove that approval of the application will lead to PG&E obtaining an investment grade issuer credit rating. The scintilla of evidence from a PG&E expert witness that one rating agency might treat the Recovery Bonds as off-credit, and upgrade PG&E's credit rating for that reason, is hardly the type of evidence the Commission should rely on to grant the extraordinary relief PG&E sought in the proceeding. Nor should the Commission have agreed with PG&E that the rating agencies would view the Commission's approval of this application as a positive sign that PG&E was improving its relationship with its regulators. San Francisco and other intervenors showed on the record that the rating agencies' continuing concerns over PG&E's poor safety record and its ongoing relationships with regulators would likely not change as a result of one favorable regulatory outcome.[9]

B. The Commission Committed Factual Errors by Ignoring Undisputed Evidence Concerning Substantial Challenges to PG&E's Effort to Achieve an Investment Grade Credit Rating

PG&E made three arguments that approval of this application will lead to an investment grade issuer credit rating. First, S&P's treatment of the Recovery Bonds as off-credit would improve PG&E's funds from operations to total debt ratio metrics. Second, approval of the plan "would demonstrate effective cooperation between PG&E and its key stakeholders and regulator, which in turn would support the rating agency views of PG&E's business risk." Third, PG&E's commitment "to significantly improving its operations, safety, and governance" would lead to improvement in the applicable qualitative factors the rating agencies would evaluate.[10]

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[8] *Id*.

[9] *See* Opening Brief of the City and County of San Francisco, 10-16; Opening Brief of The Utility Reform Network, 11-35; Alliance for Nuclear Responsibility's Opening Brief, 6-12.

[10] *See* D.21-04-030 at 23-24.

The Commission in D.21-04-030 accepts these arguments without considering all of the evidence in the record related to this issue. Had it done so, the Commission would have come to a different result.

With regard to S&P's off-credit treatment of the Recovery Bonds, the Commission ignores the undisputed evidence that Moody's would treat the Recovery Bonds as on-credit. In addition, as discussed below, the Commission's modifications to PG&E's proposal for the Customer Credit Trust in D.21-04-030—allowing the Commission to require PG&E to make additional contributions to the Customer Credit Trust if there are any shortfalls—call into question whether S&P will continue to treat the Recovery Bonds as off-credit. These modifications would appear to make PG&E the guarantor of the Fixed Recovery Charges.[11]

The Commission's biggest failure in D.21-04-030 is accepting PG&E's argument that its commitment "to significantly improving its operations, safety, and governance" would lead to improvement in the applicable qualitative factors the rating agencies would evaluate.[12] In so doing, the Commission ignores undisputed evidence from Moody's and S&P that "an upgrade" of the company "is unlikely in the near term" and the company "could be downgraded if the company is not successful at reducing wildfire risks" among other things. In addition to these safety concerns, Moody's identifies as a credit challenge: "Overhang from weakened

[11] *See* pp. 11-13. infra.

[12] *See* D.21-04-030 at 24.

relationship with state regulators and key policymakers due to past governance issues and operational miscues expected to continue."[13] [14]

The Commission also ignores undisputed evidence demonstrating that, since emerging from bankruptcy, PG&E has not improved its governance, management, and safety performance in any meaningful way that would lead the rating agencies to reduce their concerns about PG&E's governance and industrial metrics. San Francisco's post-hearing Opening Brief identifies some of the recent events the rating agencies would certainly consider relevant when reviewing PG&E's credit rating in the future.[15] Even after San Francisco filed that brief, concerns over PG&E's safe operations have continued to mount with no end in sight:

- On April 6, 2021, the Sonoma County District Attorney charged PG&E with five felonies and 28 misdemeanors in connection with the 2019 Kincade Fire, which destroyed more than 400 buildings and seriously injured six firefighters. The charges include "emitting an 'air contaminant,' smoke and ash, that endangered people and property."[16]
- On March 21, 2021, CalFire determined that PG&E is responsible for the Zogg fire that burned 56,000 acres over two days and destroyed more than 200 homes.[17]
- During its meeting on April 15, 2021, the Commission voted to approve Resolution M-4852: Placing Pacific Gas and Electric Company into Step 1 of the "Enhanced Oversight and Enforcement Process" Adopted in Decision 20-05-053.

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[13] PG&E Exh. 5, 5-Exh.5.7-11; *see also* PG&E Exh. 14, Exh.5.10-2 (S&P September 16, 2020 report in which S&P expressed "negative outlooks" and "increased probability for a downgrade" in PG&E's credit rating due to "the accelerated rate of wildfire activity as demonstrated by the record-setting pace of California's wildfires"). Due to the drought, California officials have expressed concerns about the 2021 wildfire season. *California braces for extreme 2021 wildfire season – it's very dry out there* (S.F. Chronicle, April 11, 2021) (available at: https://www.sfchronicle.com/local/climate/article/California-braces-for-extreme-2021-wildfire-16091995.php).

[14] PG&E admitted that the "social and reputational challenges" the rating agencies warned about in their reports "have not been completely resolved." Tr., 706:21 – 706:27 (Thomason).

[15] *See* San Francisco's Opening Brief, 15-16.

[16] *New kind of criminal charges against for wildfires cites dangers from smoke and issue* (S.F. Chronicle, April 9, 2021) (available at: https://www.sfchronicle.com/local/article/New-kind-of-criminal-charges-against-PG-E-for-16090337.php).

[17] *PG&E equipment caused deadly Zogg Fire in Shasta County. Cal Fire says tree hit power line* (Sacramento Bee, March 22, 2021) (available at: https://www.sacbee.com/news/california/fires/article250134899.html#storylink=cpyhttps://wl.

- On April 28, 2020, United States District Court Judge William Alsup issued a number of rulings seeking to improve PG&E's power shut-off program and pushing the company to clear enough vegetation to reduce the risk of wildfires. Judge Alsup accused PG&E of "'robb[ing] its tree clearance budget' in previous years 'to enhance the bottom line.'" According to Judge Alsup, this inaction "resulted in 'a power grid overgrown with hazard trees ready to strike onto PG&E's lines during windstorms.'"[18]

The Commission in D.21-04-030 fails to take this overwhelming evidence into account when it finds that the minimal improvement in PG&E's quantitative metrics—due to the Commission's approval of its Securitization application—would somehow lead to PG&E obtaining an investment grade issuer credit rating. This one Commission action favorable to PG&E cannot be viewed in a vacuum. The Commission's approval of PG&E's application would not outweigh the rating agencies' continuing concerns over the Commission's ongoing investigations into PG&E's safety practices, the potential for further wildfires in 2021, and PG&E's potential liability for the Kincade and Zogg fires. These factors are all major obstacles to any improvements in PG&E's credit rating that are unlikely to be overshadowed by the Commission's approval of this application.

III. THE COMMISSION SHOULD NOT HAVE APPROVED PG&E'S SECURITIZATION PLAN BECAUSE THERE IS NO EVIDENCE IN THE RECORD THAT THE APPROVED PLAN IS RATEPAYER NEUTRAL

A. The Commission Correctly Questioned Whether PG&E's Original Plan Was Ratepayer Neutral

During the hearing, PG&E argued that, based on its forecasts, expectations, and projections, there is an 84 percent chance that the Customer Credits will be sufficient to cover the Fixed Recovery Charges ratepayers will be required to pay for 30 years.[19] This argument was consistent with PG&E's view of ratepayer neutrality. According to PG&E, "ratepayer neutrality is to be achieved prospectively and does not require a present-day guarantee."[20]

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[18] *Federal judge takes action to improve PG&E power shut-offs, tree trimming* (S.F. Chronicle, April 30, 2021) (available at: https://www.sfchronicle.com/business/article/Federal-judge-takes-action-to-improve-PG-E-power-16140405.php?cmpid=gsa-sfgate-result).

[19] *See* PG&E Opening Brief, 116; PG&E Exh. 15, 6-33 (Table 6-14) (Allen).

[20] D.21-04-030 at 53.

While it approved PG&E's application, the Commission did not seem to agree with PG&E on this point. The Commission was not convinced that PG&E's original proposal—the one that had an 84 percent chance of actually reimbursing ratepayers—met the Commission's requirement that it be ratepayer neutral. The best the Commission could say was that it was "arguably" ratepayer neutral.[21] But the Commission seems to suggest it could not approve this "arguably" ratepayer neutral plan. As the Commission correctly finds: "[W]e cannot conclude the proposal is neutral, on average, to ratepayers if we are, at the outset, precluded from considering shortfalls in the Customer Credit Trust that, in real time, clearly would prevent the trust from achieving its purpose."[22]

This finding should have led the Commission to reject the plan as not in compliance with the ratepayer neutrality commitment the Commission required in the *Bankruptcy OII Decision*. The Commission should have clarified that ratepayer neutrality could not be achieved unless there was certainty that the Customer Credits would fully reimburse ratepayers for 30 years of Fixed Recovery Charges. The mere possibility that ratepayers 30 years from now might see a surplus in the Customer Credit Trust cannot recompense the many other ratepayers who might be held responsible for unreimbursed Fixed Recovery Charges in prior years.

The Commission instead improperly approved the application by including in D.21-04-30 modifications to PG&E's original plan for funding the Customer Credit Trust that were only proposed after the hearing. Some were proposed by PG&E during the post-hearing briefing.[23] Others were proposed by the Commission on its own accord and added to the Proposed

[21] That finding, however, was a marked departure from the Proposed Decision, in which the Commission found that PG&E's original Securitization plan "was not likely" to be ratepayer neutral. In D.21-04-030, the Commission deleted the words "was not likely" and added the word "arguably" instead.

[22] D.21-04-030 at 71.

[23] *See* D.21-04-030 at 8.

Decision.[24] Still others were proposed by PG&E in its comments on the Proposed Decision.[25] The Commission seems to suggest that, with these modifications, there would be some certainty that the Commission could at a later date require PG&E to make up for any shortfalls in the Customer Credit Trust—without requiring that PG&E provide a guarantee.

B. The Commission Improperly Approved Modifications to PG&E's Securitization Plan that Were Raised in Post-Hearing Briefs and Not Supported by Evidence in the Record

San Francisco and other intervenors argued during the hearing that PG&E's plan was not ratepayer neutral.[26] To address these concerns, in its post-hearing Opening Brief PG&E proposed four modification to the Customer Credit Trust that it claimed would better protect ratepayers.[27] The Commission agreed with PG&E that these modifications could be incorporated into its final decision because they were "developed at and from the evidentiary hearing" to approve a modified plan that it believes "would provide a higher level of assurance that the securitization plan will be neutral on average."[28] That statement ignores the extensive record in this proceeding.

PG&E's original proposal was supported by hundreds of pages of testimony from PG&E's employees and expert witnesses, and thousands of pages of documents. Intervenors likewise submitted hundreds of pages of testimony and thousands of pages of documents, and there were eight full days of hearings with a transcript of over 1500 pages. The Commission seems to acknowledge that there is no evidence in the record to support its determination that these modifications mean that PG&E's proposal is ratepayer neutral. The Commission simply agrees

[24] D.21-04-030 at 66 (specifying that the Commission does not "waive existing regulatory authority to address shortfalls").

[25] *See* PG&E Opening Brief, 5-6; D.21-04-030, Finding of Fact 14 and Ordering Paragraph 2.

[26] See Opening Brief of the City and County of San Francisco, 16-17; Opening Brief of The Utility Reform Network, 35-109; Alliance for Nuclear Responsibility's Opening Brief, 15-35.

[27] PG&E Opening Brief, 6.

[28] D.21-04-030 at 53.

with PG&E that "these modifications are logical outgrowths of issues raised at the evidentiary hearing. . . and are logical extensions of its original proposals and are grounded in the record."[29]

It was legal error for the Commission to rely on these post-hearing modifications to find that PG&E's plan is ratepayer neutral. PG&E's expert witness Greg Allen ran 2,000 Monte Carlo simulations of thirty years of investment returns to support PG&E's claim that there is an 84 percent chance the Customer Credit Trust will be cash flow positive to ratepayers.[30] As the Commission notes in D.21-04-030, PG&E claimed in its post-hearing Opening Brief that "its proposed modifications result in projected cash flow to customers that is positive in more than 90 percent of the Monte Carlo simulations."[31] Nowhere in D.21-04-23, however, does the Commission cite to any evidence that supports this conclusion.

The Commission has found that it cannot determine the "appropriateness" of a proposal made by one of the parties if the proposal was "not developed at the evidentiary hearing but proposed for the first time in its post-hearing brief."[32] Similarly, the Commission has rejected attempts to use post-hearing briefs to introduce new evidence:

> [W]e have repeatedly ruled that it is improper to introduce new evidence in legal briefs. . . . The introduction of evidence in a legal brief after the close of evidentiary hearings does not comply with the Commission's rules governing the offering and receipt of evidence into the evidentiary record. . . . Moreover, Rule 13.11 requires factual statements in briefs to be supported by identified evidence of record. . . . A legal brief that introduces new evidence does not comply with this rule. [33]

In contrast to these clear statements by the Commission regarding the need to support its decision by evidence in the record, the authority cited by the Commission in D.21-04-030 to

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[29] *Id*. at 62.

[30] See PG&E Exh. 15, 6-33 (Table 6-14) (Allen).

[31] D.21-04-030 at 43, *citing* PG&E Opening Brief, 160.

[32] D.00-07-017, *Re Southern California Edison Company*, 2000 WL 33245471 (July 6, 2000).

[33] D.15-07-045, *Order Instituting Investigation into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Pub. Util. Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010*, 2015 WL 4648065, at *4 (internal citations omitted) (July 23, 2015).

support its approval of PG&E's plan as modified is not persuasive.[34] In D.01-01-007, one party to a rulemaking filed a motion to strike portions of Southern California Edison's ("SCE's") Opening Brief on the grounds that "two alternative proposals offered by SCE on brief are not record-based, are untested by cross-examination, and do not have comparative pricing information provided."[35] The Commission denied the motion finding that SCE's alternative proposals are "'logical extension[s]' of proposals by other parties, with basis in the record."

That is different from the situation here. While the Commission allowed the evidence into the record in the SCE case, there is nothing in that decision that suggests that the Commission relied on it in any way. Furthermore, this proceeding is not a rulemaking led by the Commission. Here PG&E is the applicant. PG&E established the parameters of its proposal in its application, and submitted testimony in support of its proposal. At any stage in this proceeding while the record was open, PG&E could have suggested alternatives that could have been tested on the record and subject to cross-examination, but that is not what PG&E did.

The Commission in D-21-04-030 also cites to D.92-10-051[36] stating that the Commission in that matter "address[ed] the proposal presented in briefing."[37] However, it is unclear what part of the decision the Commission is referring to or how the reference supports the outcome here, which is that the Commission has adopted proposals that are not supported by evidentiary record—not just issues addressed in the briefing.

In addition, there is some language in D.92-10-051 that supports San Francisco's arguments here. As the Commission notes in that decision, one party in the proceeding filed a motion to supplement its reply brief to seemingly raise a new issue. While the Commission considered the issue addressed in that brief, because no party objected, the Commission expressed concerns about the process. The Commission found that, had "this concern had

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[34] *See* D.21-04-030 at 62, and fn. 243.

[35] D.01-01-007, *Re Implementation of Pub. Util. Code § 390*, 2001 WL 359583 (Jan. 04, 2001).

[36] D.92-10-051, *Re Pacific Gas and Electric Company,* 46 CPUC 2d 113 (Oct. 21, 1992).

[37] D.21-04-030 at 62, fn. 243.

been brought to our attention earlier, we would have solicited testimony on the appropriate mechanism to address these matters."

That is exactly what the Commission should have done here. Rather than approving PG&E's modified proposal that lacked any evidentiary support, when San Francisco and other intervenors objected, the Commission should have re-opened the hearing to allow PG&E to submit new testimony that would at least have been subject to cross-examination. This failure by Commission to follow its own procedural requirements is basis alone for the Commission to grant rehearing.

C. The Commission Approved Modifications to the Customer Credit Trust that Undermine the Commission's Finding that Its Approval of PG&E's Securitization Plan Will Provide a Path to an Investment Grade Issuer Credit Rating

One of the critical components of PG&E's Securitization plan is that S&P would treat PG&E's Recovery Bonds as off-credit, but only if PG&E did not guarantee that the Customer Credit Trust would have sufficient funding to ensure that ratepayers were reimbursed for all their Fixed Recovery Charges.[38] As the Commission states:

> PG&E further clarified S&P's ratings methodology defines a financial guarantee as a promise by one party to assume a liability of another party if that party fails to meet its obligation. PG&E indicated if the ultimate structure was deemed to be on-credit, as would likely occur from a guarantee, the forecasted improvements in S&P's financial metrics would not occur.[39]

According to PG&E, this off-credit treatment was essential to PG&E's expedited path to an investment grade issuer credit rating.[40] PG&E's argument throughout this proceeding has been that, were the Commission to require PG&E to guarantee that the funds in the Customer Credit Trust would be sufficient to ensure reimbursement of all Fixed Recovery Charges, S&P would treat the full amount of the Recovery Bonds as on-credit.[41] In which case, PG&E's application would not have complied with the *Stress Test Decision*. And PG&E would not have

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[38] See *id*. at 25.

[39] *Id*. (footnote omitted).

[40] See *id*.

[41] *See* PG&E Opening Brief, 159.

savings of $441 million in future borrowing costs from expediting its path to an investment grade issuer credit rating.[42]

Yet, PG&E argued in its post-hearing Opening Brief, without citing any evidence, that PG&E *believes* S&P would *not* view PG&E's commitment to add up to $775 million to the Customer Credit Trust as a guarantee: "By limiting the potential supplemental contribution to $775 million, and providing that the supplemental contribution . . . could be ordered no sooner than 2040, PG&E believes that this alternative proposal satisfies the goal of off-credit treatment."[43] The Commission in D.21-04-030 errs by accepting PG&E's unsupported argument, finding that "PG&E is currently describing its modified proposal (including the proposal to make a second contribution in the first quarter of 2024) as not leading S&P to treat the credit obligation as debt."[44]

The decision fails to explain why S&P would still treat the Fixed Recovery Bonds as off-credit in light of the additional modifications the Commission made after PG&E filed its Opening Brief. While San Francisco supports the Commission's efforts to improve the plan—by making sure the Customer Credit Trust is adequately funding—the Commission should have considered how these improvements would impact PG&E's path to an investment grade issuer credit rating. The plan the Commission approved would seem to require one party (PG&E) "to assume the liability of another party" (the Customer Credit Trust) if that party (the Customer Credit Trust) "fails to meet its obligation" (to reimburse ratepayers for their Fixed Recovery Charges). The Commission cannot gloss over the fact that the Commission has now required PG&E to in essence guarantee the Fixed Recovery Charges—the very thing PG&E asserted would spoil its opportunity to obtain an investment grade issuer credit rating from S&P.

[42] *See* D.21-04-030 at 25-26.

[43] PG&E Opening Brief, 159.

[44] D.21-04-030 at 19.

While these additional modifications the Commission has approved to the Customer Credit Trust were necessary, they cast further doubt on the Commission's finding that approval of PG&E's Securitization plan would provide PG&E with a path to an investment grade issuer credit rating.

D. The Commission Improperly Approved Other Modifications to PG&E's Securitization Plan that PG&E Suggested in its Comments on the Proposed Decision that Raise Concerns About Whether the Customer Credit Trust Will be Sufficiently Funded from the Start

The Proposed Decision accepted PG&E's plan to split its Initial Shareholder Contribution of $1.8 million in 2021 into two contributions of $1 billion each (one in 2021 and one in 2024) based on information in PG&E's post-hearing Opening Brief. In its Opening Comments on the Proposed Decision, PG&E proposed yet another modification, asking the Commission to revise the Proposed Decision further to say that, should PG&E issue a series of Recovery Bonds instead of just one for the full amount, the Commission should authorize PG&E to make its contributions to the Customer Credit Trust in "pro rata amounts corresponding to each series issuance."[45] Under PG&E's new proposed modified plan, should PG&E issue the Recovery Bonds in two series of $3.75 billion each, with the first series issued in July 2021 and the second series issued in January 2022, PG&E would make one $500 million contribution to the Customer Credit Trust in July 2021 and another $500 million contribution in January 2022. Presumably, PG&E could similarly pro rate the second $1 billion contribution that would be required in 2024.[46]

PG&E did not even attempt to argue that this modification is supported by evidence in the record, and it is not. PG&E could only cite to one oblique reference to possibly using a pro rata approach to its Initial Shareholder Contribution in the testimony in the case:

> PG&E requires the flexibility to issue the bonds in multiple series to achieve the best execution and lowest pricing possible, and PG&E proposes to fund the Customer Credit Trust proportionately with each issuance. For example, if PG&E issues the first series of Recovery Bonds

[45] PG&E Opening Comments on Proposed Decision, 5.

[46] *See* id., 5-6.

> in the amount of $3.75 billion, which is half of the total $7.5 billion of Recovery Bonds, then PG&E would make an Initial Shareholder Contribution of $900 million, which is half of the $1.8 billion total Initial Shareholder Contribution.[47]

Despite this testimony, nowhere in its application in this proceeding, or in the more than 300 pages of post-hearing briefings, did PG&E make it clear that this was its plan.[48] Nonetheless, the Commission in D-21-04-030 approved this additional modification to its Securitization plan by adding it to the Findings of Fact and Ordering Paragraphs with only a limited discussion of the reasons.[49] In so doing, the Commission has approved a major change in the Customer Credit Trust, without any evidence that the modified plan is ratepayer neutral.

As the Commission correctly notes, "[t]he original sizing of the $1.8 billion Initial Shareholder Contributions were based on amounts required to fund the Customer Credit Trust until the Additional Shareholder Contributions were forecasted to be made starting in 2024."[50] But then the Commission incorrectly notes that, "PG&E demonstrated in its illustrations of the Fixed Recovery Charge that $1 billion would be sufficient to fund the customer credit trust through the first quarter of 2024."[51] These so-called illustrations cited by the Commission are not part of the evidentiary record in this proceeding.[52] The so-called evidence cited by the Commission does not address the plan the Commission actually approved, which allows PG&E to pro rate the Initial Shareholder Contribution of $1 billion into two contributions of $500

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[47] PGE Exh. 13 (Becker rebuttal testimony) at 3-2. PG&E also refers to this testimony in Application 21-01-004, in which PG&E has asked the Commission to approve a financing order based on the Commission's approval of this application.

[48] D.21-04-030 refers to the "pro-rata method" PG&E "originally proposed" for the Initial Shareholder Contribution. D.21-04-030 at 6, fn.7, 19, and Finding of Fact 15. While PG&E suggests the PD "adopts" this approach, the references in the PD to the "pro-rata" method are unclear at best. PG&E's original proposal was to make the entire $1.8 billion contribution at one time.

[49] *See* D.21-04-030, Finding of Fact 14 and Ordering Paragraph 2.

[50] *Id*. at 63.

[51] *Id*.

[52] The document the Commission cites is from PG&E's application for a financing order in proceeding A.21-02-004, which PG&E also attached to its Opening Comments on the Proposed Decision in this proceeding.

million. Nor does it address the undisputed evidence that delaying any portion of the Initial Shareholder Contribution would impact the Customer Credit Trust's investment earnings, which are necessary for PG&E's plan to be ratepayer neutral.

In sum, rehearing is required because the Commission ignored the fact that it has now allowed PG&E to reduce its crucial first contribution to the Customer Credit Trust from the $1.8 million it proposed its original plan of $1.8 million to $500 million—without requiring PG&E to submit any evidence that this modification would be ratepayer neutral.

IV. CONCLUSION

Based on the foregoing, the Commission should grant rehearing and deny PG&E's application.

Dated: May 3, 2021

Respectfully submitted,

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