BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

APPLICATION OF THE UTILITY REFORM NETWORK

FOR REHEARING OF DECISION 21-04-030

[PUBLIC – REDACTED VERSION]

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Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this application for rehearing of Decision (D.) 21-04-030.

I. INTRODUCTION AND SUMMARY

Decision (D.) 21-04-030 ("the Decision") approves, with conditions, a Pacific Gas and Electric Company (PG&E) proposal that would impose "fixed recovery charges" (FRC) of almost $400 million per year for 30 years on the bills of PG&E customers. These charges would result from $7.5 billion in securitized bonds that PG&E would use to pay for 2017 wildfire liabilities that, absent securitization, are the sole responsibility of PG&E's shareholders. Even though the ratepayer neutrality requirement of Section 3292(b)(1)(D)[1] and D.20-05-053 requires that rates not increase to pay for these wildfire liabilities, the Decision fails to ensure that ratepayers will receive credits that fully offset the FRCs, thereby imposing significant financial risk on ratepayers that they would not face if PG&E's proposal were rejected. The Decision justifies this outcome by concluding that PG&E's plan will improve the utility's sub-investment grade credit rating and otherwise afford benefits to ratepayers that would not be available absent securitization. This application for rehearing will show that those findings and conclusions result from ignoring key evidence in the record and committing numerous other legal errors.

Indeed, the Decision is riddled with legal errors that evidently result from the fact that it was hastily prepared and decided – notwithstanding the Commissioners' acknowledgement at the voting meeting that this is an extraordinarily complex case -- in an unexplained rush to accommodate an arbitrary timeline requested by PG&E. Specifically, as shown below, the Decision commits the following serious errors:

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[1] All statutory references are to the California Public Utilities Code, unless otherwise indicated.

(1) The Decision fails to provide a conclusion of law adopting a clear and explicit definition of ratepayer neutrality, contrary to § 1705.

(2) The Decision approves PG&E's proposal without ensuring the ratepayer neutrality required by Section 3292(b)(1)(D) and D.20-05-053 and thereby acts in excess of the Commission's power, contrary to § 1757(a)(1), and fails to proceed in the manner required by law, contrary to § 1757(a)(2).

(3) The Decision fails to provide findings and conclusions that show why it rejects TURN's recommendations to ensure ratepayer neutrality, contrary to § 1705.

(4) The Decision approves PG&E's proposal without ensuring compliance with the requirement of § 850.1(i) that securitized bond costs may not be imposed on CARE and FERA customers, and thereby acts in excess of the Commission's power, contrary to § 1757(a)(1), and fails to proceed in the manner required by law, contrary to § 1757(a)(2).

(5) The Decision fails even to address the issue of the failure of PG&E's plan to ensure compliance with the requirement of § 850.1(i) that securitized bond costs may not be imposed on CARE and FERA customers, contrary to § 1705.

(5) The Decision fails to address the fact that the two key credit ratings agencies, Moody's and S&P, provided detailed written evaluations concluding that PG&E's securitization proposal will have no effect on its credit ratings, contrary to § 1705 and *Northern California Power Agency v. Public Utilities Comm*.[2]

[2] *Northern California Power Agency v. Public Utilities Comm.*, 5 Cal. 3d 370, 381 (1971).

(6) Contrary to § 1705, the Decision fails to address the fact that the only evidence supporting its findings on the credit rating issues comes from a PG&E witness whose firm would gain up to $41 million in underwriting fees only if a securitization is approved, an obvious and significant financial bias in favor of approving PG&E's application.

(7) In finding that PG&E's proposal would accelerate improvement in PG&E's credit ratings and put PG&E on a path to an investment grade credit rating, the Decision ignores the contrary and highly relevant evaluations of the ratings agencies and relies on the financially biased testimony of PG&E's witness and, therefore, is not supported by substantial evidence in light of the whole record, contrary to § 1757(a)(4).

(8) The Decision's conclusion that PG&E has satisfied the Stress Test requirements under D.19-06-027 and § 451.2 is based on the previously described legally erroneous finding that PG&E's proposal would put the utility on a path to an investment grade credit rating. By failing to hold PG&E to the legal requirements the Commission itself established as a prerequisite for approving PG&E's application under § 451.2, the Commission has acted in excess of its powers and jurisdiction and failed to proceed in the manner required by law, contrary to §1757(a)(1) and (2).

(9) The Decision's finding that ratepayer costs will be higher without securitization because it would take PG&E longer to achieve investment grade credit ratings is premised on the previously described legally erroneous findings, contrary to §1757(a)(4).

(10) The Decision's conclusion that, absent securitization, ratepayers would be affected by borrowing costs related to the temporary debt or replacement debt ignores the Commission's

own pronouncement in D.20-05-053 that shareholders bear full responsibility for paying for PG&E's 2017 and 2018 wildfire liability costs and therefore constitutes arbitrary decision-making, contrary to § 1757(a)(5). In addition, because there is no support in the record for this conclusion, it is not supported by substantial evidence in light of the whole record, contrary to § 1757(a)(4).

(11) The Decision's conclusion that, with securitization, ratepayers would benefit from the transfer of risks associated with realization of net operating loss (NOL) tax benefits from shareholder to ratepayers ignores the Commission's own pronouncement in D.20-05-053 that shareholders bear full responsibility for paying for PG&E's 2017 and 2018 wildfire liability costs and therefore constitutes arbitrary decision-making, contrary to § 1757(a)(5). In addition, because there is no support in the record for this conclusion, it is not supported by substantial evidence in light of the whole record, contrary to § 1757(a)(4).

(12) The Decision's finding that PG&E's modified proposal would reduce the risk of a shortfall to "near zero" and "minuscule" levels is not supported by any evidence in the record because PG&E's modified proposal was not made until after the conclusion of evidentiary hearings, contrary to § 1757(a)(4). In reaching this finding without allowing opposing parties to present their own evidence and to cross examine PG&E regarding its modified proposal, the Commission has failed to follow its own procedures, contrary to § 1757(a)(2), and violated the due process rights of the parties, contrary to § 1757(a)(6).

(13) The Commission's refusal to admit and consider evidence proffered by TURN in PG&E's February 25, 2021 10-K filing, evidence that conflicts with the Commission's finding

that there is no risk of PG&E being unable to realize the full $7.59 billion of NOLs, is unexplained and arbitrary and capricious, contrary to § 1757(a)(5). In addition, because it ignores this highly relevant and reliable evidence, the Commission's finding is not based on substantial evidence in light of the whole record, contrary to § 1757(a)(4).

(14) The Decision's finding that rejection of securitization would increase safety risks and hinder achievement of climate goals is not supported by any evidence in the record, contrary to § 1757(a)(4). In addition, because the issue of the impact of PG&E's proposal on safety and the state's climate change goals was not among the issues listed in the Scoping Ruling, the Commission has failed to proceed in the manner required by law, contrary to § 1757(a)(2).

(15) The Decision fails to address the disputed issue of whether ratepayers should be required to provide an interest free loan to the Customer Credit Trust (CCT) in the event of a shortfall, contrary to § 1705.

(16) The Decision fails to address the disputed issue of whether ratepayers should be required to pay an additional 38.9% tax gross up on payments for the securitized debt any time there is a shortfall in funds available from the CCT, contrary to § 1705.

Each of these errors must be corrected to avoid annulment of the Decision by a reviewing court. The Commission should grant rehearing and take the necessary time to issue a legally sound decision.

II. STANDARD OF REVIEW

Rule 16.1 requires an application for rehearing to "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or

erroneous." The purpose of an application for rehearing "is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Section 1757 provides the applicable standard of review because the Decision is "a ratemaking decision of specific application that is addressed to particular parties."[3]

Under § 1757, a court reviewing a Commission decision will assess whether any of several errors occurred, including the following:

- The commission acted without, or in excess of, its powers or jurisdiction. (§ 1757(a)(1)).
- The commission has not proceeded in the manner required by law. (§ 1757(a)(2)).
- The findings in the decision of the commission are not supported by substantial evidence in light of the whole record. (§ 1757(a)(4)).
- The order or decision of the commission was procured by fraud or was an abuse of discretion. (§ 1757(a)(5)).
- The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution. (§ 1757(a)(6)).

The Commission acts in excess of its powers and fails to proceed in the manner required by law when it takes actions which contradict Legislative directives,[4] and when it "fail[s] to comply with required procedures, appl[ies] an incorrect legal standard, or commit[s] some other error of law,"[5] including failing to comply with its own procedural rules.[6]

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[3] § 1757(a).
[4] *Southern California Edison Co. v. Public Utilities Comm.*, 24 Cal. 3d 653, 659 (Commission lacks authority to contradict or disregard specific legislative directives).
[5] *Pedro v. City of Los Angeles*, 229 Cal. App. 4th 87, 99 (2014).
[6] *Southern California Edison Co. v. Public Utilities Comm.*, 140 Cal. App. 4th 1085, 1106 (2006).

In applying the "substantial evidence in light of the whole record" requirement, a reviewing court must consider all relevant evidence in the record, while "it is for the Commission to weigh the preponderance of conflicting evidence."[7] However, the reviewing court "cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record."[8] Rather, the court must "consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence."[9] Evidence will not be considered "substantial" unless it constitutes "evidence that a rational trier of fact could find to be reasonable, credible, and of solid value."[10] To overturn a Commission decision's finding, the challenging party must show that, based on the evidence before the Commission, a reasonable person could not reach the same conclusion.[11]

An abuse of discretion will be found when a Commission decision is found to be arbitrary or to exceed the bounds of reason.[12] The Commission violates the due process rights of a party under the Due Process Clause of the United States Constitution's Fourteenth Amendment when it fails to afford a party the opportunity to present its own evidence or to cross-examine and refute evidence relied upon by the Commission.[13]

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[7] *The Utility Reform Network v. Public Utilities Comm. (Oakley II)*, 223 Cal. App. 4th 945, 959 (2014).
[8] *Id.*
[9] *Id.*; *County of San Diego v. Assessment Appeals Bd. No. 2, 148 Cal. App*. 3d 548, 555 (1983).
[10] *Pedro v. City of Los Angeles*, 229 Cal. App. 4th at 99.
[11] *E.g., id.*
[12] *Ponderosa Tel. Co. v. Calif. Pub. Util. Comm. (Ponderosa),* 36 Cal. App. 5th 999, 1019 (2019)
[13] *Caesar's Restaurant v. Industrial Acc. Comm.* 175 Cal. App. 2d 850, 855 ("The right to [a fair and open] hearing is one of the 'rudiments of fair play' (citation) assured to every litigant by the Fourteenth

Section 1705 requires, after hearings on utility applications, that the Commission's decision contain separately stated findings of fact and conclusions of law on all issues material to the decision. Every issue that must be resolved to reach an ultimate finding is material to the decision and findings are required on the basic facts upon which the ultimate finding is based.[14] Such findings afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as to assist parties to know why the case was lost and to prepare for rehearing for review, assist other planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.[15]

Violation of any of these decision-making requirements would constitute grounds for annulment of the Commission's decision.

III. THE DECISION COMMITS LEGAL ERROR BY FAILING TO COMPLY WITH THE RATEPAYER NEUTRALITY REQUIREMENT OF SECTION 3292(B)(1)(D) AND DECISION 20-05-053

A. The Commission Needs to Adopt a Clear and Explicit Definition of Ratepayer Neutrality to Comply With § 1705

As the Decision notes, PG&E's securitization application is an outgrowth of its bankruptcy plan of reorganization. In approving that plan in D.20-05-053, the Commission stated:

Amendment as a minimal requirement" and stating that a "reasonable opportunity to meet and rebut the evidence produced by his opponent" and the right of cross-examination are generally recognized as essential minimum requirements.)

[14] *Greyhound Lines, Inc. v. Public Utilities Comm.*, 65 Cal. 2d 811, 813 (1967).

[15] *Id.*

> Given the close connection between the plan and the proposed securitization and PG&E's commitment that its securitization application will meet the requirements of AB 1054, including ratepayer neutrality, the securitization application should satisfy those requirements.[16]

The Commission's reference in D.20-05-053 to the ratepayer neutrality requirement of AB 1054 is to Section 3292(b)(1)(D), which requires that the Commission find PG&E's reorganization plan to be "neutral, on average, to the ratepayers of [PG&E]." Consistent with D.20-05-053, the Decision states that PG&E's securitization proposal, through the Customer Credit Trust (CCT), must satisfy the ratepayer neutrality standard.[17] Moreover, PG&E has the burden of proof to show that it has met this requirement.[18] Thus, it is indisputable that ratepayer neutrality is a central and material issue in the case.

The definition of ratepayer neutrality was sharply disputed. PG&E argued that the requirement could be satisfied merely by a prediction based on modeling of expected value,[19] an implausible position that meant that a 51% probability of a neutral outcome would suffice to satisfy the standard.[20] TURN and most other parties argued that ratepayer neutrality needed to be achieved based on the actual results of the transaction. TURN -- whose position on this issue was not summarized in the Decision (even though *PG&E's* interpretation was described)[21] --

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[16] D.20-05-053, p. 78. This sentence is quoted in the Decision at page 42.
[17] D.21-04-030, p. 18 and fn. 22 (citing D.20-05-053 and § 3292(b)(1))D)). In footnote 131 on page 43, the Decision states that it does not address PG&E's claim that § 3292(b)(1)(D) is inapplicable to this case because "the result is the same" under AB 1054 and with respect to PG&E's commitments to the Bankruptcy Court and the Commission.
[18] D.21-04-030, pp. 17-18.
[19] PG&E Opening Brief, pp. 56-57.
[20] TURN Reply Brief, p. 18.
[21] D.21-04-030, p. 43.

cited the Commission's determination in D.20-05-053 that, to ensure ratepayer neutrality, the Commission needed to know the "actual total costs incurred" and could not rely on a forecast.[22] TURN also pointed out that PG&E's position would defeat the ratepayer protective purpose of the requirement if actual results differed from the forecast and made ratepayers worse off.[23]

The Decision *appears* to reject PG&E's position and adopt the interpretation of TURN and most intervenors, but this is not clear. The Decision adopts conditions (which will be addressed in Section III(B) below) to retain regulatory authority to address shortfalls, which the Decision says are "necessary to ensure ratepayer neutrality."[24] It further states that "we cannot conclude the proposal is neutral, on average, to ratepayers if we are, at the outset precluded from considering shortfalls . . . that, in real time, clearly would prevent the trust from achieving its purpose."[25] In addition, revisions to the Proposed Decision (PD) added a sentence that appears to agree with TURN stating that the Decision "does not rely on the forecast in isolation from the terms of this decision when evaluating rate neutrality. . .."[26] However, TURN respectfully submits that these sentences fall short of a clear and unequivocal rejection of PG&E's forecast-based interpretation of ratepayer neutrality. The lack of clarity is compounded by the fact that the Decision contains unqualified statements that PG&E's *proposal* satisfies its burden of proof

[22] TURN Opening Brief, pp. 38-39.
[23] *Id.*, pp. 37-38.
[24] D.21-04-030, pp. 71-72.
[25] D.21-04-030, p. 71.
[26] D.21-04-030, p. 83.

to demonstrate ratepayer neutrality,[27] even while the Decision elsewhere recognizes that PG&E's proposal still poses the risk of a shortfall that would lead to a net increase in rates.[28]

On rehearing, the Commission needs to clearly and explicitly reaffirm its conclusion in D.20-05-053 that ratepayer neutrality must be achieved by actual results that cause no net increase in rates and that ratepayer neutrality cannot be satisfied by a forecast. In this case, the actual results mean the outcome of the 30-year securitization transaction.

Such a clear and explicit interpretation of ratepayer neutrality is required by § 1705. As discussed, the meaning of ratepayer neutrality is a material issue in this case. For a reviewing court to be able to determine whether the Decision is consistent with the ratepayer neutrality requirement, it must determine, first, whether the Commission's interpretation is legally sound and, second, whether the Decision's resolution of the case comports with a correct legal interpretation of the standard. A court cannot make these determinations without knowing how the Decision interprets the ratepayer neutrality mandate. In addition, stating a clear and explicit definition is important for the benefit of future commissions who will have the duty to ensure ratepayer neutrality. Future commissions need to know the definition that this Commission relied upon when it approved the transaction and that future commissions are expected to uphold. Furthermore, TURN and other parties need to understand how the Commission defines ratepayer neutrality in order to determine whether to seek judicial review of an incorrect interpretation.

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[27] D.21-04-030, pp. 18, 54.
[28] D.21-04-030, p. 67 (viewing risk of shortfall as "real but not significant").

In sum, the Decision must adopt a clear and explicit definition of ratepayer neutrality to afford a rational basis for judicial review, and to provide necessary clarity to the parties and future commissions regarding the basis for the Commission's decision on this central issue.

B. The Decision Fails to Ensure Ratepayer Neutrality and Therefore Fails to Proceed in the Manner Required By Law

Ratepayer neutrality is a requirement that must be satisfied before PG&E's securitization transaction may be approved. Once a financing order is final and securitized bonds are issued, the imposition of bond charges on customer bills is irrevocable.[29] If, for some reason, it is impossible for the Commission to assure ratepayers that ratepayer neutrality will be achieved, then the only lawful outcome is to deny PG&E's application. The Commission may not lawfully defer this issue to future commissions. Moreover, precisely because the transaction is designed to proceed based on streamlined advice letter processes (many of which are Tier 1 or 2 advice letters that do not result in a Commission resolution), there may not be any meaningful and timely opportunities to challenge results that violate the ratepayer neutrality requirement. Unless ratepayer neutrality is assured now, the Commission has failed to proceed in the manner required by law, contrary to § 1757(a)(2), and it is unlawful to move ahead with the securitization.

Under PG&E's modified proposal that the Decision adopts, with conditions,[30] PG&E is required to fund the CCT with $2 billion in initial shareholder contributions (ISC), $7.59 billion of additional shareholder contributions (ASC) and up to an additional $775 million shareholder

[29] § 850.1(e).
[30] D.21-04-030, p. 17.

contribution in 2040. The Decision acknowledges that this funding structure creates a "real" risk of a shortfall.[31] Absent other action ordered by the Commission, a shortfall would either reduce or eliminate customer credits such that they would not offset the fixed recovery charges (FRC), resulting in a net increase to customer rates. As discussed in the previous section, such an outcome would be contrary to the ratepayer neutrality requirement.

As a condition of approving PG&E's modified proposal, the Decision states that the Commission is not waiving its regulatory authority "to satisfy ratepayer neutrality arguments brought by Intervenors . . .." More specific language about the potential exercise of regulatory authority appears at the bottom of page 71:

> . . . we accept PG&E's proposal . . . because it has been shown to have minimal risk and only maintain regulatory authority to address shortfalls triggered by catastrophic events (including without limitation, change of ownership, bankruptcy or government ownership or intervention on the company) that may materially reduce the value of the trust funding, or material deviations from the value in the Customer Credit Trust relative to the base case projections, taking into account actual investment returns and projections at that time (i.e., Table 6-3 of PG&E-06 as submitted in A.21-01-004 as Table A9-1 on January 6, 2021).[32]

This quoted language is unchanged from the PD.

In its comments on the PD, TURN argued that ensuring the achievement of ratepayer neutrality, as required by law, necessitated clearer and stronger language. First, and most important, TURN pointed out that, to satisfy the ratepayer neutrality mandate, the Commission must be explicit that it intends to take *whatever measures are necessary* to ensure ratepayer

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[31] D.21-04-030, p. 67 ("We view the risk of shortfall as real but not significant . . .").
[32] D.21-04-030, p. 71 (emphasis added).

neutrality, including directing PG&E to make contributions to the Trust in addition to PG&E's arbitrarily capped $775 million potential contribution in 2040.[33] Second, TURN stated that the final Decision needs to make clear that a proceeding would be opened at any point in the 30-year securitization period, not just in 2040, because waiting until 2040 may be too late.[34] To comply with the ratepayer neutrality obligation, TURN urged the addition of an Ordering Paragraph (OP) as follows:

> *At any point in the life of the Customer Credit Trust, if PG&E's projected Trust balances are materially below the values in the base case projections in the record of this case (i.e., Table 6-3 of PG&E-06 as submitted in A.21-01-004 as Table A9-1), the Commission will open a proceeding to determine what measures should be taken to prevent a shortfall in the Trust, including without limitation directing PG&E to make contributions to the Trust in addition to the $775 million potential contribution in 2040.*[35]

The Decision does not include TURN's requested OP, or anything resembling it, anywhere in the text. The minor revisions that were made in the Decision are insufficient to overcome the PD's legal shortcomings. The Decision (p. 82) points to Finding of Fact (FOF) 29[36] as somehow responsive to TURN's argument. However, the only modifications to that FOF added the phrase "monitoring the Customer Credit Trust," as one of the elements supporting a finding that the transaction "and regulatory structure" will be neutral to ratepayers. While these minor changes were directionally positive, "monitoring" falls well short of stating a clear

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[33] TURN Opening Comments on PD, pp. 7-8; TURN Reply Comments on PD, pp. 1-2.
[34] TURN Opening Comments on PD, pp. 7-8.
[35] TURN Opening Comments on PD, p. 8.
[36] The Decision erroneously refers to FOF 28, which was unchanged from the PD.

intention to take the necessary action, including requiring additional contributions from PG&E, to ensure ratepayer neutrality. Without such explicit language, the Decision indicates nothing more than that the Commission may take necessary measures, which is insufficient to provide the assurance of ratepayer neutrality that the law requires. Ratepayer neutrality requires a firm Commission commitment in the decision approving the securitization, not equivocation about something the Commission may or may not do after the securitized bonds are irrevocable.

The only other relevant modification to the PD was to include language (pp. 70-71) indicating that a proceeding to address shortfall risk could be initiated "by an appropriate party" based on the criteria identified in the Decision. This change *appears* to allow such requests to be made at any point in the life of the Trust when the critieria are met, but would benefit from explicit clarification that this is the Decision's intent, in order to forestall a future argument from PG&E that this language only applies to PG&E's proposed proceeding in 2040.

Therefore, to comply with the ratepayer neutrality requirement, the Decision needs modification to include language that: (1) states an unequivocal commitment to take whatever measures are necessary to ensure ratepayer neutrality, including requiring PG&E to contribute more than its self-determined $775 million cap on supplemental contributions; and (2) makes clear that a proceeding to take such measures may be initiated at any time that the Commission's criteria for a shortfall risk are met, not just in 2040. Otherwise, the Decision violates the ratepayer neutrality requirement of § 3292(b)(1)(D) and D.20-05-053 and therefore fails to proceed in the manner required by law, contrary to § 1757(a)(2).

C. If the Commission Continues to Refuse to Make the Modifications Needed to Comply with the Ratepayer Neutrality Requirement, Section 1705 Requires an Explanation of the Reasons for Rejecting the Modifications

The Decision fails to explain why the Commission viewed TURN's recommended language as objectionable -- particularly TURN's request for an explicit statement that the Commission should be ready to require PG&E to make more contributions than it has proposed (*i.e,*, above PG&E's arbitrary $775 million cap on supplemental contributions) in order to ensure ratepayer neutrality. As explained, the Decision's assurance – or lack thereof – that ratepayer neutrality will be achieved relates to a central issue in the case and is therefore a material issue under § 1705. The reviewing court and parties contemplating judicial review are entitled to know the "principles relied upon by the commission to determine whether [the CPUC] acted arbitrarily" and to assist in preparing a court challenge.[37] TURN and other parties' rights are improperly abridged if we are forced to guess as to why the Commission was unwilling to adopt stronger language. Accordingly, If the Commission is unwilling to make TURN's modifications discussed in Section III(B), the decision in response to this rehearing request needs to explain the reasons for rejecting those changes, as required by § 1705.

IV. THE DECISION FAILS TO ENSURE COMPLIANCE WITH THE REQUIREMENT OF § 850.1(i) THAT SECURITIZED BOND COSTS MAY NOT BE IMPOSED ON LOW-INCOME CUSTOMERS

Section 850.1(i) is unequivocal that recovery costs – monthly charges for securitized bonds – "shall not be imposed upon customers participating in the California Alternative Rates

[37] *Greyhound Lines*, 65 Cal. 2d at 813.

for Energy [CARE] or Family Electric Rate Assistance [FERA] programs . . ..” (Emphasis added.) However, under the PG&E proposal approved in D.21-04-030, unless there is a dollar-for-dollar offset of fixed recovery charges (FRC), CARE and FERA rates will increase.[38] In fact, PG&E’s bill impact analysis showed that, in the case when no customer credit is provided because of a CCT shortfall, CARE and FERA customer rates would increase by the same percentage that the FRCs caused all other charges to increase. In other words, contrary to Section 850.1(i), FRCs would be imposed on CARE and FERA customers in this situation.

This problem was highlighted in TURN’s cross examination of PG&E’s witness on this subject[39] and in several pleadings, most prominently by A4NR.[40] However, the Decision fails to address the issue, contrary to § 1705.

This violation of the statute would only arise under PG&E’s proposal when a CCT shortfall causes the customer credit to be less than the FRC or precludes any customer credit at all. Consequently, this violation would be prevented be ensuring ratepayer neutrality. Thus, the need to ensure compliance with § 850.1(i) is another reason that the Decision must be modified to include TURN’s ordering paragraph language set forth in Section II(B) above. Absent such an assurance that the Commission will take any measure necessary to achieve ratepayer neutrality, CARE and FERA customers face the prospect of bill increases caused by FRCs – a clear and direct violation of § 850.1(i).

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[38] Tr., Vol. 3, p. 529, lines 7-11 and 20-24 (Pease/PG&E)
[39] Tr., Vol. 3, pp. 528-535.
[40] A4NR Opening Brief, p. 37, fn. 120; A4NR Opening Comments on PD, pp. 2-3; TURN Reply Comments on PD, p. 5.

Alternatively, the Commission can prevent such a violation by rejecting PG&E's statutory interpretation that creates the possibility of bill increases for CARE and FERA customers. PG&E states that such increases are necessary in order to avoid exceeding the maximum statutory discounts for CARE and FERA customers under § 739.1(c)(1) (CARE) and §739.12 (FERA).[41] PG&E is effectively concluding that these statutory discounts trump the unequivocal directive in § 850.1(i) that FRCs "shall not" be imposed on CARE and FERA customers. However, principles of statutory construction require that the later enacted statute – in this case, § 850.1(i), which was added by SB 901 in 2018 – must prevail in the event of a statutory conflict. In contrast, PG&E's approach would improperly "subordinate a later-in-time statute to an earlier-in-time statute."[42] The Legislature made no exceptions to its § 850.1(i) bar on imposing FRCs on CARE and FERA customers, even if the exemption caused discounts to increase above maximum discounts prescribed elsewhere in the Public Utilities Code.[43]

Accordingly, to prevent a violation of § 850.1(i), the Commission should adopt the ordering paragraph language set forth in Section II(B) above to ensure the achievement of ratepayer neutrality. Alternatively, the Commission should reject PG&E's statutory

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[41] Ex. PG&E-9 (Pease/PG&E), p. 9-4.
[42] D.18-10-019, p. 52 (citing *People v. Moody* (2002) 96 Cal.App. 4th 987, 993).
[43] The issue addressed in this paragraph also arises in another pending PG&E application to issue securitized bonds, A.21-02-020. In that case, TURN has taken the same position described in this paragraph -- that PG&E's interpretation of Section 850.1(i) is unlawful. See TURN's Opening Brief in A.21-02-020 (Feb. 23, 2021), pp. 13-18, found at https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M380/K021/380021348.PDF Accordingly, the Commission may wish to coordinate its decision on this rehearing application with its decision in A.21-02-020.

interpretation and direct that PG&E may not cause CARE and FERA customer rates to increase as a result of fixed recovery charges, even if customer credits do not fully offset the FRCs.

V. THE FINDING THAT PG&E'S SECURITIZATION PLAN WOULD PUT PG&E ON A PATH TO AN INVESTMENT GRADE CREDIT RATING CONSITUTES LEGAL ERROR, IN MULTIPLE RESPECTS

A. The Decision Fails to Address the Most Relevant Evidence of All – the Rating Agency Evaluations Concluding that PG&E's Proposal Would Have No Effect on Its Credit Ratings

The Decision states that PG&E has met its burden to demonstrate that its proposal will accelerate improvement in PG&E's credit ratings and provide a sufficient path to an investment grade rating.[44] However, the Decision never addresses – indeed, does not even mention -- the most relevant and credible evidence of all, what the ratings agencies themselves stated in formal written evaluations when posed the very question of what would be the impact of securitization on PG&E's credit rating. The answer from the ratings agencies was clear – securitization would have no impact on PG&E's credit ratings.[45] Under *Northern California Power Agency*, ignoring the issues raised by these evaluations relating to a central issue in the case constitutes legal error and is grounds for annulment of the Decision.

TURN and other parties made the rating agency evaluations a key part of their opposition to PG&E's application. Because D.19-06-027 identified Moody's and S&P as the rating agencies whose analytical rating frameworks would be used for the Stress Test,[46] TURN focused

[44] D.21-04-030, p. 18, 36.
[45] TURN Confidential Opening Brief, pp. 22-25, quoting from Exhibits 1.2 and 1.3 to Ex. PG&E-1-C.
[46] D.19-06-027, Attachment 1, p. 6.

its testimony and briefs on those two agencies' evaluations of the impact of PG&E's proposal on its credit ratings. TURN addressed these agencies' analyses in the testimony of its financial expert, Jennifer Dowdell,[47] and, in greater detail, in its opening and reply briefs.[48]

The Decision fails to mention the undisputed fact that, under the Moody's analysis, securitization would not improve PG&E's credit ratings. In multiple reports in the record of this case, Moody's has made clear that PG&E's proposed securitization would be credit neutral.[49] Moody's stated that, while it would typically view securitized bonds as credit positive (even though its practice is to treat such bonds as on-credit), in this situation, the credit offset back to customers "will reduce PG&E's revenues and cash flows . . .."[50] As a result, in its confidential analysis, Moody's assessment of PG&E's key credit metrics [redacted][51] Even PG&E's witness found that Moody's key metric would show little to no improvement with securitization.[52]

The Decision's failure to address this undisputed conclusion from one of the two largest ratings agencies -- on which the Commission has said its Stress Test analysis would rely – is

[47] Ex. TURN-01-C, pp. 14-17.
[48] TURN Confidential Opening Brief, pp. 22-27; TURN Confidential Reply Brief, pp. 6-10.
[49] Ex. PG&E-14, p. 5-Exh5.9-1 (Moody's 8/19/20 Ratings Update); PG&E-01-C, Ex. 1.3 (Moody's Confidential March 2020 Rating Assessment Letter).
[50] Ex. PG&E-14, p. 5-Exh5.9-7.
[51] PG&E-01-C, p. 1-Exh1.3-4 (see table labeled "Exhibit 3" at the top of the page).
[52] Ex. PG&E-05, p. 5-28, Figure 5-5, showing Moody's CFO Pre-WC/Debt metric as worse with securitization in 2021, flat in 2022 and 2023, and only slightly better than no-securitization in 2024 (18% compared to 17%). The slight improvement for 2024 in this testimony would make no difference to PG&E's credit rating under its credit rating framework, as shown in PG&E-05, p. 5-18, Figure 5-3.

significant, particularly when the Commission previously stated that it would use the most conservative results of these two agencies' analytic frameworks in deciding whether the Stress Test criteria are satisfied.[53] Moody's evaluation means that, at best, PG&E can only hope for an improvement in credit ratings from S&P. In this case of a "split" rating where only S&P's ratings showed improvement, even PG&E's witness acknowledged that the reduction in debt costs would be significantly lowered from PG&E's original estimate.[54]

In light of Moody's undisputed conclusion that securitization would not improve PG&E's credit ratings, PG&E was forced to pin its hopes on S&P. *However, S&P was also unequivocal in concluding that securitization would not improve PG&E's credit ratings, even with its customary practice of treating securitized bonds as off-credit* (also referred to as "off-balance sheet"). S&P's analysis in its March 2020 rating evaluation letter -- which TURN quoted in its opening and reply briefs and the Decision does not address -- clearly explains why securitization will not improve PG&E's ratings.[55] S&P explained that it expected that [redacted] [56] This conclusion mirrors Moody's analysis, discussed

[53] D.19-06-027, Attachment 1, p. 6.
[54] Ex. PG&E-14, p. 5-11, PG&E states that, in the case of a split rating, the yield differential would fall from 60 basis points, on which its $441 million ratepayer savings estimate was based, to 14 basis points. The impact is to reduce PG&E's estimate of interest savings estimate from $423 million to $99 million. TURN cites this testimony to make the point that even PG&E conceded a split rating was much less valuable than a ratings improvement from both agencies. TURN has repeatedly made clear that its position is that there will be no interest cost savings because both ratings agencies have made clear that securitization will not improve PG&E's credit ratings. TURN Opening Brief, p. 28; TURN Reply Brief, p. 14.
[55] TURN Confidential Opening Brief, pp. 24-26; TURN Confidential Reply Brief, pp. 7-10.
[56] Ex. PG&E-01-C, p. 1-Exh1.2-4 (emphasis added).

above, and reflects the fact PG&E must use cash flow from the net operating loss (NOL) tax benefits and other sources to fund the Customer Trust, which offsets the cash flow benefits of the securitization. The Decision (p. 69) even states that the transfer of the NOLs to the CCT reduces PG&E's future cash flow, but fails to make the connection that this reduced cash flow offsets the otherwise credit-positive benefits of PG&E's proposal.

In addition, S&P's March 2020 evaluation letter specifically addressed the expected impact of securitization on PG&E's credit metrics. S&P stated that it expects [redacted][57] This conclusion – from S&P itself – contradicts the Decision's finding (p. 65) that PG&E's credit statistics are "expected to improve toward the middle to upper end" of the range for its business risk profile. In making this finding, the Commission never addresses this directly contrary evidence in S&P's evaluation. The above-quoted S&P conclusion also directly refutes PG&E's claim that the ratings agencies were only providing a snapshot analysis. S&P was using a three-year cash flow forecast, which is the same forecast period PG&E used.[58]

There can be no dispute that the most relevant and credible evidence of the impact of PG&E's securitization proposal on the *ratings agencies'* determination of PG&E's credit rating is what *those agencies* said in their evaluation reports in response to this exact question. As shown, those evaluations clearly and unequivocally contradict the Decision's finding that

[57] Ex. PG&E-01-C, p. 1-Exh1.2-4.
[58] TURN Reply Brief, pp. 9-10.

securitization would accelerate improvement in PG&E's credit ratings and put it on a path to investment grade status. The Decision never mentions these evaluations. As a result, the parties and any reviewing court can only wonder whether this evidence was considered at all, and, if so, why it was rejected.

B. The Failure to Address the Ratings Agencies' Findings that Securitization Would Not Improve PG&E's Credit Ratings Warrants Annulment of the Decision

The Commission has previously faced a situation in which its decision ignored an obviously critical issue that needed to be addressed before it could approve an application. In *Northern California Power Agency (NCPA*), the California Supreme Court found that the Commission's decision granting PG&E's an application for a certificate of public convenience and necessity improperly failed to consider important issues related to the antitrust and competitive implications of PG&E's proposal, even though they had been extensively addressed by the parties, including the petitioner NCPA. Because of this failure, the Commission's decision was annulled.[59]

The holding and language of *NCPA* are directly applicable here. As in *NCPA*, the issue of how securitization would change the credit ratings assigned by the credit rating agencies is essential to the resolution of the case. Scoping Ruling Issue 1(e) is "[w]hether the proposed securitization provides a sufficient path to an investment grade rating for PG&E."[60] In addition,

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[59] *Northern California Power Agency v. Public Utilities Comm.*, 5 Cal. 3d 370, 381 (1971).
[60] *Assigned Commissioner's Scoping Memo and Ruling (Scoping Ruling*), July 28, 2020, p. 4.

the Commission obviously considered the rating agency evaluations important, because the Scoping Ruling specifically directed PG&E to include in its supplemental testimony the S&P and Moody's ratings reports and analyses, including any "private reviews related to securitization implications."[61] Nevertheless, despite hearing extensive testimony and arguments from TURN and other intervenors on the key issue of the rating agencies' evaluations, the Decision "appears to ignore" this issue "entirely."[62] As *NCPA* states, it is not enough for the Commission to assert that it received evidence and heard legal arguments on such a critical issue. "The task of the Commission extends far beyond the passive role of a sounding board."[63] The Commission "cannot discharge its duty" without "weigh[ing] the opposing evidence and arguments" to determine whether PG&E has made the requisite showing.[64] Here, as in *NCPA*, the Decision completely fails to show that the Commission gave any consideration to the opposing evidence of the rating agency evaluations that contradict the Decision's conclusions. In addition, as *NCPA* also held, the failure to provide findings and conclusions on the material issue raised by the rating agencies' evaluations does not meet the requirements of § 1705.[65] Absent rehearing to correct these glaring omissions, the Commission's failure to discharge its basic decision-making duties compels annulment of the Decision.

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[61] *Scoping Ruling*, p. 8.
[62] *NCPA*, 5 Cal. 3d at 379.
[63] *Id.*
[64] *Id.*
[65] *Id.* at 380-381.

C. The Decision's Findings That Securitization Will Improve PG&E's Credit Ratings Are Based Solely on the Opinion of an Expert with a Clear Financial Bias, An Issue the Decision Does Not Address, Contrary to Section 1705

The only evidence proffered by PG&E to counter the ratings agencies' conclusions that securitization will not improve PG&E's credit ratings was the testimony of a high-ranking executive of Citigroup, Joseph Sauvage, whose title is Vice Chairman and Chairman of Global Power.[66] The Decision fails to discuss Mr. Sauvage's evident financial bias that discredits his expert witness testimony, even though TURN raised the issue in its opening brief, in its oral argument, and in its comments on the PD.[67] Mr. Sauvage's bias results from the undisputed fact that PG&E has committed to using Citigroup as its lead underwriter for the securitization. If, and only if the Commission approves a securitization, Citigroup stands to make as much as $41 million from the transaction.[68] The ability of Mr. Sauvage's firm to garner this huge payout was dependent on Mr. Sauvage rendering opinions that support approval of PG&E's request.

Because Mr. Sauvage's testimony is the sole support for the Commission's conclusions with respect to the impact of securitization on PG&E's credit rating, his financial bias is a material issue that the Decision must address under § 1705. Put another way, without crediting Mr. Sauvage's testimony, there is no evidentiary basis for the Decision's findings and conclusions with respect to PG&E's ratings. Indeed, as discussed in the previous section, the

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[66] Ex. PG&E-10, p. AppA-7.
[67] TURN Opening Brief, pp. 9-10; Tr., vol. 9, pp. 1600-1601 (TURN oral argument); TURN Comments on the PD, pp. 10-11.
[68] TURN Opening Brief in A.21-01-004, pp. 14, 15-16.

direct words of the ratings agencies themselves point to conclusions that are exactly the opposite of those reached in the Decision. Moreover, the "existence or nonexistence of a bias, interest, or other motive" is an issue that should be taken into account in determining the credibility of a witness.[69] As the California Supreme Court has observed, "there may be no stronger witness bias than a financial interest in the outcome of the litigation contingent upon its terminating favorably for the party for whom the witness testified."[70]

Under these circumstances, the Commission failed to meet its obligation to address – in separately stated findings and conclusions – the clearly material issue of the weight that should be given to Mr. Sauvage's testimony. Unless corrected, this violation of § 1705 warrants annulment of the Decision.

D. The Decision's Findings that PG&E's Proposal Will Accelerate Improvement in PG&E's Credit Ratings and Put PG&E on a Path to Investment Grade Status Are Not Supported by Substantial Evidence In Light of the Whole Record

As previously noted, the Decision finds that PG&E has met its burden to demonstrate that its proposal will accelerate improvement in PG&E's credit ratings and provide a sufficient path to an investment grade rating.[71] For the reasons explained in Sections V(A), V(B) and V(C) above, these findings are not supported by substantial evidence in light of the whole record as required by Section 1757(a)(4). Instead, the Decision ignores the most relevant and credible

[69] Cal. Evidence Code § 780(f).
[70] *People v. Lucas*, 60 Cal. 4th 153, 211 (2014).
[71] D.21-04-030, p. 18, 36.

evidence of how securitization will affect the ratings agencies' assessment of PG&E's credit ratings – the evaluation letters of the ratings agencies themselves on this very question. Worse, the only evidence that supports the Commission's findings comes from a witness with a clear financial bias that should have significantly reduced the weight, if any, that his testimony was accorded.

In this respect, the Decision bears strong similarities to the decision that was annulled in *TURN v. Public Utilities Comm. (Oakley II)*.[72] In *Oakley II*, the court held that the Commission's decision failed to satisfy the substantial evidence standard when a key finding of fact was based on admissible, but uncorroborated hearsay evidence.[73] The court explained that whatever evidentiary weight was due the hearsay evidence, that evidence alone could not support the Commission's finding.[74] Here, the Decision similarly relies on evidence that is entitled to little, if any, weight – the opinion of a PG&E witness with an obvious financial bias.[75] The case for invalidating the Decision's findings is even stronger here than in Oakley because the severely tainted evidence on which the Commission relies is directly contradicted by far more direct and reliable evidence of how the ratings agencies would respond to PG&E's securitization plan – the statements of the ratings agencies themselves on that very issue. When all of the evidence is

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[72] 223 Cal. App. 4th 945 (2014).
[73] *Id.* at 966.
[74] *Id.* at 963.
[75] *Pedro v. City of Los Angeles*, 229 Cal. App. 4th at 99 (Evidence will not be considered "substantial" unless it constitutes "evidence that a rational trier of fact could find to be reasonable, credible, and of solid value.")

considered, "including evidence detracting from the decision,"[76] the conclusion that the Decision is not supported by substantial evidence is even more compelling than in *Oakley II*. Under these circumstances, no reasonable person could reach the Decision's findings based on the record before the Commission, contrary to § 1757(a)(4).

E. Because the Decision's Finding that PG&E's Plan Would Put the Utility On a Path to Investment Grade Status Is Based on Multiple Legal Errors, the Conclusion that PG&E Has Satisfied the Stress Test Requirements Constitutes Legal Error

As Scoping Ruling Issue 1(c) makes clear, in order to satisfy the Stress Test requirements developed pursuant to Section 451.2(b), PG&E must show that its proposed securitization provides a sufficient path to an investment grade rating.[77] The foregoing sections V(A)-V(D) have shown that the Decision's conclusion that PG&E has met this requirement is premised on multiple legal errors. The Decision's conclusion on page 36 that PG&E has satisfied this requirement is therefore unsupported and legally invalid. Because PG&E has not met this key Stress Test requirement, the Decision commits legal error in concluding that PG&E is entitled to recover Stress Test costs under § 451.2(b) and to seek a financing order under § 451.2(c).[78] By failing to hold PG&E to the legal requirements the Commission itself established as a prerequisite for approving PG&E's application under § 451.2, the Commission has acted in

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[76] *Id.* at 959.
[77] *Scoping Ruling*, p. 4.
[78] In addition, as TURN pointed out in its Opening Comments on the PD (p. 12, fn. 58), the following sentence on page 35 of the Decision needs to be modified as follows: "The Reorganization Plan approved by the Commission in D.20-05-053 allowed PG&E to *seek to* apply the Stress Test and securitize debt attributable to 2017 wildfire costs." D.20-05-053 made no findings that PG&E had satisfied the Stress Test requirements and left that issue to this case, as is reflected in Scoping Ruling issue 1.

excess of its powers and jurisdiction and failed to proceed in the manner required by law, contrary to §1757(a)(1) and (2).

F. The Finding that Securitization Would Lead to Lower Ratepayer Costs Than Without Securitization Constitutes Legal Error

The Decision finds that ratepayer costs will be higher without securitization as it will take PG&E longer to achieve investment grade ratings.[79] For the reasons stated in foregoing sections V(A)-V(D), this finding contradicts the specific and direct conclusions of the ratings agencies discussed above that securitization will have no effect on PG&E's credit ratings. Accordingly, this finding is premised on the multiple legal errors discussed above and is legally invalid, contrary to § 1757(a)(4). To avoid legal error, this finding -- and any other findings indicating that securitization will improve PG&E's credit ratings and thereby benefit ratepayers -- must be removed from the decision.

VI. THE DECISION COMMITS LEGAL ERROR IN FINDING THAT REJECTION OF SECURITIZATION WOULD INCREASE RATEPAYER COSTS FOR DEBT THAT IS THE SOLE RESPONSIBILITY OF SHAREHOLDERS

The Decision states that PG&E testified that, absent securitization, it would likely be required to refinance the $6 billion of temporary utility debt at higher interest rates, which would result in higher costs of borrowing.[80] In the next sentence, the Decision (p. 69) concludes: "On balance, denial of the application is more likely to result in long-term costs to ratepayers that

[79] Decision, p. 18.
[80] D.21-04-030, p. 69. The Decision cites PG&E's reply brief, pp. 11-14 for this point, but those pages do not discuss higher financing costs to refinance the temporary utility debt.

exceed any short-term benefits." Basing this conclusion on increased borrowing costs to refinance the temporary utility debt betrays a blatantly incorrect assumption on the part of the Commission – that, absent securitization, ratepayers would be affected by borrowing costs to refinance the debt that PG&E took on to pay for 2017 and 2018 wildfire liabilities. Even PG&E did not make this argument.

In fact, the temporary utility debt and any subsequent refinancing of that debt relate entirely to wildfire liabilities for which PG&E shareholders bear full financial responsibility. D.20-05-053 is unequivocal that the Commission will hold PG&E to its promise that, absent securitization, PG&E will not seek recovery of any costs related to the 2017 and 2018 wildfire claims.[81] Thus, any financing costs associated with the temporary utility debt or replacement debt are shareholder-only below-the-line costs that cannot be recovered from ratepayers. Moreover, there is absolutely no support in the record for a finding that, absent securitization, ratepayers would be required to pay costs related to financing the wildfire liabilities that are the shareholders' responsibility.

Thus, the conclusion that ratepayers would be affected in the long-term by borrowing costs related to the temporary utility debt, or replacement debt ignores the Commission's own pronouncement less than a year ago and constitutes arbitrary and capricious decision-making, contrary to Section 1757(a)(5).[82] Because there is absolutely no evidentiary support for this

[81] D.20-05-053, pp. 81-82.
[82] *Ponderosa,* 36 Cal. App. 5th at 1019 (2019) (An abuse of discretion will be found if an agency decision is found to be arbitrary or to exceed the bounds of reason).

conclusion, no reasonable person could reach this conclusion based on the record, contrary to Section 1757(a)(4).[83] This incorrect conclusion betrays a fundamental misunderstanding of the impact of maintaining the status quo and rejecting PG&E's application and must be removed from the Decision.

VII. THE DECISION COMMITS LEGAL ERROR IN FINDING THAT TRANSFERRING NET OPERATING LOSS TAX BENEFITS FROM SHAREHOLDERS TO RATEPAYERS CONSTITUTES A RATEPAYER BENEFIT COMPARED TO THE STATUS QUO

The Decision (p. 69) states that "a question before us" is "whether the risk of realization of the NOLs is better borne by the utility or by ratepayers." The Decision (*id.*) determines that transferring this risk is "beneficial to ratepayers and in the public interest." This is another blatantly incorrect finding that, like the error discussed in Section VI above, is based on a fundamental misunderstanding of the status quo that would remain in place absent securitization.

As noted in the previous section, D.20-05-053 is clear that, absent securitization, ratepayers bear no financial responsibility for paying the 2017 and 2018 wildfire liabilities and therefore bear no risk.[84] Instead, all of the risk of paying those costs, including the risks associated with realization of NOLs, falls on PG&E's shareholders, where it belongs in light of the "abysmal"[85] conduct that gave rise to those liabilities. Absent a guarantee of ratepayer neutrality, which the Decision does not provide (see Section III(B) above), the Decision transfers the risks of realization of NOLs and investment returns from shareholders to captive ratepayers.

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[83] *E.g., Oakley II*, 223 Cal. App. 4th at 959.
[84] D.20-05-053, pp. 81-82.
[85] D.20-05-053, pp. 17, 68.

Thus, as was the case with the legal error identified in the previous section, the conclusion that ratepayers would benefit from the transfer of risks associated with paying the wildfire liabilities ignores the Commission's own pronouncement less than a year ago and constitutes arbitrary and capricious decision-making, contrary to Section 1757(a)(5).[86] Furthermore, no reasonable person could conclude, based on the record, that ratepayers would benefit from having to assume a risk that they do not bear in the absence of securitization, contrary to Section 1757(a)(4).[87] Again, this is a fundamental defect in the Decision that goes to the heart of the Commission's apparent conclusion that ratepayers would be made better off if securitization is approved. This legally erroneous finding must be removed.

VIII. THE DECISION'S FINDING THAT PG&E'S MODIFIED PROPOSAL REDUCES THE RISK OF A SHORTFALL TO 'NEAR ZERO' AND 'MINUSCULE' LEVELS IS NOT SUPPORTED BY ANY EVIDENCE IN THE RECORD AND VIOLATES THE DUE PROCESS RIGHTS OF THE PARTIES

The Decision finds that PG&E's modified proposal, which was presented for the first time in PG&E's opening brief and not addressed in the evidentiary record, would reduce the risk of a shortfall in the CCT (which in turn would prevent full offset of the fixed recovery charges on customer bills) to "near zero" and "minuscule" levels. The Decision states:

> PG&E states that as a result of such modifications [*i.e.,* the modifications first presented in its opening brief], the risk of a shortfall in the near term is near zero and there is no plausible scenario where Additional Shareholder Contributions are delayed post 2039) [*sic*]. We <u>recognize</u> PG&E's characterization that such risks are minimal and the adjusted

[86] *Ponderosa,* 36 Cal. App. 5th 999, 1019 (2019) (An abuse of discretion will be found if an agency decision is found to be arbitrary or to exceed the bounds of reason).
[87] *E.g., Oakley II*, 223 Cal. App. 4th at 959.

> proposal reduces risks of near term shortfalls to near zero and probabilities of any shortfalls to minuscule levels.[88]

The Decision goes on to state that "we agree the risks are improbable" and that we view the risk of shortfall as "real but not significant," repeating PG&E's claims that the risk is "near zero in the near term and minuscule with present value amounts quantified as $20-$30 million."[89]

This is an important finding that seems to give the Commission comfort that the risk of a shortfall is so remote that it need not provide the assurances TURN sought (see Section III(B) above) that ratepayer neutrality will be preserved.[90]

There is no evidence in the record to support a finding that PG&E's post-evidentiary hearing modifications would reduce the risk of a shortfall to near zero or minuscule levels. The Decision cites no *evidence* that can support these conclusions. Indeed, the Decision cannot do so, because PG&E did not present its modified proposal until its opening brief and therefore presented no record evidence regarding the modified proposal.[91] As a result, parties had no opportunity to present evidence or conduct discovery or cross-examination to probe the precise issue on which the Decision makes its wholly unsupported finding.

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[88] D.21-04-030, p. 66 (footnote omitted, emphasis added).
[89] D.21-04-030, p. 67.
[90] D.21-04-030, p. 67 ("we agree the risks are improbable and should only be evaluated if extreme circumstances give rise to a shortfall.") If a finding that the risk of a shortfall is remote was indeed a reason for rejecting TURN's requested assurances of ratepayer neutrality, it was legally inadequate. As discussed in Section III(B), ratepayer neutrality requires that any risk of a less than full offset of FRCs be foreclosed before PG&E's application may be approved.
[91] The Decision (pp. 53, 87 (FOF 278) tries to paper over this absence of evidentiary support by incorrectly stating that PG&E's modifications were developed "at and from" the evidentiary hearings. There can be no dispute that PG&E did not present its modified proposal until after the evidentiary hearings and thus presented no risk model results regarding it.

In the absence of any supporting evidence in the record regarding the risk of a shortfall under PG&E's modified proposal, no reasonable person could reach this conclusion based on the record, contrary to Section 1757(a)(4).[92] Furthermore, by making a key finding on this issue without affording parties the requisite opportunity for discovery (as required by Commission Rule of Practice and Procedure 10.1) and presentation of evidence and cross examination of PG&E's evidence (as required by the Due Process Clause of the Fourteenth Amendment and Section 13 of the Commission's Rules of Practice and Procedure), the Commission has violated the due process rights of the parties and failed to follow its own procedures, contrary to §§ 1757(a)(2)[93] and (6).[94]

IX. THE DECISION COMMITS LEGAL ERROR IN REFUSING TO ADMIT AND CONSIDER TURN'S EVIDENCE FROM PG&E'S 10-K ADMITTING A SIGNIFICANT RISK THAT THE COMPANY MAY NOT BE ABLE TO FULLY REALIZE THE $7.59 BILLION IN NET OPERATING LOSS TAX BENEFITS ON WHICH PG&E IS RELYING TO FUND THE CUSTOMER CREDIT TRUST

The Decision finds that any adverse events that are not accounted for in PG&E's modeling of the risk of a CCT short should only affect the timing of the realization of the NOLs, and "should not prevent them from being realized eventually."[95] This finding – that there is no risk of PG&E eventually being able to realize the full $7.59 billion of NOLs – is directly contradicted by evidence offered by TURN from PG&E's own 10-K submission that it filed with

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[92] *E.g., Oakley II*, 223 Cal. App. 4th at 959.
[93] *Southern California Edison Co.*., 140 Cal. App. 4th at 1106.
[94] *Caesar's Restaurant v. Industrial Acc. Comm.* 175 Cal. App. 2d at 855; s*ee Oakley II*, 223 Cal. App. 4th at 951.
[95] D.21-04-030, p. 68.

the Securities and Exchange Commission (SEC) on February 25, 2021.[96] As explained below, the Commission's failure to admit and consider this evidence that conflicts with the above-described finding constitutes legal error.

The 10-K that TURN offered into evidence acknowledged much more significant risk relating to realization of the NOLs than PG&E had portrayed in its testimony and briefs. In its opening brief, PG&E claimed that there was "virtually no risk that the full amount" will not be contributed to the CCT.[97] In its reply brief, PG&E stated that "it is not therefore a question of if, but when, the $7.59 billion will be contributed to the Trust."[98] However, in the February 25, 2021 10-K, submitted to the SEC just 24 days after filing its reply brief in this case, PG&E told a very different story, including:

- PG&E's ability to use "some or all" of the NOLs "may be subject to certain limitations, if the IRS finds that PG&E has undergone an "ownership change" under Section 382 of the Internal Revenue Code.

- As of the 2/25/21 date of the report, it is "more likely than not" – not virtually certain as claimed in PG&E's briefs – that PG&E has not undergone such an ownership change, but whether such an event has occurred or will occur "depends on several factors outside [PG&E's] control and the "application of certain laws that are uncertain in several respects."

- "[T]here can be no assurance that the IRS would not successfully assert that PG&E Corporation has undergone or will undergo an ownership change" pursuant to PG&E's bankruptcy plan of reorganization.

- Limitations on PG&E's ability to use NOLs could cause them to "expire unused," "reducing or eliminating the benefit" of such NOLs, which is "critical to a

[96] Motion of TURN for Admission of Additional Evidence (TURN 10-K Motion), March 5, 2021.
[97] PG&E Opening Brief, p. 97.
[98] PG&E Reply Brief, p. 83.

> successful rate-neutral securitization transaction," a clear reference to PG&E's proposal in this case.[99]

These statements directly contradict PG&E's claim and the Commission's finding that full realization of the NOLs is either certain or virtually certain. In addition, PG&E cannot question the reliability of these statements, as they are admissions made directly by PG&E in a document that PG&E chose to file with a federal regulatory agency.

Nevertheless, the Commission has apparently denied admission of this highly relevant and reliable evidence into the record. TURN says "apparently" because there has been no ruling directly addressing TURN's 10-K Motion, only an ordering paragraph stating that all pending but unaddressed motions are denied "as moot."[100] The Decision offers no explanation as to why a motion seeking the admission of evidence that contradicts a finding made in the Decision would be moot, particularly when parties have a statutory right to seek rehearing and judicial review of the Decision.

The Commission's denial of TURN's 10-K motion and the refusal to consider the statements in PG&E's 2/25/21 10-K that conflict with the Decision's finding is arbitrary and capricious and therefore an abuse of the Commission's discretion, contrary to §1757(a)(5).[101] In addition, the Commission, like courts reviewing its actions, is not free to disregard relevant evidence, but rather must consider all relevant evidence, "including evidence detracting from the

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[99] TURN 10-K Motion, p. 3 (quoting PG&E's 2/25/21 10-K filing).
[100] D.21-04-030, p. 94 (OP 23).
[101] *Ponderosa*, 36 Cal. App. 5th at 1019.

decision."[102] The Commission's failure to consider the 10-K evidence that detracts from its finding that realization of the NOLs is certain constitutes a failure to base its findings on substantial evidence in light of the *whole* record, contrary to §1757(a)(4).

X. THE DECISION COMMITS LEGAL ERROR IN FINDING, WITHOUT ANY SUPPORTING EVIDENCE, THAT REJECTION OF SECURITIZATION WOULD INCREASE SAFETY RISKS AND HINDER ACHIEVEMENT OF CLIMATE GOALS

The Decision states (p. 53): "We are convinced that rejection of this securitization would ultimately result in higher costs to ratepayers, increase safety risks and hinder achievement of our state climate and greenhouse gas goals." For the following reasons, this statement constitutes legal error.

First, with respect to higher costs to ratepayers, Sections V, VI and VII above have demonstrated the legal errors in the Decision's findings that securitization would improve PG&E's credit ratings and otherwise benefit ratepayers by avoiding higher costs that would be imposed on ratepayers absent securitization. TURN will not repeat those arguments here.

With respect to the notion that denial of securitization would somehow increase safety risks and hinder achievement of climate and greenhouse gas goals, the Decision cites no evidence in the record to support these outlandish claims and fails to explain how the disposition of this application would have any impact on safety and climate goals. This statement finds no support in the record, and no reasonable person could reach this conclusion based on the record

[102] *Oakley II*, 223 Cal. App. 4th at 959; *County of San Diego v. Assessment Appeals Bd. No. 2, 148 Cal. App*. 3d 548, 555 (1983).

in this case, contrary to § 1757(a)(4).[103] In addition, the issue of the impact of PG&E's proposal on safety and the state's climate change goals was not among the many issues listed in the Scoping Ruling. As a result, the Commission has "failed to comply with its own rules concerning the scope of issues to be addressed in the proceeding" and therefore has failed to proceed in the manner required by law, contrary to § 1757(a)(2).[104] This sentence must be removed from the Decision.

XI. THE DECISION COMMITS LEGAL ERROR IN FAILING TO ADDRESS THE REASONABLENESS OF PG&E'S PROPOSAL TO REQUIRE RATEPAYERS TO PROVIDE ZERO INTEREST LOANS IN THE EVENT OF AN INTERIM SHORTFALL

PG&E's proposal and modeling assumed that any shortfalls during the course of the next 30 years that are repaid from the CCT years later would be treated as zero interest loans from ratepayers. TURN pointed out that this treatment of ratepayers is unfair and contrary to the ratepayer neutrality requirement. TURN explained that a ratepayer that pays a dollar in one year, and is only reimbursed with one dollar five years later, has not been made whole.[105] The Decision fails to mention this dispute. It is therefore unclear whether the Commission has endorsed or rejected PG&E's proposal to force ratepayers to make interest free loans of unlimited duration in the event of any trust shortfalls occurring over the next 30-years.

The Decision's failure to address this issue violates the § 1705 requirement to provide findings and conclusions on all material issues. The issue of whether ratepayers are required to

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[103] *E.g., Oakley II*, 223 Cal. App. 4th at 959.
[104] *Southern California Edison Co. v. Public Utilities Comm.*, 140 Cal. App. 4th at 1106.
[105] TURN Reply Brief, pages 49-52.

provide interest free loans is material because, as explained, it is highly relevant to the question of whether PG&E's proposal satisfies the ratepayer neutrality requirement, a central issue in this case.[106] In addition, by failing to address this issue, the Decision deprives the reviewing court and parties of the information they need to assess whether the Commission has acted arbitrarily or otherwise failed to properly carry out its decision-making duties.[107]

The Commission should grant rehearing to address this issue and direct PG&E to provide a reasonable rate of interest that makes customers whole for any delay in receiving offsetting credits. However, if, on rehearing, the Commission chooses to accept PG&E's proposal, the CPUC must cite record evidence showing why it would be reasonable, and consistent with the ratepayer neutrality requirement, for customers to provide an interest free loan that could last years or decades.

Alternatively, the Commission's decision in response to this pleading should, at a minimum, clarify that this issue is appropriate to raise in a "subsequent proceeding" to "address unexpected shortfalls," as referenced on pages 70-71 of the Decision.

XII. THE DECISION COMMITS LEGAL ERROR IN FAILING TO ADDRESS THE REASONABLENESS OF PG&E'S PROPOSAL TO REQUIRE RATEPAYERS TO PAY A 'GROSS UP' TO COVER PG&E'S TAX OBLIGATIONS IF THERE IS A TRUST SHORTFALL

TURN criticized PG&E's proposal to require ratepayers to pay an additional 38.9% tax gross up on payments for the securitized debt any time there is a shortfall in funds available from

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[106] *E.g., Greyhound Lines, Inc. v. Public Util. Comm.,* 65 Cal. 2d 811, 813 (1967) ("every issue that must be resolved to reach [the] ultimate finding" is material under § 1705).
[107] *Id.,* 65 Cal. 2d at 813.

the CCT. TURN noted that this additional payment would "add insult to injury" in the event of shortfalls by unfairly forcing ratepayers to absorb 100% of PG&E's incremental tax burdens associated with ratepayer bond payments and would only exacerbate a failure to achieve ratepayer neutrality.[108] This result would be particularly unfair because this situation would only arise because of PG&E's failure to sufficiently fund the CCT, not because customers had consumed more of PG&E's services. TURN urged the Commission to reject this unfair element of PG&E's proposal.

The Decision never acknowledges TURN's criticism, fails to mention the existence of any dispute on this point, and does not indicate whether it approves or rejects PG&E's treatment of this issue.

For the reasons discussed in the previous section, the Decision's failure to address this issue violates the § 1705 requirement to provide findings and conclusions on all material issues. The issue of whether ratepayers are required to pay for additional taxes that PG&E may incur in the event of a shortfall is material because, as explained, it is highly relevant to the question of whether PG&E's proposal satisfies the ratepayer neutrality requirement, a central issue in this case.[109] In addition, by failing to address this issue, the Decision deprives the reviewing court and parties of the information they need to assess whether the Commission has acted arbitrarily or otherwise failed to properly carry out its decision-making duties.[110]

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[108] TURN Opening Brief, pages 124-125.
[109] *E.g., Greyhound Lines, Inc. v. Public Util. Comm.,* 65 Cal. 2d 811, 813 (1967) ("every issue that must be resolved to reach [the] ultimate finding" is material under § 1705).
[110] *Id.,* 65 Cal. 2d at 813.

The Commission should grant rehearing to address this issue and direct PG&E's shareholders to pay any increased tax costs in the event that customer credits fall short of FRC payments by ratepayers.

Alternatively, the Commission's decision in response to this pleading should, at a minimum, clarify that this issue is appropriate to raise in a "subsequent proceeding" to "address unexpected shortfalls," as referenced on pages 70-71 of the Decision.

XIII. CONCLUSION

For the foregoing reasons, the Commission should grant rehearing to correct each of the legal errors specified in this application for rehearing.

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Respectfully submitted,

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