

Decision **PROPOSED DECISION OF ALJ HAGA** (Mailed 3/23/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Pacific Gas and Electric Company for
(1) Administration of Stress Test
Methodology Developed Pursuant to
Public Utilities Code Section 451.2(b)
and (2) Determination That \$7.5 Billion
of 2017 Catastrophic Wildfire Costs and
Expenses Are Stress Test Costs That
May Be Financed Through Issuance of
Recovery Bonds Pursuant to Section
451.2(c) and Section 850 et seq.(U39E).

Application 20-04-023

**DECISION APPROVING THE APPLICATION OF STRESS TEST
METHODOLOGY TO PACIFIC GAS & ELECTRIC COMPANY**

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Attachment A

DECISION APPROVING THE APPLICATION OF STRESS TEST METHODOLOGY TO PACIFIC GAS & ELECTRIC COMPANY

Summary

This Decision determines that Pacific Gas & Electric Company (PG&E) satisfies the Stress Test Methodology created pursuant to Public Utilities Code Section 451.2(b) and that \$7.5 billion of 2017 catastrophic wildfire costs and expenses are Stress Test Costs that may be financed through the issuance of recovery bonds pursuant to Public Utilities Code Sections 850 *et. seq.*

This decision authorizes PG&E to establish a Customer Credit Trust, funded by PG&E shareholders, that will provide a monthly Customer Credit to ratepayers to offset the Fixed Recovery Charge that may be created to pay the costs and expenses of the recovery bonds in order to achieve a ratepayer neutral result. Consideration of the creation of the Fixed Recovery Charge and associated authorization to issue the recovery bonds is discussed in a coordinated proceeding, Application 21-01-004.

1. Background

Catastrophic wildfires have devastated California in recent years. The Legislature enacted Senate Bill (SB) 901 in 2018 and Assembly Bill (AB) 1054 in 2019 to, among other things, address electrical corporations' exposure to financial liability resulting from wildfires that were caused by utility equipment and increased costs to ratepayers.

Application (A.) 20-04-023 (Application or Securitization Application) was filed on April 30, 2020, by PG&E seeking to apply the Stress Test Methodology adopted in Decision (D.) 19-06-027 pursuant to Public Utilities Code Section 451.2(b); and determine that pursuant to the Stress Test Methodology \$7.5 billion of 2017 catastrophic wildfire costs and expenses may be financed

through the issuance of recovery bonds pursuant to Public Utilities Code Section 850 *et seq.*¹

1.1. Factual Background

On September 21, 2018, SB 901² was signed by Governor Brown adopting, among many other things, § 451.2 which governs the Commission's review of applications by electrical corporations that request recovery of costs and expenses from catastrophic wildfires having an ignition date in 2017. On July 12, 2019, AB 1054 was signed by Governor Newsom adopting, among many other things, an amended Division 1, Part 1, Chapter 4, Article 5.8, commencing with § 850.³ Sections 451.2(c) and 850.1(a) authorize the Commission to issue a financing order to allow for recovery of costs that exceed the maximum amount a utility can pay without harming customers, as determined pursuant to § 451.2(b).

The Commission issued a rulemaking in 2019 to, among other things, guide the evaluation of an electrical corporation's financial status and the determination of the maximum amount the corporation can pay for 2017 catastrophic wildfire costs. D.19-06-027 (Stress Test Decision) adopted a methodology for conducting a financial "Stress Test" to implement the directives of § 451.2. PG&E's application asks this Commission to apply that methodology because it has incurred costs and expenses from 2017 wildfires that should be disallowed, and it seeks to issue recovery bonds for a portion of those costs and expenses pursuant to § 451.2(c) and §§ 850 *et. seq.*

¹ All statutory references are to the California Public Utilities Code unless otherwise stated.

² Ch. 626, Stats. 2018.

³ Ch. 79, Stats 2019. Article 5.8 was later amended by Assembly Bill 1513 and authorizes the issuance of Recovery Bonds.

The Stress Test Decision described the methodology:

First, a utility requests application of the Stress Test to determine if disallowed wildfire costs should be allocated to ratepayers.

Second, Commission applies a three-factor framework to determine the maximum amount the utility can pay, which is called the “Customer Harm Threshold.” The amount of Stress Test Costs allocated to ratepayers equals the total disallowed wildfire costs presented in the application for recovery, minus the Customer Harm Threshold amount.

Third, the Commission considers ratepayer protection measures as a necessary condition on the utility’s authorization to recover Stress Test Costs provided in the utility’s application and vetted by stakeholders. Ratepayer Protection Measures are intended to mitigate ratepayer impacts given that the determination of Stress Test Costs will be final and not subject to future revision.⁴

In its application, PG&E asks the Commission to apply the Stress Test Methodology by considering its financial status and determining its “Customer Harm Threshold.” Specifically, PG&E seeks to have the Commission determine it has satisfied the Stress Test developed pursuant to § 451.2(b), and that at least \$7.5 billion of wildfire claims costs are eligible for recovery under the Stress Test. In combination with the Stress Test determination, PG&E has proposed to establish a grantor trust (the Customer Credit Trust or Trust) that is designed to fund offsetting bill credits equal to the fixed recovery charge to meet its obligation to the Commission that securitization is neutral, on average, to ratepayers.⁵ The evaluation of the Customer Credit Trust is addressed in this decision because, under the terms of the statute, a financing order addresses the

⁴ D.19-06-027, Attachment A at 3.

⁵ See, D.20-05-053 at 75-78. See also, AB 1054 (§ 3292(b)(1)(D)).

adoption of fixed recovery charges and associated terms for an issuance of recovery bonds.⁶

AB 1054 specified that if the Commission determines costs must be allocated pursuant to § 451.2, the Commission “may issue a financing order to allow recovery through fixed recovery charges....” In A.21-01-004 (Financing Application) PG&E seeks to have the Commission authorize the issuance of \$7.5 billion of recovery bonds pursuant to §§ 451.2(c) and 850.1(a) as that amount is within the “the amount of costs and expenses ... disallowed for recovery ... but exceeding” the Customer Harm Threshold. Thus, consideration of granting authority to issue recovery bonds and complete a securitization will be addressed in a separate decision, A.21-01-004, that is contingent on approval of this decision.

PG&E claims the proposed securitization provides a cost-efficient way to retire \$6 billion of temporary utility debt that was used to pay wildfire claims costs on emergence from bankruptcy protection plus associated interest (approximately \$150 million) and to accelerate the final payment of \$1.35 billion to wildfire victims as described in the Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 (Reorganization Plan).

PG&E states the proposed Securitization is designed to be rate-neutral, on average, and customer-protective.

⁶ Conversely, because amounts determined herein to meet the § 451.2(b) criteria may only be recovered via a securitization approved pursuant to § 850.1(a) in order for PG&E to meet its prior commitments, this decision is contingent on the result of A.21-01-004.

PG&E proposes to provide a credit to customers funded by shareholder assets placed into the Customer Credit Trust. Specifically, PG&E proposes to fund the Trust through the following shareholder assets:

- (1) an initial contribution of \$1 billion (the Initial Shareholder Contribution);
- (2) a second \$1 billion contribution in 2024;⁷
- (3) up to \$7.59 billion of additional contributions (the Additional Shareholder Contributions) funded by certain shareholder-owned tax deductions or net operating losses (the Shareholder Tax Benefits);⁸
- (4) a contingent supplemental shareholder contribution in 2040 (at which point the Additional Shareholder Contributions should have been fully contributed), if needed, up to a limit of \$775 million;⁹ and
- (5) “Customer Credit Trust Returns” which are the expected returns on the investment of the assets in the Customer Credit Trust.¹⁰

⁷ PG&E Opening Brief at 6. The Application initially proposed a \$1.8 billion Initial Shareholder Contribution to be made concurrent with the issuance of the securitized bonds. As explained below, we adopt the modified proposal, with conditions. However, at the time PG&E would have contributed the full amount of the initial contribution under the pro-rata method it originally proposed, it must file a Tier 2 advice letter demonstrating that the deferral of the second part of its modified time-sequenced initial contribution continues to not be credit negative to PG&E given 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. Otherwise, PG&E must propose modified timing for this contribution to avoid adversely impacting PG&E’s credit statistics relative to upfront funding of the first \$1.8 billion as originally proposed.

⁸ Application at 4; *see also*, Exhibit PGE-06. For income tax purposes, a net operating loss (NOL) occurs when a company’s allowable deductions exceed its taxable income within a tax period. The NOL can generally be used to offset the company’s tax payments in future tax periods through federal tax provision called a loss carryforward. (*See*, 26 U.S. Code §172.) The terms Shareholder Tax Benefit and NOL are used interchangeably throughout this decision.

⁹ PG&E Opening Brief at 6-7.

¹⁰ Application at 4, 9. (*See also*, Exhibits PGE-06, PGE-15.)

PG&E also proposes to share with customers a portion of any surplus of the assets that exists in the Customer Credit Trust, to be distributed at the end of the life of the Trust, or sooner if the Commission so directs.¹¹

Because PG&E believes the Customer Credit Trust is expected to end up with a substantial surplus, its original application proposes sharing 25 percent of any surplus and that the surplus sharing represents a significant benefit for customers.¹²

PG&E proposes that the Customer Credit Trust be structured in a manner similar to the nuclear decommissioning trusts, managed by a majority-independent committee pursuant to investment policies approved by the Commission. PG&E states the assets of the Customer Credit Trust would be dedicated exclusively to providing the Customer Credit,¹³ and the Trust would be structured to minimize the risk that it would be consolidated with PG&E in the event of a future bankruptcy.¹⁴

PG&E argues the proposed Securitization would support and expedite PG&E's path back to an investment-grade issuer credit rating. PG&E states that this will help it continue to make critical safety and reliability improvements in its electric system and accelerate the final payment to wildfire victims as set forth in PG&E's Reorganization Plan. PG&E argues that the Securitization is in the public interest, satisfies the requirements of Section 850.1(a)(1)(A), and should be authorized by the Commission.

¹¹ Application at 4, 9-10.

¹² *Id.*

¹³ Application at 4 (Trust assets will also be used for trust expenses and payment of taxes on the trust returns.).

¹⁴ *Id.*

In testimony, and detailed in its briefing materials filed on January 15, 2021, PG&E proposed modifications to its proposed structure, including:

1. Modifying the sequencing of the monetization of net operating losses (NOLs), accelerating \$89 million of contributions from 2024 into 2023;
2. Modifying the Customer Credit Trust portfolio allocation to reduce reliance on equity returns (i.e., more fixed income investments relative to equity investments);
3. Increasing shareholder cash contributions by \$200 million, and delaying a portion of the initial contributions to the first quarter of 2024; and
4. Agreeing that the Commission may open a proceeding in 2040 that could result in direction to PG&E to make up to \$775 million of additional contributions.
5. PG&E also agreed following its initial application to contribute additional tax attributes, as required, to ensure the market value of settlements would not reduce NOL contributions.¹⁵

1.2. Procedural Background

Notice of the Application appeared on the Commission's Daily Calendar on May 4, 2020. Resolution ALJ 176-3460 was adopted on May 7, 2020, and preliminarily categorized this proceeding as ratesetting and determined that hearings were necessary. PG&E was granted an extension of time to comply with Rule 3.2(b) and (c) due to shelter in place orders in Bay Area counties on May 21, 2020.

Protests were timely filed by Wild Tree Foundation (Wild Tree), Alliance for Nuclear Responsibility (A4NR), California Large Energy Consumers

¹⁵ PGE-06 at 6-8

Association (CLECA), the Public Advocates Office of the California Public Utilities Commission (Cal Advocates), The Utility Reform Network (TURN), City and County of San Francisco (CCSF), and Energy Producers and Users Coalition (EPUC). In addition, the Agricultural Energy Consumers Association (AECA) submitted a response, and Southern California Edison Company, the Coalition of California Utility Employees (CUE), and the Official Committee of Pacific Gas and Electric Company Tort Claimants filed motions for party status that have all been granted.

A telephonic prehearing conference (PHC) was held on June 18, 2020, to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. A Joint PHC Statement was filed on June 17, 2020, by Wild Tree, EPUC, AECA, A4NR, CCSF, PG&E, Cal Advocates, CLECA, and TURN. TURN also filed a separate PHC Statement to address certain issues on which the parties did not agree in the Joint PHC Statement. A Scoping Memo was issued on July 28, 2020, setting forth the issues and initial schedule of the proceeding.

A Ruling issued on August 17, 2020, amended the schedule in response to an unopposed request by TURN to provide additional time to prepare intervenor testimony and shorten the length of the scheduled evidentiary hearing. PG&E submitted its Proof of Rule 3.2(e) Compliance on September 29, 2020, and submitted its Proof of Rule 13.1(b) Compliance on December 7, 2020. Evidentiary Hearings were held on December 7-11, and 14-16, 2020. A ruling granting proposed corrections to the evidentiary hearings transcripts was issued on March 1, 2021. A motion to consolidate this application with A.21-01-004 was made by PG&E on January 7, 2021. Oppositions to that motion were filed by Wild Tree, EPUC and CLECA (jointly), and TURN on January 22, 2021.

Opening Briefs were filed by A4NR, AECA, Cal Advocates, CCSF, CLECA, CUE, EPUC, PG&E, TURN, and Wild Tree on January 15, 2021. Reply Briefs were filed by Wild Tree on January 29, 2021, and by A4NR, AECA, CCSF, CLECA, EPUC, PG&E, and TURN on February 1, 2021. A4NR and TURN submitted motions for leave to file confidential versions of both their opening and reply briefs under seal. PG&E submitted a motion for leave to file a confidential version of its reply brief under seal.

On January 14, 2021, A4NR submitted a motion for oral argument before the Commission regarding this application in accordance with Rule 13.13. Oral argument before the Commission is scheduled for April 9, 2021.

On March 2, 2021, a ruling granted the motions of PG&E, CCSF, and TURN seeking corrections to the evidentiary hearing transcripts.

On March 17, 2021, a ruling removed Southern California Edison Company (SCE), and the Official Committee of Pacific Gas and Electric Company Tort Claimants from party status.

2. Jurisdiction

The following critical statutory provisions are at issue in this proceeding:¹⁶

§ 451.2(a): In an application by an electrical corporation to recover costs and expenses arising from, or incurred as a result of, a catastrophic wildfire with an ignition date in the 2017 calendar year, the commission shall determine whether those costs and expenses are just and reasonable in accordance with Section 451.

(b) Notwithstanding Section 451, when allocating costs, the commission shall consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without

¹⁶ We recite the most salient statutory provisions in this section, other Constitutional and statutory provisions may be cited as appropriate.

harming ratepayers or materially impacting its ability to provide adequate and safe service. The commission shall ensure that the costs or expenses described in subdivision (a) that are disallowed for recovery in rates assessed for the wildfires, in the aggregate, do not exceed that amount.

(c) An electrical corporation may apply for a financing order pursuant to Article 5.8 (commencing of Section 850) of Chapter 4 for the amount of costs and expenses allocated to the ratepayer as just and reasonable or as disallowed for recovery but exceeding the amount determined pursuant to subdivision (b).

§ 850(a)(2): If an electrical corporation submits an application for recovery of costs and expenses related to catastrophic wildfires, including fire risk mitigation capital expenditures identified in subdivision (e) of Section 8386.3, in a proceeding to recover costs and expenses in rates and the commission finds that some or all of the costs and expenses identified in the electrical corporation's application are just and reasonable pursuant to Section 451, the electrical corporation may file an application requesting the commission to issue a financing order to authorize the recovery of those just and reasonable costs and expenses by means of a financing order, with those costs and expenses being recovered through a fixed charge pursuant to this article....

§ 850(b)(2): "Catastrophic wildfire amounts" means the portion of costs and expenses the commission finds to be just and reasonable pursuant to Section 451.1 or the amount determined pursuant to subdivision (c) of Section 451.2....

§ 850(b)(6): "Financing order" means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery charges and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated

with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the recovery bonds contemplated by the financing order....

§ 850(b)(10): “Recovery costs” means any of the following:
(A) The catastrophic wildfire amounts or costs pursuant to paragraph (2) of subdivision (a) authorized by the commission in a financing order for recovery....

§ 850(b)(14): “True-up adjustment” means a formulaic adjustment to the fixed recovery charges as they appear on customer bills that is necessary to correct for any overcollection or undercollection of the fixed recovery charges authorized by a financing order and to otherwise ensure the timely and complete payment and recovery of recovery costs over the authorized repayment term.

§ 850.1(a): If an electrical corporation files for recovery of recovery costs and the commission finds some or all of those costs and expenses to be just and reasonable pursuant to Section 451 or 451.1, as applicable, or the commission allocates to the ratepayers some or all of those costs and expenses pursuant to subdivision (c) of Section 451.2, the commission may issue a financing order to allow recovery through fixed recovery charges, which would therefore constitute recovery property under this article, and order that any portion of the electrical corporation’s federal and State of California income and franchise taxes associated with those fixed recovery charges and not financed from proceeds of recovery bonds may be recovered through fixed recovery tax amounts.

§ 850.1(a)(1)(A): Following application by an electrical corporation, the commission shall issue a financing order if the commission determines that the following conditions are satisfied:

- (i) The recovery cost to be reimbursed from the recovery bonds have been found to be just and reasonable pursuant to Section 451 or 451.1, as applicable, or are

allocated to the ratepayers pursuant to subdivision (c) of Section 451.2.

(ii) The issuance of the recovery bonds, including all material terms and conditions of the recovery bonds, including, without limitation, interest rates, rating, amortization redemption, and maturity, and the imposition and collection of fixed recovery charges as set forth in an application satisfy all of the following conditions, as applicable:

- (I) They are just and reasonable.
- (II) They are consistent with the public interest.
- (III) The recovery of recovery costs through the designation of the fixed recovery charges and any associated fixed recovery tax amounts, and the issuance of recovery bonds in connection with the fixed recovery charges, would reduce, to the maximum extent possible, the rates on a present value basis that consumers within the electrical corporation's service territory would pay as compared to the use of traditional utility financing mechanisms, which shall be calculated using the electrical corporation's corporate debt and equity in the ratio approved by the commission at the time of the financing order.

§ 850.1(a)(1)(B): The electrical corporation may request the determination specified in subparagraph (A) by the commission in a separate proceeding or in an existing proceeding or both....

3. Issues Before the Commission

The issues to be determined are:

- 1) Whether, under D.19-06-027, PG&E has met its burden to demonstrate that it is eligible to access and has satisfied the Stress Test developed pursuant to Section 451.2(b), including:

- a) Whether PG&E's application satisfies all applicable legal requirements.
 - b) Whether the Commission has sufficient information to determine the financial status of PG&E.
 - c) Whether the proposed securitization provides a sufficient path to an investment grade rating for PG&E.
 - d) Whether excess cash and non-core asset sales are appropriately calculated by PG&E.
 - e) Whether a regulatory adjustment is warranted.
- 2) Whether PG&E has sufficiently demonstrated that 2017 wildfire claims costs are eligible for recovery under the Stress Test including:
- a) Whether PG&E's estimations of its 2017 wildfire claims costs are accurate.
 - b) Whether PG&E's wildfire claims costs should be measured based on the stated value of the Fire Victim Trust settlement or the market value of the settlement.
 - c) Whether at least \$7.5 billion of the wildfire claims costs being paid as part of PG&E's Reorganization Plan are attributable to the 2017 North Bay Wildfires.
- 3) Whether PG&E's proposal for the securitization is neutral, on average, to ratepayers, as required by D.20-05-053, including:
- a) Is the proposed structure reasonable in the event there is ultimately a Customer Credit Trust shortfall?
 - b) Whether PG&E's proposal reasonably accounts for risks to ratepayers or whether alternatives to PG&E's securitization transaction are available that strike a better balance of benefits and detriments.
 - c) Would providing for a dollar-for-dollar rate credit (in the amount of any shortfall) appropriately ensure ratepayers always receive the full offset? Would such a structure create any secondary issues?

- d) If modifications to PG&E's proposed structure (including rate credits) are proposed, would those modifications impact credit ratings, and if so, what is the impact?
 - e) How should downside risk and upside potential in the Customer Credit Trust be allocated between PG&E shareholders and ratepayers?
- 4) Whether the Commission has sufficient information to determine the amount and timing of NOLs that will be available to fund the Customer Credit Trust, including:
- a) What risks exist in the proposed forecast for the amount and timing of receipt of PG&E's realization of NOLs?
 - b) How should the Commission evaluate and account for risks that may reduce the value or change the timing of NOL realization?
 - c) Whether there are other quantifiable risks related to PG&E's ability to collect or otherwise realize the value of NOLs on its projected timeline, including: its unique situation of having recently emerged from bankruptcy; exposure to future additional wildfire losses; the actual market value of the Fire Victim Trust settlement; or statutory changes including Assembly Bill 85, adding Section 17276.23 to the California Revenue and Taxation Code (Stats. 2020, Ch. 8, Sec. 8. Effective June 29, 2020).
 - d) Whether PG&E's proposal sufficiently addresses such risks.
- 5) Whether § 451 applies, and, if so, whether PG&E has met its burden of showing that the proposed securitization transaction is just and reasonable under § 451.
- 6) Whether PG&E's investment returns assumptions and criteria for allocating the Customer Credit Trust investments are reasonable and appropriate, including:

- a) Does PG&E's proposal, or would an alternative proposal, sufficiently ensure that ratepayers receive the entirety of tax benefits and investment returns that PG&E estimates will be used to fund the Customer Credit Trust?
 - b) How should the Customer Credit Trust be allocated between different investment securities?
 - c) What impacts would any proposed changes have on the ability of the Customer Credit Trust to fully satisfy all obligations related to securitization?
- 7) If the securitization is approved, should the Commission authorize PG&E's proposed adjustments to its ratemaking capital structure?
- 8) If the securitization is approved, what are the impacts on departing municipal customers, including the Fixed Recovery Charges, Customer Credit, and surplus in the Customer Credit Trust?

Additional issues relating to PG&E's proposed issuance of a financing order under §§ 850 *et seq.*, will be resolved separately in our disposition of A.21-01-004, including but not limited to:¹⁷

- 1) Whether the Commission should determine that the conditions set forth in § 850.1(a)(1)(A)(ii) are satisfied.
 - 2) What role should the Commission play in structuring the securitization, including the selection of underwriters and asset managers?
- 4. PG&E's Financial Status and Granting Authority to Implement §§ 451.2(b) and (c) For Wildfire Costs and Expenses with Conditions**

PG&E has satisfied the requirements of the Stress Test Methodology and we can determine that \$7.5 billion of 2017 wildfire costs and expenses incurred by PG&E are Stress Tests Costs to be recovered through the issuance of recovery

¹⁷ See, Ruling Denying Consolidation of Proceedings and Incorporating Records.

bonds pursuant to § 451.2(c) and §§ 850 *et seq.* We adopt the overall transaction structure proposed by PG&E, including the Customer Credit Trust, with conditions explained below. The adoption of a financing order that allows for the issuance of recovery bonds will be considered in A.21-01-004.

As noted above, the instant proceeding is categorized as ratesetting. The Commission is charged with the responsibility of ensuring that all rates demanded or received by a public utility are just and reasonable.¹⁸ In ratemaking applications, the burden of proof is on the applicant utility.¹⁹ “[T]he burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its Staff, or any interested party or protestant ... to prove the contrary.”²⁰

As the Applicant, PG&E must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding.²¹ PG&E must show it is eligible to access the Stress Test created pursuant to § 451.2, that \$7.5 billion of 2017 wildfire claims costs are eligible for securitization, that its proposal will accelerate

¹⁸ See, § 850(a)(1)(A)(i). See generally, § 454 (“a public utility shall not change any rate ... except upon a showing before the Commission, and a finding by the Commission that the new rate is justified”); Application of Pacific Gas and Electric Company (2000) D.00-02-046, at 36, 2000 Cal. PUC LEXIS 239.

¹⁹ See, e.g., *Re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701 (“Of course the burden of proof is on the utility applicant to establish the reasonableness We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application”) ; D.92496, *Re Southern California Edison Company* (1983) 11 CPUC 2d 474, 475; D.83-05-036 (“Of course the burden of proof is on the utility applicant to establish the reasonableness We expect an affirmative showing by each utility with percipient witnesses in support of all elements of its application”).

²⁰ Application of Pacific Gas and Electric Company (2000) D.00-02-046, at 36, 2000 Cal. PUC LEXIS 239, citing, *Re Pacific Bell* (1987) 27 CPUC 2d 1, 21, D.87-12-067.

²¹ See, e.g., In the Matter of the Application of California Water Service Company (2003) D.03-09-021, at 17; Decision Approving a Modified Monterey Peninsula Water Supply Project (2018) D.18-09-017 at 19; see also, D.16-12-063 at 9, D.12-12-030 at 42, *aff’d* D.15-07-044 at 28-30.

improvement in PG&E's credit ratings, and that through the creation and funding of the Customer Credit Trust the proposal is neutral, on average as required by the Commission.²²

In this case PG&E has met its burden to prove that it is eligible to access the Stress Test created pursuant to § 451.2, that \$7.5 billion of 2017 wildfire claims costs are eligible for securitization, that its proposal will accelerate improvement in PG&E's credit ratings, and that through the creation and funding of the Customer Credit Trust the proposal is neutral, on average, to ratepayers, as required by the Commission. Intervenor did not identify viable alternatives or evidence sufficient to change our determination that PG&E met its burden of proof. Intervenor has shown that in a small and narrow subset of circumstances (described by PG&E as a near zero risk in the near term and quantified by PG&E as a \$20-30 million risk),²³ rate neutrality may not be achieved if the Commission waives its existing regulatory authority and as such we have addressed such concerns as described further herein in Section 4.4. In sum, we determine that without the securitization proposed in this application, ratepayer costs will be higher as it will take PG&E longer to achieve investment grade credit ratings.

We approve the creation of the Customer Credit Trust, consistent with the form agreement outlined in Attachment A, which contains alterations from the form agreement PG&E originally proposed in A.21-01-004. We require PG&E shareholders to contribute no less than \$1 billion to the Customer Credit Trust upon the first issuance of Recovery Bonds in 2021, if approved in A.21-01-004.

²² See, D.20-05-053 at 73-78, AB 1054 (Pub. Util. Code § 3292(b)(1)(D)).

²³ PGE-11 at 1-4; RT at 185, 656-657.

We require PG&E shareholders to contribute an additional \$1 billion contribution to the Customer Credit Trust before March 31, 2024. Further, we require that at the time PG&E contributes the full amount of the initial contribution under the pro-rata method it originally proposed, it must file a Tier 2 Advice Letter demonstrating that the deferral of the second part of its modified time-sequenced initial contribution continues to not be credit negative to PG&E given 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. Otherwise, PG&E must propose modified timing for this contribution to avoid adversely impacting PG&E's credit statistics relative to upfront funding of the first \$1.8 billion as originally proposed.

We require PG&E shareholders to contribute \$7.59 billion of Additional Shareholder Contributions funded by certain shareholder-owned tax deductions or net operating losses (the Shareholder Tax Benefits) to the Customer Credit Trust. If needed, we will require PG&E to contribute a contingent supplemental shareholder contribution in 2040 (at which point the Additional Shareholder Contributions should be contributed), up to a limit of \$775 million to the Customer Credit Trust. We require PG&E to contribute the "Customer Credit Trust Returns" which are the expected returns on the investment of the assets in the Customer Credit Trust. We require PG&E to provide ratepayers with at least 25 percent of any surplus of the assets that exists in the Customer Credit Trust, to be distributed at the end of the life of the Trust, or sooner if the Commission so directs. We determine that any future proposed transaction that impacts the Customer Credit shall ensure its continuity for the duration of the period costs are charged to customers.

We adopt the Securitization structure proposed by PG&E, including the Customer Credit Trust as explained below. If Recovery Bonds are approved in A.21-01-004, upon their issuance PG&E may exclude the securitized debt from its ratemaking capital structure, up to a total of \$7.5 billion, even though it will appear on PG&E's consolidated financial statements. Finally, PG&E is allowed to exclude from its ratemaking capital structure any non-cash accounting charges related to future revenue credits associated with the Customer Credit Trust.

4.1. PG&E Has Met its Burden to Demonstrate that it is Eligible to Access and has Satisfied the Stress Test developed pursuant to § 451.2(b).

PG&E has demonstrated that it has incurred more than \$7.5 billion in costs arising from catastrophic wildfires in 2017; that such costs should be disallowed in this decision and thus be eligible for recovery pursuant to § 451.2, subject to the conditions set forth below.

PG&E states that most parties do not dispute that it is eligible to access the Stress Test following its emergence from bankruptcy. PG&E cites D.20-05-053 as providing the Commission and other stakeholders clear visibility into PG&E's financial status and that there is sufficient information in the record to determine its current financial status.²⁴ PG&E states that it has committed not to recover wildfire costs from ratepayers (other than through a rate-neutral securitization), and that it formally waives the right to assert the 2017 wildfire costs are just and reasonable in this application.²⁵ Accordingly, PG&E states there is no merit to

²⁴ PG&E Opening Brief citing AECA-01 at 3-4, A4NR-01 at 8.

²⁵ PGE-05 at 5-5 to 5-6.

the arguments that it cannot seek recovery of Stress Test Costs because the Reorganization Plan resolved all wildfire claims.²⁶

PG&E has demonstrated Stress Test Costs well in excess of the \$7.5 billion that PG&E has requested to securitize.²⁷ PG&E calculated its Maximum Overall Debt Capacity using methodologies outlined by the ratings agencies and its calculation of threshold levels required to achieve investment grade credit ratings.²⁸ PG&E then takes the difference between its Maximum Overall Debt Capacity and its forecasted debt to calculate Stress Test Costs.

PG&E argues that it does not have excess cash that could reduce Stress Test Costs. PG&E states that excess cash under the Stress Test Methodology is designed to account for cash and cash equivalents not captured by the maximum incremental debt capacity calculation.²⁹ PG&E claims the calculation provides an estimate of the amount of cash available above the utility's cash necessary for operations.³⁰ PG&E's testimony showed that it does not maintain excess cash on its balance sheet, and that it has not paid dividends in the past year that should be included in the Excess Cash calculation.³¹ PG&E also testified that any asset sales are already accounted for in PG&E's forecast for purposes of this analysis.³²

²⁶ Cf. A4NR-01 at 6-8, AECA-01 at 3:10-20.

²⁷ PGE-05 at 5-47 & Figure 5-15 (calculated average debt forecast exceeds its maximum overall debt capacity by \$11.138 billion in Stress Test Costs (approximately \$12.8 billion for S&P and approximately \$9.5 billion for Moody's)).

²⁸ See, PGE-05 at 5-16, 5-19.

²⁹ PG&E Opening Brief at 22, *citing*, D.19-06-027, Attachment A at 5.

³⁰ PGE-05 at 5-48

³¹ *Id.* at 5-58 to 5-51

³² *Id.* at 5-54.

PG&E states most parties did not contest its excess cash calculation,³³ and that the hypothetical sale of core utility assets (including as proposed by CCSF) should be rejected.

PG&E argues that mere indications of interest from CCSF (or other municipal entities) regarding PG&E's core utility assets are not relevant to the Excess Cash calculation.³⁴ PG&E calls such indications "merely hypothetical" and "speculative" as there is no actual or imminent cash in hand that satisfies the requirements of the Stress Test Methodology.³⁵ In addition, PG&E urges the Commission to reject CCSF's proposed definition of non-core assets as it would eliminate any distinction between core and non-core assets.³⁶ Finally, PG&E argues that, even if we were to adopt CCSF's proposed \$3.2 billion adjustment to PG&E's debt capacity based on the hypothetical sale to municipalities of what are core assets, its Stress Test costs would still exceed the proposed \$7.5 billion it seeks to finance through the recovery bonds.³⁷

PG&E argues there is no merit to the arguments put forth by some parties that a downward regulatory adjustment should be applied to the \$7.5 billion Stress Test costs.³⁸ A4NR, AECA, and CCSF did not propose a specific reduction nor analyze how such an adjustment would impact PG&E's credit profile.³⁹

³³ PG&E Opening Brief at 22-23, *citing*, A4NR-01 at 16:17-19, CUE-01 at 6-8.

³⁴ PGE-14 at 5-14, *citing*, D.19-06-027, Attachment A at 11.

³⁵ *Id.*, RT at 1277-1278.

³⁶ *See*, CCSF-13 at 12, RT at 1269, 1271, 1274, 1284, 1311, *Cf.* PGE-05 at 5-47 and Figure 5-15.

³⁷ PG&E Opening Brief at 24-25.

³⁸ PG&E Opening Brief at 25-28.

³⁹ RT at 1288, A4NR-01 at 20, AECA-01 at 11-12 (calling for "meaningful cost control measures" should be considered over the 30-year securitization period).

PG&E argues it has satisfied the Commission's requirement to show it can return to an investment-grade issuer credit rating, and that Securitization will support and accelerate that return, even taking into consideration the fact that other factors are involved.⁴⁰ PG&E states it has shown that it has an ability to achieve a minimum investment-grade issuer credit rating through the Reorganization Plan and subsequent focus on improving its business risk and strengthening its financial position.⁴¹ PG&E argues the Securitization supports and accelerates the process, by providing specific benefits for both quantitative and qualitative elements of the credit rating analysis.⁴²

Specifically, PG&E argues that its path to an investment-grade issuer credit rating will involve the three primary components under the S&P and Moody's methodologies. By improving its funds from operations to total debt ratio (FFO/Debt) metrics, a securitization by PG&E can improve the utility's financial and business metrics. PG&E also asserts Securitization will strengthen its financial metrics by funding the Customer Credit Trust in a credit-accretive

⁴⁰ D.19-06-027 at 43.

⁴¹ PGE-05 at 5-19 to 5-34; PGE-14 at 5-2 to 5-12.

⁴² *Id.*; see also, PGE-20 at AppB-4, AppB-10, AppB-30, and AppB-39; *in accord*, CUE-01 at 1 ("The proposed securitization provides a path to achieve [investment-grade credit rating] status sooner"); CalPA-01 at 13:6-19 (Securitization "will accelerate PG&E's path to achieve an investment-grade credit rating"); PGE-20 at AppB-23 (CCSF Response to PG&E Data Request 2, Question 17) ("All else equal, under S&P's methodology securitization would give PG&E the *opportunity* to achieve an investment grade issuer credit rating 'earlier' than without securitization") (emphasis in original); *id.* at AppB-36 (EPUC Response to PG&E Data Request 2, Question 18) (implementation of Stress Test Methodology should improve PG&E's business profile); See also, *id.* at AppB-17 (CCSF Response to PG&E Data Request 2, Question 4) ("All else equal, the proposed Securitization would increase certain quantitative metrics that S&P uses to assess PG&E's Financial Risk Profile..."); *id.* at AppB-25 (CCSF Response to PG&E Data Request 2, Question 20) ("The Commission's approval of Securitization would be one signal of PG&E's ability to manage regulatory risk"); *cf.* PGE-20 at AppB-30 (CLECA Response to PG&E Data Request 2, Question 11) (describing Securitization as a "relatively small factor" in rating agency analysis).

manner, thereby supporting the rating agency views of PG&E's financial profile. PG&E asserts that approval of the Securitization 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.

PG&E also committed to significantly improving its operations, safety, and governance, as described in other proceedings,⁴³ which it indicates will also support its pathway to an investment-grade issuer credit rating.⁴⁴ PG&E has identified components that tend towards demonstrating that applicable qualitative factors can improve, or are currently improving, and we would anticipate that PG&E has the ability to proceed in a constructive regulatory environment after its emergence from bankruptcy, and can improve its business risk profile from the point of view of the rating agencies.⁴⁵

TURN argued the rating agency reports produced by PG&E do not show it receiving investment grade ratings, do not show its qualitative ratings improving, and do not explicitly reference approval of the Securitization as a cause for upgrade.⁴⁶ PG&E indicated reports referenced by intervenors were based on PG&E's status at a specific point in time and did not address how credit ratings might change over time. PG&E also argued that while other factors can affect its credit ratings, the issue in this proceeding is whether the Securitization will improve PG&E's credit ratings to the point of investment grade as compared to no Securitization.⁴⁷

⁴³ See, e.g., I.19-09-016.

⁴⁴ See, PGE-05 at 5-25 to 5-26, 5-28 to 5-29 & Figure 5-5; PGE-14 at 5-5.

⁴⁵ PGE-05 at 5-27 to 5-30, PGE-14 at 5-5, 5-8, RT at 412.

⁴⁶ See, TURN-01 at 15-17; RT at 1107.

⁴⁷ RT at 384, 387, 410-412, 492, and 884; PGE-14 at 5-4 to 5-8.

The issue of how rating agencies, and in particular S&P, will treat the financial elements of the structure was heavily developed in the record. TURN in cross examination solicited testimony that there was no certainty how S&P would treat binding credit enhancements such as guaranteed dollar-for-dollar rate credits or guarantees.⁴⁸ Several parties advocated for the Commission to require a PG&E guarantee or dollar-for-dollar rate credit as further protection for ratepayers. However, PG&E stated such firm guarantees could give rise to S&P treating such amounts as an enforceable contractual commitment if PG&E were to guarantee a dollar-for-dollar rate credit.⁴⁹ 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.⁵⁰ 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.⁵¹ We recognize the value in not requiring contractual commitments from PG&E, where practical, while meeting other requirements of this decision, and reject the proposals for PG&E to provide a dollar-for-dollar rate credit and/or contractual guarantee of the Customer Credit Trust.

PG&E claims the Commission has consistently recognized that an investment-grade issuer credit rating is important "to ensuring on an ongoing basis that PG&E can reliably and efficiently raise capital to finance construction of new infrastructure, accommodate seasonal fluctuations in cash collections and

⁴⁸ RT at 713-714.

⁴⁹ PG&E Reply Brief at 1-7.

⁵⁰ RT at 503-504.

⁵¹ PGE-01 at 1-15.

disbursements, and meet its obligations to serve customers.”⁵² PG&E argues that a higher credit rating can reduce PG&E’s cost of debt and produce cost savings that benefit customers. Based on its capital needs for 2021 to 2024, PG&E estimates it could capture approximately \$441 million in nominal interest cost savings for customers based on a 60 basis point (bps) improvement in its cost of debt and the expectation that Securitization would allow PG&E to regain an investment-grade issuer credit rating at least two years faster than it would absent securitization.⁵³

PG&E notes that other parties agree that an investment-grade issuer credit rating will benefit customers through a reduced cost of debt, though the amount of the debt savings that will be passed on to customers over the next few years is disputed.⁵⁴ PG&E calls those criticisms misplaced, and specifically in response to TURN’s criticism, PG&E states its assumptions are reasonable and appropriate for calculating the customer benefit of debt cost savings that will result from improved credit ratings, and support its view that \$441 million is the best estimate of the amount of anticipated savings. PG&E admits the savings could be lower, but that TURN’s witness also admitted that its original \$63 million estimate did not include savings arising from short-term debt (\$9 million), and did not account for the full savings of a 10-year bond. Combining those adjustments to TURN’s estimates yields a revised TURN estimate of \$78.3 million.⁵⁵ PG&E argues that TURN’s original \$63 million estimate of the

⁵² D.03-12-035 at 42.

⁵³ PGE-05 at 5-32 to 5-34 (generally, the higher a company’s credit rating, the lower its cost of debt financing, as evidenced by the difference in yield relative to a U.S. Treasury security with the same maturity); PGE-14 at 5-8, 5-10.

⁵⁴ *See, e.g.*, TURN-01 at 17-18; CLECA-01 at 13-14.

⁵⁵ RT at 1120, 1124-1125.

value of anticipated improved credit ratings, has a present value of \$48 million.⁵⁶ PG&E states that \$48 million present value calculated by TURN is greater than the present value of the expected customer deficit in the 16 percent of deficit cases based on PG&E's proposal.⁵⁷ PG&E, therefore, claims that this savings means that the proposal is not just ratepayer-neutral but ratepayer-positive, even without regard to any other benefits to customers.⁵⁸

In addition, with respect to proposals to limit future dividends, PG&E notes it has committed to a limited dividend suspension program going forward and will not pay common dividends until it has recognized \$6.2 billion in Non-Generally Accepted Accounting Principles (Non-GAAP) Core Earnings.⁵⁹

A4NR claims that Ordering Paragraph 3 of D.19-06-027 makes PG&E ineligible to access the Stress Test as all pre-bankruptcy debts would have been dealt with in the bankruptcy process.⁶⁰ A4NR calls the path to investment grade issuer rating identified by PG&E "attenuated and conjectural" that at best achieves a split rating, while assuming the interest rate savings attributable to an upgrade from both agencies. A4NR argues that neither S&P nor Moody's placed significant weight on the proposed Securitization as a relevant step on the path back to an investment grade issuer rating.⁶¹

⁵⁶ TURN-01 at 17-18.

⁵⁷ See *infra*, discussion of the Customer Credit Trust.

⁵⁸ PG&E admitted in testimony that its April 2022 cost of capital application would be the initial opportunity for the Commission to evaluate the prospect of improved credit ratings in setting PG&E's authorized cost of debt. RT at 241-242, 244-247.

⁵⁹ See, D.20-05-053 at 85.

⁶⁰ A4NR Opening Brief at 4-6.

⁶¹ *Id.* at 6-12.

In addition, A4NR argues PG&E has failed to meet its burden of proof with respect to the regulatory adjustment as the Commission is left with an evidentiary void in assessing PG&E's claimed operational cost savings and efficiency initiatives.⁶²

AECA claims no electrical corporation that has filed for bankruptcy can access the Stress Test Methodology.⁶³ Further, AECA states that PG&E does not need the securitization as it has stated it can finance short-term debt without it.⁶⁴ AECA also challenges PG&E's claim that the securitization will accelerate improvement in PG&E's credit ratings, and that even if it did the benefit would not offset the risk to customers of shortfalls in the Customer Credit Trust over the next 30 years.⁶⁵

CCSF argues that the evidence does not support PG&E's claim that approval of the securitization will lead to the rating agencies upgrading PG&E's credit rating to investment grade. CCSF states that PG&E will remain well outside S&P's criteria for investment grade and that there was no guarantee S&P would upgrade PG&E's credit rating after securitization. CCSF states the evidence shows any minimal improvement in PG&E's quantitative metrics are not likely to change either agency's rating, as the qualitative metrics will continue to be a more significant barrier to any improvement in PG&E's credit rating.⁶⁶

⁶² *Id.* at 12-14.

⁶³ AECA Opening Brief at 4, *citing* D.19-06-27, Ordering Paragraph 3.

⁶⁴ AECA-01 at 3-4, *citing* I.19-09-016 RT at 582.

⁶⁵ AECA Opening Brief at 6-8.

⁶⁶ CCSF Opening Brief at 10-16.

CLECA states PG&E should be barred from accessing the Stress Test due to the clear language of D.19-06-027. CLECA states that the stress test is a measure of last resort, and PG&E had other options available.⁶⁷ CLECA also urges the Commission to reject the application as PG&E has failed to satisfy the ratepayer neutrality requirements enunciated in AB 1054 and D.20-05-053. CLECA argues that PG&E has quantified a significant probability the Customer Credit Trust will not be fully funded and that it would not result in just and reasonable rates if PG&E's application is granted.⁶⁸ CLECA also claims the record casts significant doubt on whether PG&E's proposal would accelerate improvement in PG&E's credit rating.⁶⁹

EPUC argues PG&E's application fails to satisfy crucial legal requirements as it is not neutral to ratepayers and other financing options should be used by PG&E before allowing this "mechanism of last resort" to be used.⁷⁰ EPUC notes the Stress Test Methodology contemplates a Commission determination that all or some wildfire costs are disallowed.⁷¹ EPUC claims PG&E proposes to skip this step by stipulating that all costs arising from the 2017 North Bay Wildfires and other Fire Claims be deemed disallowed.⁷² EPUC argues that because it permits recovery of disallowed costs from ratepayers, the Stress Test Methodology is a "mechanism of last resort," after utilities "maximize the share

⁶⁷ CLECA Opening Brief at 4.

⁶⁸ *Id.* at 5.

⁶⁹ *Id.* at 5-9.

⁷⁰ EPUC Opening Brief at 5-8.

⁷¹ D.19-06-027, Attachment A at 3.

⁷² EPUC Opening Brief at 6, *citing* PGE-01 at 1-10 to 1-11.

of disallowed costs they absorb.”⁷³ EPUC claims that PG&E voluntarily entered bankruptcy and a post-bankruptcy application of the Stress Test contravenes the purpose of the statute and implementing Commission decision.⁷⁴

EPUC states:

If the Commission denies the Securitization, PG&E will fund its temporary utility debt with long-term debt securities, as proposed in docket A.20-05-005. In docket A.20-05-005, the Commission specifically approved long-term debt securities up to \$12.6 billion if the Securitization is not approved. Thus, this proposed usage of the Stress Test is not a “last resort,” as it was intended to be, but instead a tool, and one among several tools, at that. Within this context, PG&E’s vehement demands for a shareholder cap, and its strident opposition to a dollar-for-dollar credit, are exaggerated theatrics. Neither is as important as PG&E makes it out to be, as described further below. For example, credit ratings alone do not ensure utility safety or prudent management, as the California utilities have repeatedly demonstrated. Additionally, if the Commission rejects the Securitization, PG&E has other options. But if the Commission approves the Securitization, PG&E customers have no option but to pay a 30-year nonbypassable wildfire surcharge for disallowed 2017 wildfire costs, costs that should be paid by shareholders alone. Thus, the Commission should ensure that customers do not also bear the risk that the payments will not be offset by a credit from the Customer Credit Trust.⁷⁵

In addition, EPUC argues that it is highly uncertain that the proposed securitization will provide a path to an investment grade credit rating.⁷⁶ EPUC states the Commission should not separate its consideration of a path toward

⁷³ D.19-06-027 at 48.

⁷⁴ EPUC Opening Brief at 6.

⁷⁵ *Id.* (internal citations omitted).

⁷⁶ *Id.* at 8.

investment grade rating with the impact on customers.⁷⁷ EPUC states the Commission must consider the role PG&E's poor management and adverse actions played in causing the credit downgrades,⁷⁸ and how PG&E distorts the credit metrics needed to restore the minimum investment grade rating, to the detriment of customers.⁷⁹ Finally, EPUC notes that in approving PG&E's Reorganization Plan, the Commission stated its expectation and PG&E's intent to pay down Temporary Utility debt quickly.⁸⁰ EPUC notes that step alone will drastically improve PG&E's financial metrics and resulting credit ratings. EPUC notes that PG&E characterizes the \$6 billion used to pay wildfire claims costs as Temporary Utility Debt, which is distinct from traditional utility debt and is not included in rate base.⁸¹ EPUC argues that PG&E's financial outlook improves long before ratepayers are free from the fixed recovery charge that would be created by the securitization.⁸²

Cal Advocates contends D.19-06-027 prohibits PG&E's instant application given it was filed while the utility was in bankruptcy. Cal Advocates argues that the Commission's reasoning behind this prohibition is that a corporation's "financial status," which includes, among other considerations, its capital structure, liquidity needs, and liabilities, as well as its capacity to take on

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 10-15.

⁷⁹ *Id.* at 15-20.

⁸⁰ *Id.* at 20-21, *citing* D.20-05-053 at 84.

⁸¹ *Id.* at 21-22.

⁸² *Id.* at 22.

additional debt, and all cash or resources that are reasonably available to the utility, cannot be determined as required by Section 451.2(b).⁸³

While Cal Advocates agrees that PG&E's credit rating should improve if the securitization is approved, it argues PG&E has not shown that securitizing more than \$6 billion will provide greater benefits or that any such benefits are sufficient to justify the additional burden on ratepayers.⁸⁴

Wild Tree argues that D.19-06-027 determined the Stress Test Methodology would be unavailable to PG&E as it had filed for chapter 11 bankruptcy. Wild Tree urges the Commission to reject PG&E's application as it had not emerged from bankruptcy protection when the application was filed. Further, Wild Tree argues PG&E is ineligible for the stress test as the Reorganization Plan did not fully address PG&E's 2017 wildfire liabilities and did not include securitization.⁸⁵

Wild Tree also argues for denial because PG&E ignored the procedural requirements of § 451.2 and D.19-06-027. Wild Tree states:

In D.19-06-027, the Commission established the following process based upon 451.2 for application of the stress test: 1.) the utility requests an application of the Stress Test to determine wildfire costs allocated to ratepayers, either by a second phase within an existing application or filing a new application following the Commission's determination of all or some wildfire costs are disallowed; 2.) the Commission applies the "Customer Harm Threshold" (CHT), "a three-factor framework to determine the maximum amount the utility can pay." The Stress Test Cost is calculated by the total disallowed wildfire costs presented in the application for recovery minus the CHT amount. Finally, the Commission

⁸³ Cal Advocates Opening Brief at 8, *citing* D.19-06-027 at 3-4, Finding of Fact 22, Conclusion of Law 12, Ordering Paragraph 3.

⁸⁴ Cal Advocates Opening Brief at 18-19.

⁸⁵ Wild Tree Opening Brief at 8-10.

considers required ratepayer protection measures, which are “intended to mitigate ratepayer impacts given that the determination of Stress Test Costs will be final and not subject to future revision” and applies a regulatory adjustment based upon the disallowed costs.

PG&E did not follow these directives instead applying for a bond for an amount they have unilaterally predetermined as being favorable to PG&E instead of being based upon costs the Commission has disallowed following a reasonableness review of claimed costs and a determination of the customer harm threshold. There has been no application to recover costs and there has been no request for an allocation of costs that have been disallowed. Instead, PG&E arbitrarily determined it wanted a \$7.5 billion bond and applied for that amount without a shred of evidence as to what any one single one dollar is a cost for.⁸⁶

Wild Tree claims that PG&E fails to make any attempt to demonstrate the \$7.5 billion is eligible for securitization under § 451.2, and that there is no evaluation as to whether any costs not intended to be covered under § 451.2 are included in PG&E’s calculation.⁸⁷ In addition, Wild Tree explains that PG&E failed to meet its burden of proof that it requires securitization to prevent ratepayer harm and provide adequate and safe service. Wild Tree claims the Bankruptcy Court and the Commission permitted PG&E to emerge from bankruptcy with the understanding it would provide adequate and safe service without harming ratepayers, but did they did not include securitization of any amount in their calculations.⁸⁸ Wild Tree also argues that PG&E’s securitization application should be denied as the Stress Test is a financing mechanism of last

⁸⁶ Wild Tree Opening Brief at 11-12 (citations omitted).

⁸⁷ *Id.* at 13.

⁸⁸ *Id.* at 14.

resort and PG&E already has ratepayer neutral financing mechanisms approved for the costs it seeks to securitize. Wild Tree claims the Commission has already approved \$6 billion of wildfire claim costs for PG&E in D.20-05-053 (refinancing \$1.5 billion issued as short-term debt as long term debt), and D.20-12-025 (refinancing \$4.5 billion in long term debt to longer term debt).⁸⁹ Further, Wild Tree argues the \$150 million difference between the \$7.5 billion securitization and the amounts paid and due to the Fire Victim Trust (\$6 billion temporary debt plus additional \$1.35 billion due) should be denied as PG&E has claimed throughout that the \$6 billion temporary debt is “the financial responsibility of shareholders, not customers.”⁹⁰ Wild Tree claims that allowing PG&E to include interest costs in its application for a recovery bond is inconsistent with its promise that ratepayers would not pay for these costs.⁹¹

Finally, Wild Tree argues that PG&E has not shown it is on a pathway to an investment grade credit rating.⁹² Further, Wild Tree claims the overall costs to ratepayers significantly outweigh any speculative benefits presented by PG&E.⁹³

There is no plausible dispute that the size of PG&E’s proposed \$7.5 billion Securitization bond issuance is less than PG&E’s maximum incremental debt capacity and allowable under the Stress Test methodology established pursuant to § 451.2(b).⁹⁴

⁸⁹ *Id.* at 15.

⁹⁰ D.20-12-025 at 13, *quoting* PGE-01 at 2-15 in I.19-09-016.

⁹¹ Wild Tree Opening Brief at 15-16.

⁹² *Id.* at 24-25.

⁹³ WTF-01 at 6-7.

⁹⁴ PGE-05 at 5-47 and Figure 5-15, EPUC-01 at 14, 20-23. (*See also*, D.19-06-027, Attachment A at 5.)

PG&E is eligible to apply under § 451.2 for application of the Stress Test because D.19-06-027 did not foreclose the possibility that an entity could satisfy the stress-test criteria once its “financial status” can be determined following the bankruptcy court’s confirmation of a reorganization plan addressing all pre-petition debts, which in turn requires certain Commission approvals.⁹⁵ Our reasoning was clear that “[a]n electrical corporation that has filed for relief under chapter 11 of the Bankruptcy Code may not access the Stress Test to recover costs in an application under Section 451.2(b), *because the Commission cannot determine the essential components of the corporation’s “financial status.”*”⁹⁶ D.19-06-027 described why it would be impossible to apply the adopted methodology to a company that was in the process of reorganizing pursuant to Chapter 11 of the federal Bankruptcy Code and did not rest on a finding that a bankruptcy court proceeding is a substitute for the Commission’s application of the Stress Test.⁹⁷

In approving the Reorganization Plan the Commission acknowledged the “close connection” between the Reorganization Plan and the application of the Stress Test and securitization.⁹⁸ The Reorganization Plan approved by the Commission in D.20-05-053 allowed PG&E to apply the Stress Test and securitize debt attributable to 2017 wildfire costs.⁹⁹ The adoption of the Plan of Reorganization did not, as contemplated in D.19-06-027, fully resolve the ratemaking treatment for the 2017 fire claims. Thus, the Stress Test process and

⁹⁵ See, D.20-05-053.

⁹⁶ D.19-06-027 at 26 (emphasis added); Finding of Fact 22.

⁹⁷ See, *id.* at 44.

⁹⁸ D.20-05-053 at 75-78.

⁹⁹ D.20-05-053 at 75-78, 84-85 (“PG&E may seek to achieve this through its securitization application, A.20-04-023....”)

statutory relief allowed under §§ 451.2 and 850 *et. seq.* is available to PG&E post-bankruptcy.

PG&E has met the requirement to show that it has a path to an investment grade credit rating.¹⁰⁰ 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.¹⁰¹ PG&E has complied with this requirement.¹⁰² For the reasons stated in D.19-06-027, we continue to believe utility ratings below investment grade have negative impacts that harm ratepayers.¹⁰³ Accordingly, we created the requirement to ensure the utility had a plan to achieve such a rating as part of our consideration of the application of the Stress Test. The evaluation of PG&E's plan is whether PG&E demonstrated to our satisfaction that it is more likely than not that it has a path to an investment grade rating within the forecast period. The issue for us to determine is whether PG&E has a plan and that the securitization is a component that will aid in the achievement of that plan. We are persuaded that PG&E has shown that the proposed securitization provides a sufficient path to an investment grade credit rating for PG&E.

¹⁰⁰ PGE-05 at 5-47 and Figure 5-15. (See also, D.19-06-027, Attachment A at 5.)

¹⁰¹ D.19-06-027, Attachment A at 13, 17 ("how recovery of Stress Test Costs will allow the utility to regain a stable minimum investment grade credit rating and a pathway for improved financial health over time").

¹⁰² PGE-05 at 5-19 to 5-34; see also, CUE-01 at 1, CalPA-01 at 13; see generally, PGE-20.

¹⁰³ D.19-06-027, Attachment A at 5, citing, D.03-12-035 at 42-43. (See also, TURN-01 at 17-18; CLECA-01 at 13-14.)

4.2. PG&E Has Demonstrated that 2017 Wildfire Claims Costs are Eligible for Recovery under the Stress Test

PG&E's testimony showed that approximately \$11.2 billion of the settlement of the claims of wildfire victims, subrogation insurers, and public entities contained in its Reorganization Plan¹⁰⁴ is reasonably attributable to the 2017 North Bay Wildfires¹⁰⁵ and eligible for recovery pursuant to SB 901.¹⁰⁶ Most parties did not contest or otherwise evaluate PG&E's testimony and conclusions in this area.¹⁰⁷

Wild Tree argues that PG&E failed to meet its burden to show that \$7.5 billion is eligible for securitization. Wild Tree says PG&E's \$7.5 billion figure was arbitrarily picked and that the Commission must conduct a reasonableness review to root out issues it claims are ineligible to be securitized.¹⁰⁸ Wild Tree argues that the \$11.2 billion figure attributable to 2017 North Bay Wildfires is a figure calculated for this application and PG&E cannot provide actual 2017 costs with any precision.¹⁰⁹ Further, Wild Tree challenges the inclusion of costs related to the Tubbs fire as PG&E, Cal Fire, and the Commission agree that neither PG&E nor its equipment was responsible for

¹⁰⁴ See, D.20-05-053.

¹⁰⁵ PGE-04 at 6-8.

¹⁰⁶ See, Pub. Util. Code § 451.2.

¹⁰⁷ See, A4NR-01 at 20; CCSF-13 at 9, lines 15-16. (See also, A4NR Opening Brief at 14, AECA Opening Brief at 6, CLECA Opening Brief at 5, and EPUC at 8.)

¹⁰⁸ Wild Tree Opening Brief at 17-24.

¹⁰⁹ See, Wild Tree Opening Brief at 21-23.

its ignition.¹¹⁰ Wild Tree also challenges the inclusion of interest payments on the debt incurred as part of PG&E's emergence from bankruptcy.¹¹¹

CCSF argues that PG&E did not meet the Stress Test requirements with respect to the calculation of excess cash and the regulatory adjustment in determining costs are eligible for recovery. CCSF Claims that PG&E has not accounted for or even addressed offers made by San Francisco and other public entities to purchase certain PG&E assets and should do so for either the excess cash or regulatory adjustment components of the Stress Test Methodology.¹¹²

A consideration in evaluating the share of the Fire Victim Settlement attributable to the 2017 wildfires is the value of PG&E's stock contributed to the Fire Victim Trust. One of the elements of consideration paid to the Fire Victim Trust was common stock of PG&E Corporation, issued at Fire Victim Equity Value as defined in the Reorganization Plan.¹¹³ The market value of the stock on July 1, 2020, was \$4.53 billion.¹¹⁴ Despite that market value, it is uncontested that the parties in the Fire Victim Settlement measured PG&E's equity contribution at \$6.75 billion (when considered inclusive of the factors outlined below). While the market value of the stock will change over time, those changes do not impact the value set for purposes of evaluating claims costs in this proceeding.¹¹⁵

¹¹⁰ *Id.* at 18, 23-24.

¹¹¹ *Id.* at 17, 19-20.

¹¹² CCSF-13, CCSF Opening Brief at 3-10.

¹¹³ PGE-01 at 1-6 (When PG&E emerged from chapter 11 on July 1, 2020, 476,995,175 shares of common stock of PG&E Corporation were transferred to the Fire Victim Trust pursuant to the Fire Victim Settlement.).

¹¹⁴ PG&E Form 10-Q, for the quarterly period ended September 30, 2020 at 51, available at http://s1.q4cdn.com/880135780/files/doc_financials/2020/q3/PGE_Q3_2020-10Q.pdf.

¹¹⁵ This is consistent with PG&E's accounting treatment. PG&E accrued a \$6.75 billion liability on PG&E's consolidated financial statements, *see*, PG&E Form 10-Q, for the quarterly period

Footnote continued on next page.

However, we agree with PG&E that even if the value of the stock is measured at market value at the transfer to the Fire Victim Trust, it does not reduce the total of wildfire costs attributable to the 2017 North Bay Wildfires below \$7.5 billion.¹¹⁶

We find no merit to the argument that PG&E must address or account for offers to purchase certain assets. In looking at asset allocation and potential sale of non-core assets we look to and adopt the principles we have long utilized with respect to used and useful assets and our evaluations pursuant to statute.¹¹⁷ We do not find any of the expressions of interest proffered by public entities would provide excess cash to PG&E in a manner that could fund the wildfire claims. None of the offers contained terms that would give PG&E cash during the pendency of this proceeding and it is likely that even negotiating the sale for any one of the offers would take more than a year.¹¹⁸ Further, CCSF has failed to convince us that any of the assets sought are non-core assets under the terms of the Stress Test.¹¹⁹ Accordingly we are not persuaded that we should adjust either the excess cash or regulatory adjustment components in applying the Stress Test in this application.¹²⁰ Further, we do not agree that PG&E or any other utility must provide a detailed analysis of potential opportunities to sell assets to meet the excess cash or regulatory adjustment components of the Stress Test methodology. The Commission limited consideration of “prudent alternatives”

ended September 30, 2020 at 51, available at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001004980/aba67036-14cc-4d9a-ac26-1a19f27f65e2.pdf>, and \$6.75 billion has now been recorded in the WEMA in connection with this application, *see*, PGE-01 at 1-10.

¹¹⁶ *See*, PGE-04 at 4-18 and Table 4-3.

¹¹⁷ *See*, Pub. Util Code §§ 455.5 (reporting), 851.

¹¹⁸ CCSF-13, *see also*, PG&E-14 at 5-14, 5-51.

¹¹⁹ CCSF-13.

¹²⁰ *See*, D.19-06-027, Attachment A at 11-13.

to “monetize non-core assets” to the excess cash component.¹²¹ Requiring the detailed analysis called for by CCSF far exceeds the requirements of the Stress Test methodology both in scope and type of asset at issue.

CCSF also argues PG&E chose to securitize less than the total amount of wildfire costs the Commission might have disallowed, and that the Commission should determine Stress Test costs eligible to be securitized by subtracting the Customer Harm Threshold from the \$7.5 billion PG&E is seeking to securitize rather than from \$11.2 billion PG&E claims it could have chosen to securitize. We do not find CCSF’s arguments for this treatment persuasive.

We do not need to go as far as Wild Tree’s suggestion to require PG&E show each individual 2017 wildfire claim to justify the costs attributable to the 2017 North Bay Wildfires. PG&E presented a reasonable allocation of the more than \$25 billion¹²² in settled wildfire liabilities (including victims and insurance subrogation claims) to determine the 2017 figure of \$11.2 billion. This far exceeds the \$7.5 billion amount PG&E proposed be securitized and Wild Tree presents no evidence that the amount of eligible 2017 claims is anything other than the \$11.2 billion figure proffered by PG&E. Based on the record we are persuaded that PG&E’s estimations of its 2017 wildfire costs are sufficient when considered in conjunction with the holistic Customer Credit Trust proposal.¹²³ It is reasonable to determine PG&E’s 2017 wildfire claims costs based on the allocation of value of the Fire Victim Trust settlement.¹²⁴

¹²¹ D.19-06-027 at 32, CoL 9, and Attachment A at 11.

¹²² PG-01, PGE-04 (PG&E has shown it accumulated more than \$25 billion in wildfire liabilities related to claims for fires ignited in 2015, 2017, and 2018.).

¹²³ PGE-01, PGE-04.

¹²⁴ PGE-04.

There is no reasonable dispute that costs and expenses incurred by PG&E related to the Tubbs Fire are eligible under the statutes, and we do not agree with Wild Tree that a collateral challenge to the Fire Victim Settlement is in the public interest. We also find no merit to Wild Tree's argument that interest on debt incurred to pay wildfire claims cannot be included in the determination of costs eligible for recovery under the Stress Test. Section 451.2(a) is clear that we are addressing "costs and expenses arising from, or incurred as a result of, a catastrophic wildfire...."¹²⁵ PG&E can, and has, shown that it has paid more than \$7.5 billion to pay 2017 wildfire liability claims and that the \$6 billion in temporary debt directly contributed to that payment.¹²⁶

Therefore, we are persuaded that at least \$7.5 billion of the wildfire claims costs paid as part of PG&E's Reorganization Plan are attributable to the 2017 North Bay Wildfires and are thus eligible for recovery under the Stress Test via a rate neutral securitization as proposed by PG&E.¹²⁷

4.3. PG&E's Proposal for the Securitization Is Neutral, On Average, to Ratepayers

PG&E claims its proposal "substantially exceeds" the rate-neutral standard to which it committed. PG&E claims it exceeds the rate-neutral standard through the Customer Credit Trust, surplus sharing, interest cost savings and other benefits of securitization, and its waiver of recovery of wildfire costs other than through securitization. PG&E proposed the Customer Credit Trust to fund offsetting bill credits equal to the fixed recovery charge as the primary means to

¹²⁵ See also, §§ 451.2(c), 850.1(a).

¹²⁶ PGE-14 at 5-18, RT at 1250.

¹²⁷ PGE-01, PGE-04, PGE-05, see also, D.20-05-053.

meet its obligation to the Commission that securitization is neutral, on average, to ratepayers.¹²⁸

As explained in D.20-05-053,

The Commission will review the proposed nominally offset securitization application in light of PG&E's commitments made in its Bankruptcy Court filings, entered into the record here via its March 24, 2020 Motion for Official Notice.

Given the close connection between the plan and the proposed securitization and PG&E's commitment that its securitization application will meet the requirements of AB 1054, including ratepayer neutrality, the securitization application should satisfy those requirements.¹²⁹

The commitments PG&E made in its Bankruptcy Court filings include:

[A] single post-emergence 30-year securitization transaction of approximately \$7.5 billion (the "Securitization"), with reduced principal payments in the early years, which would replace the Temporary Utility Debt and be neutral, on average, to customers and also would accelerate the deferred payments to the Fire Victim Trust to be funded under the Plan. The Securitization includes offsetting credits to be funded initially from a reserve account and further funded with the value of net operating losses contributed in the year in which the net operating losses are utilized. The Securitization structure is anticipated to yield a full (nominal) offset each year to securitized charges.¹³⁰

¹²⁸ PGE-06 at 6-1 to 6-2.

¹²⁹ D.20-05-053 at 78.

¹³⁰ I.19-09-016, Motion for Official Notice, Ex. A at 8, filed March 24, 2020 (Ex. A is Debtors' Motion Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 9019 for Entry of an Order (I) Approving Case Resolution Contingency Process, and (II) Granting Related Relief, *In re PG&E Corporation*, U.S. Bankruptcy Court for the Northern District of California, Case No. 19-30088, ECF No. 6398 (Mar. 20, 2020) (*hereinafter*, Resolution Motion)).

PG&E claims that these commitments do not require zero risk to customers but that the phrase “neutral, on average” allows for both positive and negative outcomes over a given period (*e.g.*, month, year, etc.).¹³¹ PG&E claims that “on average” equates to the overall expected value (EV) of the entire transaction.¹³² PG&E’s testimony described expected value as a financial term used “to describe the most likely (weighted average) value of an investment when there is uncertainty regarding its outcome.”¹³³ Therefore, PG&E claims “the determinative question is whether the expected value is ratepayer-neutral when all aspects of the transaction are taken into account as a whole.”¹³⁴ Further, PG&E claims that ratepayer neutrality is to be achieved prospectively and does not require a present-day guarantee, and that such a guarantee is required by neither PG&E’s commitments in the Chapter 11 cases nor those incorporated in D.20-05-053. According to PG&E, a guaranteed rate credit would undermine the customer benefits of Securitization as S&P would treat the Customer Credit obligation as equivalent to debt and eliminate the associated improvement to quantitative metrics achieved by S&P’s not considering the amounts securitized as debt when calculating certain metrics.

In addition to the Customer Credit that is expected to equal the Fixed Recovery Charge in each period until the Recovery Bonds are paid in full, PG&E

¹³¹ Even though AB 1054 (Pub. Util. Code § 3292(b)(1)(D)) uses the same “neutral, on average” term with respect to resolving PG&E’s bankruptcy for the “reorganization plan and other documents resolving the insolvency proceeding” PG&E argues the statutory directive set forth in AB 1054 do not apply here. (*See*, PG&E Opening Brief at 56.) As the result is the same with respect to PG&E’s commitments to the Commission and Bankruptcy Court and AB 1054, we need not and do not address PG&E’s applicability claim.

¹³² PG&E Opening Brief at 55-56.

¹³³ PGE-15 at 6-1, n.2.

¹³⁴ PG&E Opening Brief at 56. *See infra*, n.131.

proposes that customers receive a credit of a portion of any surplus in the Customer Credit Trust at the end of the life of the Trust.¹³⁵ PG&E originally proposed to fund the Customer Credit Trust with an Initial Shareholder Contribution (\$1.8 billion), Additional Shareholder Contributions based on realization of Shareholder Tax Benefits (also called NOLs herein) (up to \$7.59 billion), and investment returns on the shareholder contributions through 2050. PG&E presented a modified proposal with an Initial Shareholder Contribution totaling \$2 billion (funded in two \$1 billion contributions in 2021 and 2024). The modifications proposed by PG&E are delineated below.

PG&E presented a model evaluating projected returns that showed cash flow to customers is positive in 84 percent of the Monte Carlo simulations of investment returns.¹³⁶ PG&E claims its proposed modifications result in projected cash flow to customers that is positive in more than 90 percent of the Monte Carlo simulations.¹³⁷ PG&E states the expected end of life residual value of the Customer Credit Trust is approximately \$4 billion, with customers' 25% share estimated at approximately \$1 billion.¹³⁸ PG&E presented two different analyses¹³⁹ of the results using a 7.34 percent discount rate (PG&E's authorized rate of return) to calculate the present value of the \$1 billion customer share at between \$116 million and \$121 million.¹⁴⁰

¹³⁵ PGE-01 at 1-14. PG&E proposes to change the surplus sharing percentage allocated to ratepayers from 25 percent to 10 percent in its modified proposal. As discussed below we do not agree that such a change is merited.

¹³⁶ PGE-15 at 6-33, Table 6-14; *cf.* PG&E Reply Brief at 77-78.

¹³⁷ PG&E Opening Brief at 160.

¹³⁸ PGE-11 at 1-4, Tables 1-1A, 1-2; PGE-17 at 10-8, Table 10-1.

¹³⁹ *See*, PGE-15 at 6-33, PGE-17 at 10-8, 10-10, RT at 563-564.

¹⁴⁰ PGE-11 at 1-4, PGE-15 at 6-33, PGE-17 at 10-8.

In addition to the Customer Credit Trust, PG&E argues Securitization will reduce interest costs, due to an improved credit profile, which will lower its cost of capital and therefore benefit customers through lower rates. PG&E claims the likely interest costs savings will be about \$441 million¹⁴¹ with a present value of \$213 million.¹⁴²

PG&E also claims that another benefit to ratepayers is its agreement with the Governor's Office that it would not seek recovery for the 2017 wildfire claims other than through a ratepayer-neutral securitization. In addition, by quickly paying off the \$6 billion in temporary utility debt, the Securitization will provide the substantial benefit of deleveraging PG&E promptly and benefit wildfire victims through earlier payment.¹⁴³

PG&E claims the net positive results of the Customer Credit Trust and reduced interest rates remain under potential downside scenarios. First, if there is a future catastrophic wildfire (eliminating all 2029 taxable income was modeled) there would be an 82 percent probability the Customer Credit Trust would end with a surplus, and expected value of \$3.694 billion, and interest cost savings would be \$309 million.

The second downside scenario assumed a 20 percent reduction in PG&E's earnings for every year of the Securitization.¹⁴⁴ This results in taxable income being reduced by at least 30 percent over the course of the securitization.¹⁴⁵

¹⁴¹ PGE-05 at 5-30 to 5-34; *see also*, PGE-14 at 5-11; *cf.*, TURN-01 at 17-21, RT 1124-1125 (TURN's reductions to PG&E's inputs produce a total of \$87.3 million in interest cost savings).

¹⁴² *See*, PGE-17 at 10-8 (Table 10-1) and 10-10 (Table 10-2).

¹⁴³ *See*, PGE-11 at 1-1 and 1-2.

¹⁴⁴ *See*, CCSF-13 at 36-38.

¹⁴⁵ *See*, PGE-47-2 (Meal Workpapers_CCSF_20_UPDATED08-07-2020.xlsx).

PG&E calls this scenario “highly unlikely,” but even then the net present value to ratepayers is \$194 million due to interest cost savings.¹⁴⁶

A third downside scenario discussed by PG&E addresses an alternative projection of the contribution of the Additional Shareholder Contributions put forth by TURN.¹⁴⁷ PG&E argues that all the negative scenarios simply delay the realization of the NOLs, but that all the NOLs are ultimately utilized during the Securitization period, “it just changes the timing.”¹⁴⁸ Further, PG&E argues it shows under a wide range of downside scenarios, the Securitization remains positive for customers on average. PG&E states that the downside risks are also small with expected values of \$20 million to \$30 million¹⁴⁹ which PG&E calls a minuscule percentage of its revenue requirement over the Securitization period.¹⁵⁰ PG&E also claims that ratepayers are being compensated at a generous multiple and the “small downside risk ... comes into clear relief when one delves into the detailed results of the Monte Carlo simulations.”¹⁵¹ PG&E claims that by running 2,000 separate simulated trials of the investment over 30 years, we should expect to see wide gaps between the highest and lowest results, and that we should not focus on the extremes but rather the simulated median result which is 6.93 percent.¹⁵² Since the break-even return is 4.04 percent, PG&E argues that if the expected return is realized the Customer Credit Trust will fully

¹⁴⁶ PGE-17 at 10-17.

¹⁴⁷ See, TURN-02 at 18-22.

¹⁴⁸ RT at 632-633.

¹⁴⁹ PGE-11 at 1-4, Tables 1-1A and 1-2, RT at 185, 656.

¹⁵⁰ PG&E Opening Brief at 65.

¹⁵¹ *Id.* at 66.

¹⁵² PGE-06 at 6-33.

fund the Customer Credits and end with a substantial surplus.¹⁵³ Further, PG&E argues that while the simulated median return was greater than 6.93 percent, the lowest annualized return over a 30-year period since 1926 was 7.5 percent (1929-1959).¹⁵⁴ PG&E calls its investment return projections reasonable and conservative and therefore a deficit is unlikely based on historical returns.¹⁵⁵

PG&E takes issue with an idea introduced by TURN that each cash flow in the transaction should be discounted separately.¹⁵⁶ PG&E argues TURN achieves a large negative net present value by applying a lower discount rate to costs than to benefits.¹⁵⁷ PG&E argues that the interrelated elements need to be viewed as a single transaction as customers face only one possible payment stream – and the sole risk is a Fixed Recovery Charge payment more than the Customer Credit in any period.¹⁵⁸ Further, as the Fixed Recovery Charge (without an equal Customer Credit) is a small fraction of the costs charged to ratepayers,¹⁵⁹ and the probability of surplus is larger than the risk of deficit, the concept of risk aversion analysis should be rejected as it applies to this application.¹⁶⁰ PG&E also criticizes TURN's arguments regarding risk aversion as a reason to reject securitization as not applicable to the considerations in this application.¹⁶¹ In

¹⁵³ RT at 183; *see also*, PGE-15 at 6-33 and Table 6-14.

¹⁵⁴ RT at 198-199, RT at 671.

¹⁵⁵ *See*, PGE-06 at 6-32 to 6-33 and Table 6-9, RT at 156.

¹⁵⁶ TURN-02 at 3.

¹⁵⁷ *See*, TURN-01 at 9-13, TURN-02 at 3-4, 11, 21.

¹⁵⁸ PGE-17 at 10-4 to 10-6.

¹⁵⁹ *See*, PGE-09 at Ex.9.1-1 (the Fixed Recovery Charge annual revenue requirement of \$394.7 million per year in relation to annual sales of electricity of \$72.9 billion), RT at 811.

¹⁶⁰ RT at 667-668.

¹⁶¹ PG&E Opening Brief at 81-82

addition to its challenge to TURN's use of multiple discount rates for different cash flow elements, PG&E criticizes TURN's selection of a 10.25 percent (PG&E's authorized return on equity) as inapt for discounting the Additional Shareholder Contributions, since unlike dividend payments to shareholders, PG&E will be required to contribute¹⁶² the Additional Shareholder Contributions at some point.¹⁶³ Further, PG&E calls TURN's use of a discount rate equal to the interest rate on the securitized bonds¹⁶⁴ inappropriate, as valuing the risk investors are taking doesn't capture the actual value, which is the risk to customers (PG&E's approved rate of return).¹⁶⁵

PG&E calls the period from 2021 to 2035 key to achieving the goal of ensuring the Customer Credit Trust fully funds the Customer Credits for the entire 30-year period, but that some delay in the Additional Shareholder Contributions can be absorbed without causing a shortfall.¹⁶⁶ PG&E argues that while its actual taxable income could be higher or lower, or may experience shocks in the future, it would be unreasonable to reject its forecast based on predictions of unknown events. PG&E claims it presented "downside" scenarios that do not ultimately change the result, which benefits customers.¹⁶⁷ PG&E challenges TURN's alternative taxable income forecast.¹⁶⁸

¹⁶² See, PGE-50.

¹⁶³ RT at 1450-1451, 1454; *see also*, RT at 632-633, 672.

¹⁶⁴ TURN-01 at 12; TURN-01 at 3.

¹⁶⁵ PGE-03 at 3-22; PGE-17 at 10-12.

¹⁶⁶ See, PGE-55 (probability of a surplus in Customer Credit Trust is 76 percent, using TURN's "flawed" modeling).

¹⁶⁷ See, *e.g.*, PGE-15 at 6-18, RT at 865-866, 917-919, PGE-17 at 10-14, 10-15, 10-17, 10-20, and 10-21.

¹⁶⁸ PG&E Opening Brief at 102-111.

We agree with TURN that assumptions around the sustainability of growth, the scope of that growth, and PG&E's expectations of rate base additions are areas of concern. However, we do not find TURN's alternative taxable income forecast persuasive. TURN devoted a considerable amount of effort to modeling PG&E's taxable income, and TURN's forecast relied primarily on drivers such as load growth, efficiency, and inflation. However, the forecast methodology should also consider, among other factors, the amount of investment in rate base required to fund maintenance capital expenditures, wildfire mitigation expenditures, transportation and building electrification. TURN's reliance on systematic factors to determine PG&E's capital expenditure requirements does not consider PG&E's company-specific needs. We have similar concerns with TURN's taxable income forecast as it oversimplifies the inputs, makes assumptions with respect to long term growth in rate base that are unrealistically low, and introduces "shocks" to the analysis that even its witness could not adequately explain how some results could occur.¹⁶⁹ However, even under TURN's analysis it is virtually certain that all of the full \$7.59 billion in Additional Shareholder Contributions will be contributed, making the residual level of risk associated with PG&E's proposal manageable.¹⁷⁰ Overall, TURN's analysis does not dissuade us from our conclusion that PG&E has met its burden of proof in this area.

We also find fault in TURN's recommendation to increase the initial shareholder contribution to \$5.89 billion.¹⁷¹ When combined with the additional \$7.59 billion shareholder contributions, the total shareholder contribution

¹⁶⁹ RT at 1442-1445; *see also*, RT at 1434-1438, TURN-02 at 4-9.

¹⁷⁰ RT at 1454.

¹⁷¹ TURN-02 at 24.

required by TURN would be \$13.47 billion (and include no investment returns). The total of the Fixed Recovery Charges is anticipated to be \$11.22 billion (\$7.5 billion securitization principle and \$3.72 billion anticipated interest), meaning TURN's contributions are more than \$2.2 billion greater than will be paid in Fixed Recovery Charges.¹⁷² Further, when the concept of investment returns is included (TURN does not include any investment return in its calculation as it treats the present value of any such returns as zero), TURN's proposed initial shareholder contribution would fund more than half the Fixed Recovery Charges.¹⁷³ While TURN correctly points out the optimism in PG&E's proposal, its overall analysis contains flaws that, in total, make its alternatives unpersuasive. For example, TURN's adherence to the use of multiple discount rates results in a calculation of a negative present value (\$67.3 million) in year three of the Customer Credit Trust, despite the fact that there is no chance of a shortfall in that period.¹⁷⁴ However, even TURN predicts the Customer Credit Trust has a better than average (56%) chance of ending with a surplus.¹⁷⁵ Thus, while we took note of TURN's criticisms of PG&E's analysis and TURN's independent modeling and factored that into our conclusions, we do not find TURN's alternatives persuasive.

¹⁷² TURN calculates the present value of the additional shareholder contributions as \$2.82 billion (TURN-02 at 9), and putting issues with the calculation aside, when it is added to its proposed \$5.89 billion initial shareholder contribution, the \$8.71 billion present value of the shareholder contributions is far in excess of the actual \$7.5 billion present value of the securitization.

¹⁷³ An initial shareholder contribution of \$5.89 billion is sufficient for 14.92 years of credits based on \$394.7 million per year of Fixed Recovery Charges. *See*, PGE-09 at Ex.9.1-1. A one percent investment return would provide a lot more than the additional 0.08 year of credits.

¹⁷⁴ PGE-17 at 10-6, PGE-45 (excerpt of Dowdell Workpapers_TURN-01.xlsx, WP FOR TURN-01 p. 13, FN 45).

¹⁷⁵ TURN-02 at 19, 21 (Table 3).

PG&E states that alternatives presented by intervenors during the proceeding would preclude or reduce the benefits of securitization. First, a contractual guarantee or guaranteed dollar-for-dollar rate credit would cause the securitization to be on credit and prevent any improvement to PG&E's financial metrics.¹⁷⁶ Second, significant increases¹⁷⁷ to the Initial Shareholder Contribution (\$2 billion in the modified proposal) ignore the investment return component of the Customer Credit Trust to such an extent as to render it meaningless, is impractical based on PG&E's current financial capabilities, and will not increase the likelihood of success.¹⁷⁸

PG&E also urges the Commission to reject significant changes to the allocation of risks presented.¹⁷⁹ First, PG&E argues a 25 percent¹⁸⁰ sharing of the surplus at the conclusion of the Customer Credit Trust fairly compensates ratepayers for taking on the downside risk during the 30-year period.¹⁸¹ Second, the Customer Credit Trust is being funded entirely by shareholders.¹⁸² Third, keeping a substantial portion (*e.g.*, 75 percent) of any surplus with PG&E aligns PG&E's incentives with customers in the success of the Customer Credit Trust.¹⁸³

Cal Advocates argues that PG&E's models fail to capture risks that heighten long-term financial risks to ratepayers. Specifically, Cal Advocates

¹⁷⁶ RT at 483, *see also*, PGE-05 at 5-27.

¹⁷⁷ *See*, TURN-02 at 23-24, CLECA-01 at 2, 15-16.

¹⁷⁸ PG&E Opening Brief at 142-145.

¹⁷⁹ *See*, TURN-01 at 27, WTF-01 at 5.

¹⁸⁰ PG&E proposes to change the surplus sharing percentage to 10 percent to ratepayers in its modified proposal. As discussed below we do not agree that such a change is merited.

¹⁸¹ PGE-11 at 1-4, PGE-17 at 10-10.

¹⁸² PGE-06 at 6-1, 6-15, PGE-15 at 6-33.

¹⁸³ PG&E Opening Brief at 147.

challenges PG&E's assumptions with respect to catastrophic events that would negatively impact PG&E's ability to meet its taxable income forecasts.¹⁸⁴

Cal Advocates also challenges PG&E's assumptions related to the expected return on the Customer Credit Trust.¹⁸⁵ Cal Advocates states that even if none of the potential pitfalls occurs, that PG&E's own Monte Carlo modeling estimates a 16 percent chance of a shortfall in the Customer Credit Trust, and a greater than 5 percent chance the shortfall will exceed \$1.9 billion.¹⁸⁶ Thus, Cal Advocates argues the securitization levels presented by PG&E fail to meet the requirements of § 451.2 and are not ratepayer neutral as required by AB 1054 and D.20-05-053.¹⁸⁷ Therefore, Cal Advocates recommends a smaller, \$6 billion, securitization is appropriate in light of the risks and potential benefits of the proposed transaction.¹⁸⁸

Another alternative proffered by TURN would have the Commission require PG&E to pay approximately \$850 million (discounted at the after-tax cost of capital of the bonds) in tax deductions from the interest paid on the bonds to Customer Credit Trust.¹⁸⁹ Based on its analysis, TURN claims such additional contributions would result in an 89% chance the Customer Credit Trust ends with a surplus.¹⁹⁰ However, TURN has not explained or shown why the Customer Credit Trust should be assigned the tax deductions. In this case PG&E

¹⁸⁴ E.g., CalPA-01 at 6 n.28

¹⁸⁵ CalPA-01 at 7, PGE-06 at 6-22 to 6-27.

¹⁸⁶ See, PGE-06 at 6-29.

¹⁸⁷ Pub. Util. Code §§ 451.2, 850.1(a), D.20-05-053 at 78.

¹⁸⁸ CalPA-01 at 12-19.

¹⁸⁹ See, TURN-02 at 3.

¹⁹⁰ TURN-02 at 24.

shareholders are funding the Customer Credit Trust to offset the costs of the securitization.¹⁹¹ Further, PG&E has proposed providing the benefit of the tax deduction for interest to ratepayers in the event of a shortfall, as such debt in PG&E's proposal would be in that case funded by ratepayers.¹⁹² PG&E's proposed treatment of the tax deduction in the event of ratepayer funding for such costs aligns the benefit of the deduction with whoever pays the interest on the Recovery Bonds. It will appropriately be treated as a ratepayer-aligned benefit should a shortfall occur.

In enacting AB 1054 the legislature recognized that credit ratings below investment grade jeopardize the ability of electric corporations to provide safe and reliable electric and gas service, provide service at just and reasonable rates, and meet other state goals.¹⁹³ In reviewing the options presented by this application there are risks associated with any decision we make. We are convinced that rejection of the securitization would ultimately result in higher costs to ratepayers, increase safety risks, and hinder achievement of our state climate and greenhouse gas goals. As originally presented, PG&E's securitization plan was arguably neutral, on average to ratepayers over the course of the 30 plus year term. However neutral it was, when taken as a whole, PG&E's modifications developed at and from the evidentiary hearing provide a higher level of assurance that the securitization plan will be neutral, on average.¹⁹⁴ In particular, increasing the amount of the Initial Shareholder

¹⁹¹ PGE-17 at 10-22, *cf.*, TURN-02 at 17.

¹⁹² RT at 299-300, PG&E Opening Brief at 146-147.

¹⁹³ *See*, § 854.2(a)(6); *see also*, Senate Floor Analyses of AB 1054, July 8, 2019, Assembly Floor Analysis of AB 1054, July 11, 2019.

¹⁹⁴ *See, infra*.

Contribution, resequencing the realization of the NOLs, and agreeing to provide up to \$775 million if needed after a proceeding in 2040, and other changes described in this decision, lead us to determine that PG&E has met its burden to show the securitization is neutral, on average to ratepayers as required by D.20-05-053.¹⁹⁵

4.4. Adoption and Approval of the Customer Credit Trust.

PG&E argues its projections are reasonable and conservative and provide an adequate cushion for plausible downside scenarios. PG&E urges the Commission to evaluate the risks that may reduce the value or change the timing of realization of the Shareholder Deductions and Shareholder Tax Benefits based on the reasonableness of those projections and plausible downside scenarios.

As noted above, Cal Advocates contests PG&E's showing that a \$7.5 billion securitization is justified as it would not be "ratepayer neutral," but that a \$6 billion securitization is reasonable.¹⁹⁶ Cal Advocates argues that both the risk of catastrophic loss of the value of the NOLs and the risk that PG&E does not meet its income projections (resulting in delayed or insufficient NOL realization)¹⁹⁷ should lead the Commission to approving an amount less than the \$7.5 billion requested by PG&E.¹⁹⁸

PG&E challenges the alternative proposal of a \$6 billion securitization put forth by Cal Advocates as it would fail to accomplish key objectives of the transaction, fail to significantly reduce risks, and serve only to reduce customer

¹⁹⁵ See, PGE-06 at 6-1 to 6-2; *see also, infra*, n.131.

¹⁹⁶ CalPA-01 at 1, 12.

¹⁹⁷ Cal Advocates Opening Brief at 12.

¹⁹⁸ CalPA-01 at 12-19 (along with a corresponding reduction in the Customer Credit Trust).

benefits.¹⁹⁹ PG&E states the objective of the Stress Test Methodology is to determine the maximum amount of debt it can incur without harming customers and that a smaller securitization would force PG&E to find alternative means to raise \$1.5 billion in capital and impede the deleveraging benefits created by the securitization, both of which are likely to lead to higher costs for PG&E and ratepayers.²⁰⁰ PG&E also states because Cal Advocates proposes a corresponding reduction in the size of the Customer Credit Trust that a smaller securitization would not reduce the risk of shortfall in that trust.

A4NR would have the Commission apply “Occam’s razor” to the “neutral, on average” requirement arising from D.20-05-053 and AB 1054. A4NR defines neutral to mean “ratepayers are financially indifferent to whether the securitization proceeds” and “on average” as “from the perspective of the average PG&E customer” which is “the same metric the utility commonly uses in its public announcements to quantify the rate impacts of Commission decisions.”²⁰¹ Further, A4NR would define “compensate them accordingly” from § 3292(b)(1)(E) to mean “the credit enhancement provided by ratepayers to monetize PG&E’s NOLs is identified and credited back to ratepayers.”²⁰²

Based on its definitions, A4NR criticizes PG&E’s proposal for not attempting to quantify the value of the credit enhancement and using the 25% residual surplus as a “backhanded attempt” to “compensate them accordingly.” A4NR further criticizes PG&E for its unwillingness to absorb the risk of deficits or provide any guarantees. A4NR claims PG&E has failed to meet its burden

¹⁹⁹ PGE-14 at 5-18 to 5-21, PGE-15 at 6-3.

²⁰⁰ *Id.*

²⁰¹ A4NR Opening Brief at 15.

²⁰² *Id.* at 16.

with respect to the requirements set forth in the statute, and proposes a different method to distribute the residual surplus as a fairer allocation of risk.²⁰³

A4NR also claims PG&E fails to reasonably account for risks to ratepayers including potential shortfalls in the Customer Credit Trust, and ramifications of PG&E's uncertain future.²⁰⁴ A4NR calls for the Initial Shareholder Contribution to be increased,²⁰⁵ and for the requirement that PG&E incorporate a third-party guarantee, to address PG&E's suppression of unfavorable results in its presentation and unwillingness to show it assessed risks and stress-tested multiple scenarios.²⁰⁶ A4NR states another option would be for PG&E to provide a contingent dollar-for-dollar rate credit backstop. A4NR states such a backstop would better address the statutory requirements.²⁰⁷

A4NR calls for the limit on Additional Shareholder Contributions to be removed and for the Commission to adopt a trueing-up methodology similar to what it does every three years with the Nuclear Decommissioning Trusts.²⁰⁸ A4NR argues that PG&E's "dearth of stress-testing" alternatives prevents an assessment of the different options that may be more suitable to avoid shortfalls.²⁰⁹

²⁰³ *Id.* at 16-21, 30-31.

²⁰⁴ *Id.* at 21-29.

²⁰⁵ *Id.* at 22-25.

²⁰⁶ *Id.* at 25-29.

²⁰⁷ *Id.* at 28-29.

²⁰⁸ *Id.* at 30-34.

²⁰⁹ *Id.* at 35.

A4NR states “PG&E’s proposal fails to satisfy the applicable legal requirements”²¹⁰ A4NR says the most serious of these deficiencies stems from three fundamental premises: (1) an “expectation” that a 30 – 32-year investment return will produce a residual surplus acceptably “neutral” to ratepayers; (2) that “compensation” for the credit enhancement taken from ratepayers need not be valued by commercial standards nor paid contemporaneously; and (3) that the Commission requirements for a credible 3-year pathway back to investment grade issuer status and use of the Stress Test Methodology only as a “last resort” will be abandoned or waived.²¹¹ A4NR argues a legally compliant approach would: (1) create a legally enforceable assurance that there will be no shortfalls in Fixed Recovery Charge reimbursements to ratepayers from the Customer Credit Trust; and (2) provide a transparent calculation of the fair market value of the credit enhancement provided for the securitization bonds by ratepayers and contemporaneous payment therefor, as would be demanded by a bond insurer or letter-of-credit bank.²¹²

A4NR says the only potential upside for ratepayers to the securitization is the speculative benefit that the cost of PG&E’s debt will be lower, but states “PG&E’s pollyannish supposition is contrary to repeated written feedback during the past year from S&P and Moody’s, and the magnitude of any purported savings is heavily disputed.”²¹³

²¹⁰ *Id.* at 37, *citing* Pub. Util. Code §§ 850.1(a)(1)(A)(ii)(I), 850.1(a)(1)(A)(ii)(II), 850.1(i), 3292(b)(1)(D), and 3292(b)(1)(E); D.19-06-027, and D.20-05-053.

²¹¹ A4NR Opening Brief at 37-38.

²¹² *Id.*

²¹³ *Id.* at 29-30.

AECA argues there is a real risk there will not be sufficient funds in the Customer Credit Trust to cover the Fixed Recovery Charges²¹⁴ as it will take about 15 years to fully fund the Customer Credit Trust,²¹⁵ and even then, it will not function as a business trust and be eligible for bankruptcy protection.²¹⁶ AECA calls PG&E's proposed allocation of risk unreasonably lopsided and urges the Commission to ensure shareholders' contributions to the Customer Credit Trust are sufficient to offset the identified risks.²¹⁷

CCSF argues the Commission should deny the application as PG&E has not proven it will timely make the Initial Shareholder Contribution and all the Additional Shareholder Contributions.²¹⁸ Further, CCSF claims PG&E has failed to show there is an 84 percent likelihood the Customer Credit Trust will have a surplus at the end of the period, or realize projected interest cost savings as a result of the securitization, and that without such showings the application fails to be neutral, on average to ratepayers.²¹⁹

CLECA claims that "PG&E does not provide any assurance that ratepayers will truly be held harmless from this transaction."²²⁰ CLECA states the record shows at least four key risks related to the Customer Credit Trust: (1) delays in contributions of the NOLs;²²¹ (2) the possibility of another PG&E bankruptcy or

²¹⁴ AECA Opening Brief at 12-13.

²¹⁵ PGE-06 at 6-15, Table 6-3.

²¹⁶ *Id.* at 6-3.

²¹⁷ AECA Opening Brief at 12-13.

²¹⁸ CCSF Opening Brief at 25-30.

²¹⁹ *Id.* at 30-33.

²²⁰ CLECA-01 at 8.

²²¹ *See*, CLECA-01 at 8-9.

other event leading to a change of control that would eliminate the NOLs;²²² (3) failure to earn adequate returns on investments;²²³ and (4) the Trust itself being subsumed into future bankruptcy proceedings.²²⁴ CLECA argues that PG&E cannot dispute the existence of these risks and any one could cause the failure of the Customer Credit Trust to offset securitization costs and result in the securitization failing to be neutral to ratepayers.²²⁵

CUE agrees with PG&E that “it is reasonable to expect that the rate of return the Trust will earn” will be sufficient “to fully fund the Customer Credit throughout the 30-year period,” and that PG&E has likely underestimated the benefits.²²⁶ CUE argues the record shows “PG&E’s proposed securitization benefits ratepayers, mitigates risk to ratepayers, and is, therefore, neutral, on average, to ratepayers.”²²⁷

EPUC argues that a dollar-for-dollar credit or a comparable mechanism is needed to comply with AB 1054, Commission orders, and PG&E’s commitment to Governor Newsom.²²⁸

Cal Advocates argues PG&E’s application does not satisfy the ratepayer neutrality requirement set forth in D.20-05-053 as PG&E fails to identify significant risks of the Customer Credit Trust being underfunded and fails to

²²² CLECA-01 at 8, 10.

²²³ CLECA-01 at 8, 11-12, RT at 557.

²²⁴ CLECA-01 at 8.

²²⁵ CLECA Opening Brief at 13.

²²⁶ CUE Opening Brief at 5, *citing*, PGE-06 at 6-14 to 6-15.

²²⁷ CUE Opening Brief at 6.

²²⁸ EPUC Opening Brief at 35-36.

provide for shareholder responsibility in the event of such underfunding.²²⁹ Cal Advocates claims PG&E has not addressed the risks associated with its future ability to meet its taxable income forecasts which could lead to a shortfall in the Customer Credit Trust and subject ratepayers to an additional tax gross-up on the principal of the shortfall.²³⁰ Further, Cal Advocates states the assumptions surrounding the inflows and outflows as well as the expected return on the Customer Credit Trust balance are dependent on a number of economic variables, and risk funding shortfalls if any of the assumptions prove overconfident, and even if all of the assumptions come true, there is still a 16 percent chance of shortfall.²³¹ Therefore, to meet the ratepayer neutrality requirement a smaller securitization is warranted, and Cal Advocates claims the uncertainty of the timing of the NOLs can be mitigated by its reduced Securitization amount.²³²

Wild Tree argues that in addition to not being ratepayer neutral²³³ the proposed structure of the Customer Credit Trust fails to protect ratepayers in the normal course of business or in the event of bankruptcy or change of ownership. Wild Tree states the arrangement where ratepayers bear 100 percent of losses but receive only 25 percent of gains can create conflicts and distorted incentives for Trust managers.²³⁴ Wild Tree also claims that PG&E's plan does not allow for sufficient management control regarding when and if available surplus funds

²²⁹ Cal Advocates Opening Brief at 12-17.

²³⁰ *Id.* at 12-13.

²³¹ *Id.* at 14-15.

²³² *Id.* at 15-17.

²³³ Wild Tree Opening Brief at 29-33.

²³⁴ Wild Tree Opening Brief at 33-34.

would be distributed to ratepayers. Wild Tree calls for managers of the Trust to have a primary fiduciary responsibility to ratepayers, not PG&E, and the Commission should have authority to terminate managers and approve all compensation, management fees, etc.²³⁵ Wild Tree also criticizes PG&E's proposal to structure the Trust as a grantor Trust as that structure puts too much control in the hands of PG&E and it has not shown such a structure is in the best interest of ratepayers.²³⁶

PG&E's original proposal would fund the Customer Credit Trust in 2021 with a \$1.8 billion Initial Shareholder Contribution and provide additional contributions as NOLs are realized through future taxable income (\$7.59 billion). During the evidentiary hearing,²³⁷ and detailed in its briefing materials filed on January 15, 2021,²³⁸ PG&E proposed modifications to its proposed structure, including:

- A. Modifying the sequencing of the monetization of NOLs, accelerating \$89 million of contributions from 2024 into 2023;²³⁹

²³⁵ *Id.*

²³⁶ *Id.* at 34-35, *citing*, WTF-01 at 10-11.

²³⁷ RT at 908-909.

²³⁸ PG&E Opening Brief at 150-160, *citing*, RT at 161-164, 166, 200-203 (asset allocation of the Trust), 870-872 (amount and timing of Initial Shareholder Contribution), 266-267, 271 (sequencing of \$423 million of shareholder NOLs), 482-489 (implications of a guarantee from rating agencies), 872-873 (the amount of contributions and risk of deficit scenarios).

²³⁹ Currently PG&E has \$423 million of federal NOLs at the holding company. These NOLs were intended to be realized on a first-out basis relative to the Shareholder NOLs being contributed to the Customer Credit Trust. This revision would prioritize the Shareholder NOLs contributed to the Customer Credit Trust. *See*, PG&E Opening Brief Attachments A and B, and Table A7-2 in Attachment 7 and Table A9-1 in Attachment 9 in A.21-01-004.

- B. Modifying the Customer Credit Trust portfolio allocation to reduce reliance on equity returns (*i.e.*, more fixed income investments relative to equity investments);²⁴⁰
- C. Increasing shareholder cash contributions by \$200 million, and delaying a portion of the initial contributions to the first quarter of 2024;²⁴¹
- D. Agreeing that the Commission may open a proceeding in 2040 that could result in direction to PG&E to make up to \$775 million of additional contributions;²⁴² and
- E. PG&E also agreed following its initial application to contribute additional tax attributes, as required, to ensure the market value of settlements would not reduce NOL contributions.

PG&E states these modifications are logical outgrowths of issues raised at the evidentiary hearing. We agree that PG&E's modifications address and are logical extensions of its original proposals and are grounded in the record, with the exceptions noted below.²⁴³ The record includes numerous discussions around the amount of the Initial Shareholder Contributions, including proposals

²⁴⁰ See, RT at 160-166, 200-203. PG&E never sought a specific investment allocation for the Customer Credit Trust, but proposed leaving that decision to the majority-independent Committee that will manage the Customer Credit Trust.

²⁴¹ PG&E originally proposed to contribute \$1.8 billion at the beginning of the trust's life. PG&E's modified proposal would contribute cash in two installments, the initial contribution of \$1 billion in 2021 and a second payment of \$1 billion in 2024. See, RT at 164-165 (describing how \$1.8 billion will actually be contributed over 4 quarters instead of all on day one of securitization), RT at 871-873 (size and structure of initial shareholder contribution established to achieve rate neutrality).

²⁴² See, CCSF-13 at 36, 38 (Figure 6). The "slow growth" forecast put forth by CCSF would have all Additional Shareholder Contributions completed by 2039. See also, PGE-15 at 6-33 (Table 6-14), a supplemental contribution in 2040 of \$775 million would reduce potential deficit scenarios into the single digits (90th percentile deficit is \$610 million without the tax gross up (\$878 million / 1.39)).

²⁴³ See, D.01-01-007, 2001 WL 359583 (Jan. 4, 2001) (addressing alternative proposals in briefing that were "logical extensions of proposals by other parties, with basis in the record"); D.92-10-051, 46 CPUC 2d 113 (Oct. 21, 1992) (addressing proposal presented in briefing).

from TURN for additional contributions and questions around the amount PG&E proposed contributing, which were subsequently increased by \$200 million. The 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 2024.²⁴⁴ 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 2024.²⁴⁵

In addition, PG&E argues that the modifications it proposes to its structure would “substantially reduce customer risk” and thus the 25 percent sharing with customers of the potential surplus at the conclusion of the Customer Credit Trust should also be modified to a 10 percent sharing with customers.²⁴⁶ We disagree. The modifications PG&E has made address areas of concern identified during this proceeding, and do not alter the basic transaction, which allows PG&E to securitize a significant expense and obtain value from the federal NOLs in 2021. While PG&E’s proposed modifications reduce the risk to a reasonable level, they do not eliminate all risks. A reasonable level of risk was the premise of PG&E’s original proposal where it proposed 25 percent of the potential surplus be assigned to ratepayers. A 25 percent allocation of any potential surplus fairly compensates ratepayers for taking on downside risk during the 30-year period. PG&E’s rationale to reduce the surplus sharing percent based on the ratio of

²⁴⁴ See, TURN-02 at 10.

²⁴⁵ See, Attachment 9 to A.21-01-004, PG&E Application, at Row 22, PG&E Opening Comments Exhibit 4 (proposed Table C-1).

²⁴⁶ PG&E Opening Brief at 160, *citing*, RT at 871.

expected value of the negative outcomes resulting from its proposed modifications is not persuasive.²⁴⁷

Intervenors recognized the risk of interim shortfalls and recoveries in the Customer Credit Trust,²⁴⁸ and offered various solutions over the course of the proceeding. TURN proposed the Commission “take steps to avoid a situation in which PG&E is unable to provide the offsetting credits for a period of time” and proposed increasing the Additional Shareholder Contributions.²⁴⁹ CCSF’s analysis of a 20 percent reduction in PG&E’s earnings indicated the full amount of the Additional Shareholder Contributions would be contributed by 2039.²⁵⁰ Thus, PG&E’s proposed 2040 time period for review of an additional \$775 million contribution is reasonable.

We believe a solution needs to address the key risks identified above as well as balance the impacts any solution may have on credit ratings. Accordingly, we have evaluated measures that will protect ratepayers by mitigating the identified risks of shortfalls in the Customer Credit Trust and mitigating catastrophic event risk, and that also are cost of capital supportive, and thus beneficial to ratepayers, by reducing PG&E’s cost of debt.

In evaluating the effectiveness of the various solutions proposed by intervenors addressing risks we identified above, we consider the following: First in evaluating ways to mitigate the risk of a shortfall we consider lower than projected taxable income and investment returns. Intervenors address these

²⁴⁷ See, *id.*

²⁴⁸ See, e.g., TURN-01 at 27, A4NR Opening Brief at 21-29, CLECA Opening Brief at 14, Cal Advocates Opening Brief at 12-17.

²⁴⁹ TURN-01 at 27.

²⁵⁰ CCSF-13 at 38 (Figure 6).

concerns through their presentation of historical taxable income projections, identifying implied unrealistically high rates, identifying that PG&E's projections do not assume go-forward events will disrupt future earnings, nor assume any material fines or penalties in the future, and analyzing the risk the Customer Credit Trust will not be sufficiently funded to earn projected returns. Second, intervenor proposals to mitigate catastrophic event risk that could reduce or eliminate the value of unutilized NOLs include highlighting the risk of change of control for tax purposes,²⁵¹ how enhanced implementation / municipalization might occur, potential adverse changes in tax law or treatment, and even a future Chapter 11 event that results in a change of control. Third, in support of PG&E's credit ratings and cost of capital, targeting off-balance sheet treatment and minimizing capital market constraints driven by the proposal, minimizing on credit risk, including those with "an absolute obligation to make a supplemental contribution that guarantees the Customer Credit Trust will have sufficient assets to fully fund the credit..." to accelerate PG&E's path to an investment grade credit rating.

PG&E's financial statistics are currently at the lower end of the range for its business risk profile and credit rating; however, its credit statistics are projected to improve toward the middle to upper end of the range by 2024. We agree with intervenors that change in business risk and notching are the key drivers of its path to investment grade credit metrics. We agree also that credit statistics are currently materially tighter than they are projected to be on a going forward basis.

²⁵¹ See, 26 U.S.C. § 382(n).

Key risks identified through the presentation of testimony and briefs include the risk that PG&E does not meet its income projections (resulting in delayed or insufficient NOL realization), the risk of catastrophic loss of the value of the NOLs (including from events such as changes of control for tax purposes, changes in tax law or enhanced enforcement), and the risk associated with investment returns.

While PG&E's modified proposal does help mitigate some of the highlighted key risks, it does not eliminate them entirely. For example, PG&E agreed accelerating customer NOL's would not be "a real problem" for them.²⁵² As such, the revised proposal provided for such an acceleration of the NOL's, and this resequencing of the NOLs does accelerate the timing of monetization but does not reduce the underlying risks of shortfall. PG&E characterizes remaining risks as minuscule. PG&E quantifies its view of the risk as having expected values of \$20-30 million,²⁵³ and has highlighted downside projections that result in such balances as extreme assumptions. PG&E further addresses concerns by contributing additional upfront cash and committing to contribute an additional \$775 million in 2040 if required. PG&E states that as a result of such modifications, 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).²⁵⁴ We recognize PG&E's characterization that such risks are minimal and the adjusted proposal reduces risks of near term shortfalls to near zero and probabilities of any shortfalls to minuscule levels. While we do not waive existing regulatory authority to address shortfalls resulting from such unlikely

²⁵² RT at 909.

²⁵³ Cf., TURN-02 at 20.

²⁵⁴ PG&E Opening Brief at 158-159.

events as material deviations in the value of the trust or catastrophic events eliminating or substantially reducing the value of the NOLs in the unlikely event that they occur, we agree the risks are improbable and should only be evaluated if extreme circumstances give rise to a shortfall. As discussed in Section 4.3, *infra*, we deny proposals from intervenors for a guarantee and for a guaranteed dollar-for-dollar rate credit.

Accordingly, PG&E will fund Additional Shareholder Contributions to the Customer Credit Trust of \$7.59 billion based on a formula, which is included as Attachment 7 to the proposed Financing Order application (A.21-01-004), to calculate the incremental cash generated from reducing taxes through applying shareholder-owned tax deductions or NOLs. In addition, we require that if, subsequent to the issuance of a financing order, PG&E receives additional insurance proceeds, tax benefits other than Shareholder Tax Benefits or other amounts or reimbursements for Catastrophic Wildfire Amounts included in the recovery costs addressed in a financing order, PG&E shall credit customers, in a manner determined at the time by the Commission.

PG&E's proposed modifications sought to apply the concept of a subsequent proceeding in a way that addresses the basic concern that underlies parties' challenges to PG&E's assertions of rate neutrality. As discussed below there are real benefits of the proposed structure, and based on the modifications discussed herein to minimize the risks, we approve PG&E's proposal as described above.

We view the risk of shortfall as real but not significant, recognizing PG&E's quantification of risk as near zero in the near term and minuscule with present values amounts quantified as \$20-30 million. The modifications made by PG&E reduce the likelihood of shortfall due to insufficient funds in the early

period of the Customer Credit Trust, but do not eliminate the possibility for any period. Intervenors, including A4NR and TURN, argue that the structure does not technically satisfy the rate neutrality commitments made by PG&E. We expect that the amount and timing of the contributions PG&E proposes should prevent a shortfall from occurring in any period. We recognize PG&E's projections reflect performance on an industrial basis and the base projections assume that no additional adverse events occur over the 30-year period.²⁵⁵ While we do not agree with PG&E or Intervenors in all respects, we do agree that even if one or more adverse events occur it should impact the timing for the realization of the NOLs, it should not prevent them from being realized eventually. Accordingly, we are satisfied that ultimately the Customer Credit Trust can be expected to offset the monthly charges caused by the issuance of the Recovery Bonds, and we have not waived an ability to utilize our standing regulatory authority to satisfy ratepayer neutrality arguments brought by Intervenors (with the expectation that such authority will never be invoked).

The Additional Shareholder Contribution is a significant asset to be contributed to the Customer Credit Trust. The ultimate value of that asset totals \$7.59 billion. However, were PG&E to attempt to sell that asset to a third party today, the contribution to the Customer Credit Trust would be significantly less. The federal NOLs are a current (or past) tax deduction that carries forward to reduce taxes in future years. It can be sold just like any other financial asset,²⁵⁶ but usually at a reduced amount based on the risk in terms of time to

²⁵⁵ See, RT at 410-411.

²⁵⁶ See, RT at 1044-1045.

realization.²⁵⁷ The time to realization depends on the amount and timing of future profits. The regulatory structure under which a utility is made subject to certain regulations on cost and service, and then may earn a certain cost of capital, provides that realization of the cost of capital is not guaranteed, but is achievable by the utility. Thus, over time utility profits should occur. A question before us is to determine whether the risk of realization of the NOLs is better borne by the utility or by ratepayers. We determine that the transfer of the value of the NOLs to the Customer Credit Trust is beneficial to ratepayers and in the public interest.

PG&E testified denial of this application would likely cause it to seek to refinance the temporary utility debt at a higher interest rate than achievable with securitization and pay off that new debt when the NOLs were realized.²⁵⁸ Further, PG&E explained denial of this application would result in higher costs for borrowing. On balance, denial of the application is more likely to result in long-term costs to ratepayers that exceed any short-term benefits. The Legislature did not prefer this outcome given the overarching public interest risks associated with the catastrophic wildfire costs.²⁵⁹ In addition, the benefit to shareholders in retaining the NOLs is significant and transferring that benefit to ratepayers (even with the associated risks) better balances the costs and rewards of PG&E's service. The transfer of the NOLs reduces PG&E's future cash flow,

²⁵⁷ *Id.* (the market value of an unusual asset is not a helpful benchmark because the market is so thin that the sale price will be discounted compared to actual value), *see also*, A4NR Reply Brief at 19 ("proposed securitization applies innovative financial engineering to convert an unmarketable, illiquid asset (the NOLs) into ... [a] liability ... to ratepayers.").

²⁵⁸ PG&E Reply Brief at 11-14.

²⁵⁹ *See*, SB 901, AB 1054.

ensures ratepayer costs do not increase, and provides a likely significant benefit to ratepayers at the conclusion of the 30-year period.

We agree with PG&E that the structure of the Customer Credit Trust would not be within the reach of creditors in a potential future bankruptcy. As the assets of the Customer Credit Trust can only be used for the limited purpose of reimbursing PG&E for payment of Customer Credits (and its expenses) it should be unavailable to PG&E's general unsecured creditors. A more significant potential pitfall is a bankruptcy (or other financial transaction)²⁶⁰ that results in a change of control under the tax code.²⁶¹ However remote this risk might appear, it is one we can mitigate here and in the future. The Bankruptcy Code expressly provides that any rate change proposed by a plan of reorganization must be approved by the government regulatory authority with proper jurisdiction.²⁶² The Commission will avail itself of any and all similar provisions of state and federal law to ensure the Customer Credit Trust operates as intended in any situation where a change of control (for tax purposes) might occur. In other words, the Customer Credits will be considered by the Commission in its review of future proposed transactions.

Accordingly, with the exception of the surplus sharing discussed above, we approve PG&E's modified proposal, but will expand upon the mechanism PG&E proposed where a subsequent Commission proceeding, commenced according to Commission procedures in effect at that time by an appropriate

²⁶⁰ See, Resolution M-4852, April 15, 2021.

²⁶¹ See, RT at 326.

²⁶² 11 U.S.C. § 1129(a)(6); *In re PG & E Corp.*, 2019 WL 2482412, at 4 (Bankr. N.D. Cal. May 28, 2019) ("[I]f any future plan includes a rate change, the Utility would first have to obtain full approval from the CPUC, and any ratepayer or entity would have the opportunity to be heard by the regulatory agency during any such consideration.").

party, if needed, could address unexpected shortfalls in the Customer Credit Trust. If such subsequent Commission proceeding were needed, based on the criteria articulated below, the Commission, at that time,²⁶³ and with the participation of PG&E and interested parties, would consider whether an appropriate regulatory solution can be developed, consistent with an appropriate overall rate structure for PG&E. We specifically do not attempt to modify or alter in any way the irrevocable charges that may be adopted via a financing order in A.21-01-004. It is unlikely such a proceeding would be necessary, and even more unlikely that PG&E's proposed \$775 million incremental contribution would not provide adequate protection for ratepayers, but we 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. As a result, we accept PG&E's proposal, as modified save for the change to surplus sharing, 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).

PG&E proposed modifications sought to apply the concept of a subsequent proceeding as a way to address a basic concern that underlies parties' challenges

²⁶³ See, *e.g.*, Commission Rules of Practice and Procedure 16.4(d).

to PG&E's assertions of rate neutrality. As discussed below there are real benefits to adopting PG&E's structure, but the long-term duration of the structure has inherent risk. Therefore, rather than continue to seek to adjust the proposal in an attempt to eliminate all risks that, structurally, will always remain, we conclude that the potential benefits are broad enough and the potential risk is narrow enough at this point to approve PG&E's proposal with a modified version of the subsequent proceeding that preserves the ability to consider ratemaking and other proposals in the unlikely event the conditions described above occur.²⁶⁴ We view these conditions as necessary to ensure rate neutrality.

The establishment and oversight of the Customer Credit Trust is included in this decision because under the terms of the statute a financing order addresses the adoption of Fixed Recovery Charges and associated terms for an issuance of recovery bonds, and the establishment of the Customer Credit Trust relates to the topics addressed here.

4.4.1. Adoption of the Customer Credit Trust Agreement Form and General Trust Description

The Commission approves the form of the Trust Agreement attached as Attachment A to this Order, which contains revisions to the form of agreement proposed in A.21-01-004. As revised, the Trust Agreement form is reasonable as it is a customary document reflecting the terms outlined in this decision.

As set out in the Trust Agreement, the Customer Credit Trust will have a limited purpose, namely, to hold and preserve the Trust's assets (the Trust Corpus) and manage the investment thereof and of the Customer Credit Trust

²⁶⁴ See, RT at 164-166 (the risk of a near-term shortfall are near zero).

Returns, all in order to fund the Customer Credit. The Trust thus will not function as a “business trust” with authority to carry out general business activities.

In addition, the Customer Credit Trust will be authorized to make interim distributions to PG&E only as specified in the Trust Agreement, namely:

(i) reimbursing PG&E for the costs of Customer Credits and (ii) reimbursing PG&E in order to pay the fees and expenses of the Trust, including any tax liabilities incurred in respect of the Customer Credit Trust Returns, as described therein. Accordingly, PG&E shall provide the Customer Credit using funds in the Customer Credit Trust to the extent such funds are available, and other sources identified herein, to affected consumers in an amount equal to the Fixed Recovery Charges to be paid by such consumers.²⁶⁵ PG&E shall provide as part of the Customer Credit, a credit for servicing and administration expenses paid to PG&E regardless of the Customer Credit Trust Balance.

Without further action from the Commission, PG&E shall be permitted to make withdrawals from the Customer Credit Trust as necessary to pay the Customer Credit. As long as the Recovery Bonds remain outstanding, PG&E cannot withdraw funds from the Customer Credit Trust for any other purposes, including to satisfy the claims of its creditors. However, if assets in the Customer Credit Trust are insufficient to fund a Customer Credit equal to the Fixed Recovery Charges for a period of time, the future Customer Credit Trust balance

²⁶⁵ PG&E correctly states that Pub. Util. Code § 850.1(i) (“Recovery costs shall not be imposed upon customers participating in the California Alternative Rates for Energy or Family Electric Rate Assistance programs discount pursuant to Section 739.1.”) exempts CARE and FERA customers from the Fixed Recovery Charges in the same way they “are exempted from paying the DWR bond charge” and similar Self-Generation Incentive Program and California Solar Initiative charges. PGE-09 at 9-2, 9-4 to 9-5.

will first be used (up to the amount of the balance) to make up any previous shortfalls in Customer Credits, including the amount of any FRTA charged on the shortfall.

The Customer Credit Trust Agreement, consistent with the form agreement outlined in Attachment A, includes a regular reporting requirement that provides the Commission an ability to monitor the sufficiency of the trust. We have clarified that the reports should be submitted quarterly and served on the service list of this proceeding.

In addition, once the Recovery Bonds are repaid and all Financing Costs have been paid in full and the Fixed Recovery Charges cease, the Customer Credit Trust will be terminated, and the assets liquidated. Consumers will receive 25 percent and PG&E will receive 75 percent of any funds remaining in the Customer Credit Trust after payment of the Customer Credit Trust expenses, including computed taxes, creating a significant upside opportunity for Consumers.

The Customer Credit Trust shall be governed by a committee composed of five members, three of whom will be independent of PG&E. Members of the Committee would be nominated by PG&E management and confirmed by PG&E's board of directors. No more than two of the members may be employees, officers, agents or otherwise affiliated with PG&E except with respect to their service as members on the Committee. At least three members will be independent, whose nominations to the Committee will be confirmed by the Commission as well as PG&E's board of directors. PG&E's appointment of the independent members of the management committee for the Customer Credit Trust (the Committee) and their compensation for serving on the Committee are subject to Commission approval, which will be sought by PG&E via a Tier 2

Advice Letter filed with the Commission. The Customer Credit Trust shall abide by the existing investment policies and procedures applicable to the nuclear decommissioning trusts, including D.87-05-062 and D.13-01-039, and specific investment guidelines as may be set forth in agreements with the relevant asset manager(s). The Commission shall approve agreements with asset managers selected by the Customer Credit Trust. Commission approval of such agreements shall be via a Tier 2 Advice Letter filed by PG&E.

4.4.2. The Customer Credit True-Up Process

The Customer Credits will, by subsequent Commission order, be subject to true-up mechanisms that enable adjustments to the Customer Credits when the related Fixed Recovery Charges are adjusted pursuant to the Fixed Recovery Charge True-up mechanisms and in other situations. Such Customer Credit True-Ups will be consistent with the timing and approval requirements applicable to the related Fixed Recovery Charge True-Up mechanisms.

In order to recognize the amounts credited to customers' bills through the Customer Credit, PG&E is authorized to establish for each series of Bonds, an account for purposes of tracking the revenues associated with the income tax gross-up (the amount of income taxes in the annual adopted Commission revenue requirement that match Shareholder Tax Benefits utilization and the Initial Shareholder Contribution).

4.5. Construction of Statutes Governing 2017 Wildfire Costs in Connection With Provisions of Article 5.8 of Chapter 4 of the Public Utilities Act

The application in this proceeding seeks to have this Commission apply the provisions of §§ 451.2(b) and (c) to certain costs and expenses relating to 2017 wildfires so those costs can be securitized pursuant to Article 5.8 (commencing with § 850) of Chapter 4 of the Public Utilities Act. Throughout

this decision we have directly and indirectly referred and interpreted the provisions of § 850 *et seq.* because they related to the relief requested. Below we explicitly construe how § 850.1(a)(1)(A)(ii) applies in these circumstances and identify a procedural consequence of the fact that we interpret portions of § 850.1 here.

4.5.1. To the Extent § 451 Applies to This Proceeding It Is Construed to Be Coextensive with § 850.1(a)(1)(A)(ii)

A4NR claims the “just and reasonable” requirements of Section 451 “effectively apply” to PG&E’s proposal even if the entire \$7.5 billion is allocated to ratepayers under § 451.2. A4NR says the requirements of § 850.1(a)(1)(A)(ii)(I) as applied to the financing order is the same standard as § 451.²⁶⁶

CCSF argues PG&E has failed to meet its burden of proving its proposal is “just and reasonable” as required under § 451.²⁶⁷ CCSF states § 451 applies to all rates, including the proposed Fixed Recovery Charges, and examination of those charges under the standard is critical given the 30-year duration of the charges and the irrevocable and non-bypassable nature of the charges.²⁶⁸ More importantly, says CCSF, is the probability that ratepayers will not be fully reimbursed and PG&E’s failure to guarantee the charges will be offset by Customer Credits leading to a meaningful probability that rate increases will occur.²⁶⁹

²⁶⁶ A4NR Opening Brief at 35-36.

²⁶⁷ CCSF Opening Brief at 34.

²⁶⁸ *Id.* at 33.

²⁶⁹ *Id.* at 33-34.

CLECA argues that “Section 451 applies, in addition to the California Constitution, and PG&E has not met its burden.”²⁷⁰ CLECA claims that the risk of a shortfall in the Customer Credit Trust and failure to offset the non-bypassable Fixed Customer Charge is unjust and contravenes § 451.²⁷¹

EPUC states that any charge imposed by PG&E is subject to § 451 requirements and that PG&E has not met its burden to show the charges proposed in this case are just and reasonable. Therefore, EPUC urges the Commission to impose conditions to make the Securitization just and reasonable.²⁷²

Cal Advocates claims that whether § 451 applies is not determinative in this proceeding as there still must be a public interest finding under § 850.1 and a harmonization with the requirements of AB 1054 as extended to the securitization application in D.20-05-053.²⁷³ First, Cal Advocates points out that § 451.2(b) was implemented after and “Notwithstanding Section 451” and provides a process a utility may recover costs absent a § 451 “just and reasonable” finding. Second, the financing order must comply with § 850.1 which contains an independent requirement for the Commission to determine the recovery bonds are just and reasonable. Third, Cal Advocates states D.20-05-053 established the standard this transaction must meet as ratepayer neutral.²⁷⁴ Therefore, Cal Advocates claims PG&E must show the benefits resulting from securitization charges and Customer Credit offsets “far exceed,”

²⁷⁰ CLECA Opening Brief at 13-14.

²⁷¹ *Id.* at 14.

²⁷² EPUC Opening Brief at 33.

²⁷³ Cal Advocates Opening Brief at 19-20.

²⁷⁴ *Id.*

and are preferable to, the allocation of unjust costs and expenses, and are ratepayer neutral.

TURN states that even if the Commission finds § 451 does not apply, the just and reasonable standard would still apply under § 850.1(a)(1)(A), and the entirety of PG&E's proposal must be found just and reasonable.²⁷⁵

Wild Tree states § 451 does apply and a reasonableness review is needed to determine if the costs PG&E claims are recovery costs eligible to be securitized pursuant to §§ 451.2 and 850 *et. seq.*

Section 451 requires all utility charges be just and reasonable.²⁷⁶ Section 850.1 incorporates this requirement in two ways. First, § 850.1 states costs and expenses related to catastrophic wildfires may be financed through issuance of recovery bonds if such costs and expenses "have been found to be just and reasonable pursuant to Section 451 or Section 451.1, as applicable, or are allocated to the ratepayers pursuant to subdivision (c) of Section 451.2."²⁷⁷

In this case PG&E seeks to securitize wildfire claims costs under § 451.2(c), not as just and reasonable costs under §§ 451 and 451.1. Section 451.2(c) specifically authorizes the recovery of costs disallowed from recovery under §§ 451 and 451.1, but exceeding the amount the Commission has described as the Customer Harm Threshold. Such costs, by definition, do not fall under §§ 451 and 451.1, and therefore those sections do not apply. However, they are nevertheless eligible to be securitized under § 451.2.

²⁷⁵ TURN Opening Brief at 109-110.

²⁷⁶ Section 451: "All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable...."

²⁷⁷ Section 850.1(a)(1)(A)(i).

Section 850.1 separately states that the Commission must find “[t]he issuance of the recovery bonds, including all material terms and conditions of the recovery bonds, including, without limitation, interest rates, rating, amortization redemption, and maturity, and the imposition and collection of fixed recovery charges as set forth in an application,” are among other things “just and reasonable.”²⁷⁸ This question will be addressed in A.21-01-004, and if the Commission determines PG&E has met the “just and reasonable” standard of § 850.1(a)(1)(A)(ii), we need not look any further.²⁷⁹ There is no additional basis or reason to apply § 451’s just and reasonable standard to this application, but to the extent that section were deemed applicable, it is construed to be coextensive with § 850.1(a)(1)(A)(ii) as applied by the Commission. Accordingly, we find any utility charges that will be created pursuant to the approvals made in this decision comply with § 451.

4.5.2. Procedural Implications of Financing Decisions Made Under Public Utilities Code Article 5.8

As noted above this order construes, implements, or interprets the provisions of Public Utilities Code Article 5.8. Therefore, applications for rehearing and judicial review of this Order are subject to §§ 1731(d) and 1756. These laws provide that any application for rehearing of this decision must be filed within 10 days of the issuance of a final decision. The Commission must issue its decision on any application for rehearing within 210 days of the filing of the application for rehearing. Within 30 days after the Commission issues its

²⁷⁸ Section 850.1(a)(1)(A)(ii).

²⁷⁹ As stated recently in a similar financing application, “The first requirement for approval ... is a finding that ‘The recovery cost to be reimbursed from the recovery bonds have been found to be just and reasonable pursuant to Section 451...’ This is a requirement set forth in § 850(a)(1)(A)(i).” D.20-11-007 at 36. *See also, id.* at 39-40.

decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the Commission issues its decision on rehearing, or at least 120 days after the application for rehearing is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of this order or any decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the Commission to certify its record in the case to the court within the time specified.

4.6. Should the Commission Issue a Financing Order Under Sections 850 *et. seq.*?

The Commission will address this issue in A.21-01-004.

4.7. PG&E's Requested Capital Structure Adjustments Should Be Approved

PG&E proposes to exclude the \$7.5 billion of securitized debt from its ratemaking capital structure. While the securitized debt will continue to appear on PG&E's consolidated financial statements, exclusion from its ratemaking capital structure is consistent with Commission precedent, as they do not finance assets in rate base.²⁸⁰ As discussed above, we do not agree with A4NR that a dollar-for-dollar rate credit is appropriate or necessary to address the adjustments to PG&E's regulated capital structure.²⁸¹

²⁸⁰ See, D.20-11-007 at 126, Ordering Paragraph 51 (excluding Recovery Bonds issued by Southern California Edison Company (SCE) from its ratemaking capital structure). *See also*, PGE-11 at 1-11, *citing* 2006 Cost of Capital (A.05-05-006 (PG&E), A.05-05-011 (SCE), and A.05-05-012 (San Diego Gas & Electric Company)) proceedings that excluded energy recovery bonds and rate reduction bonds from ratemaking capital structures).

²⁸¹ See, A4NR-01 at 36-37.

PG&E also proposes to exclude from its ratemaking capital structure any non-cash accounting charges related to future revenue credits associated with the Customer Credit Trust. This is appropriate, as such charges will not affect equity used to finance rate base and it is proper to exclude these charges from PG&E's ratemaking capital structure.

4.8. Consideration of Any Impact on Municipal Departing Load Can Be Deferred to Specific Municipalization Proceedings

CCSF contends, that to the extent departing municipal customers continue to bear the burden of the Fixed Recovery Charges, they should also continue to receive the Customer Credit and share in any Customer Credit Trust surplus on the same basis as other customers.²⁸² PG&E agrees in principle and proposes in the proposed Financing Order that consideration be deferred to specific municipalization proceedings, if any occur in the future. We agree.

We also note that to the extent consumers of electricity in PG&E's service territory are billed by other entities, PG&E (as servicer for the recovery property) would bill such consumers directly or would require these other entities to bill for the Fixed Recovery Charge, if such charges are authorized in A.21-01-004, and to remit the Fixed Recovery Charge revenues to PG&E on behalf of such consumers. Relevant here, such consumers would also be eligible to receive the Customer Credit equal to the amount of any Fixed Recovery Charges collected and remitted to PG&E.

5. Conclusion

After consideration of the record and applicable law for the reasons stated herein, the Commission approves PG&E's Application, as modified herein.

²⁸² CCSF-13 at 42-43.

6. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Haga in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 12, 2021, by A4NR, AECA, CCSF, CLECA, EPUC, PG&E, TURN, and Wild Tree, and reply comments were filed on April 19, 2021, by A4NR, CCSF, EPUC, PG&E, and TURN. In response to comments on the proposed decision, corrections and clarifications have been made throughout this decision as appropriate to aid in understanding the features of the transaction and regulatory structure we approve herein. These are explained in the decision and we direct the parties to the provisions we have included, and chose to rely on our existing regulatory procedures because they are self-explanatory. For example, some parties, including TURN, claim that this Commission is obligated to be more explicit in its discussion of rate neutrality and propose specific language containing standards they believe we should adopt.²⁸³ As noted in Finding of Fact 28, we evaluate the overall transaction we approve herein and conclude that, on the whole, that transaction will be neutral, on average, to ratepayers.

TURN further indicates that sections of the proposed decision suggest PG&E has met its burden with respect to rate neutrality, arguing that rate neutrality cannot be determined until the actual costs were known. The decision properly evaluates and makes determinations in section 4 and section 4.4 in the context of the terms of the proposed decision as a whole (as explicitly indicated

²⁸³ E.g., TURN Opening Comments at 6.

in section 4.4). This decision does not rely on the forecast in isolation from the terms of this decision when evaluating rate neutrality as indicated by TURN.²⁸⁴

7. Assignment of Proceeding

Marybel Batjer is the assigned Commissioner and Robert Haga is the assigned ALJ in this proceeding.

Findings of Fact

1. On September 21, 2018 SB 901 was signed by Governor Brown adopting, among many other things, § 451.2 which governs the Commission's review of applications by electrical corporations that request recovery of costs and expenses from catastrophic wildfires having an ignition date in 2017.

2. On July 12, 2019, AB 1054 was signed by Governor Newsom adopting, among many other things, amended Division 1, Part 1, Chapter 4, Article 5.8, commencing with § 850. Sections 451.2(c) and 850.1(a) authorize the Commission to issue a financing order to allow for recovery of disallowed costs that exceed the maximum amount the Commission determines under § 451.2(b) the utility can pay.

3. D.19-06-027 adopted a methodology for conducting a financial "Stress Test" to implement the directives of § 451.2.

4. We created the requirement for an electrical corporation to show it has a path to an investment grade credit rating to ensure the utility had a plan to achieve such a rating as part of our consideration of the application of the Stress Test.

²⁸⁴ Cf., TURN Opening Comments, at 6.

5. This decision applies the “Stress Test” methodology adopted in D.19-06-027 to allow PG&E to issue recovery bonds pursuant to §§ 451.2(c) and 850 *et. seq.*

6. The proposed \$7.5 billion of securitization bonds is allowable under the Stress Test methodology established pursuant to § 451.2(b).

7. PG&E has shown that the proposed securitization provides a sufficient path to an investment grade credit rating for PG&E.

8. PG&E is eligible to apply under § 451.2 for application of the Stress Test because D.20-05-053 and D.19-06-027 did not foreclose the possibility that an entity could apply post-bankruptcy.

9. PG&E’s estimations of its 2017 wildfire costs are sufficient when considered in conjunction with the holistic Customer Credit Trust proposal.

10. It is reasonable to determine PG&E’s wildfire claims costs based on the stated value of the Fire Victim Trust settlement plus associated interest on the \$6 billion of short-term bonds issued by PG&E to make its first payment to the Fire Victim Trust.

11. At least \$7.5 billion of the wildfire claims costs being paid as part of PG&E’s Reorganization Plan are attributable to the 2017 North Bay Wildfires and are thus eligible for recovery under the Stress Test.

12. PG&E will be required to create a Customer Credit Trust.

13. The transfer of the Shareholder Tax Benefits to the Customer Credit Trust is beneficial to ratepayers and in the public interest.

14. PG&E shareholders will be required to contribute \$1 billion to the Customer Credit Trust in 2021. PG&E shareholders may contribute the \$1 billion in 2021 pro rata to the amount of the issuance of Recovery Bonds (as a proportion of the authorized \$7.5 billion), upon each issuance of Recovery Bonds.

15. Within 30 days of PG&E's first contribution (pro rata or otherwise) of the initial shareholder contribution, it must file a Tier 2 Advice Letter demonstrating that the deferral of the second part of its modified time-sequenced initial contribution continues to not be credit negative to PG&E given 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. Otherwise, PG&E must propose modified timing for this contribution to avoid adversely impacting PG&E's credit statistics relative to upfront funding of the first \$1.8 billion as originally proposed.

16. PG&E shareholders will be required to make a second contribution of \$1 billion to the Customer Credit Trust before March 31, 2024 subject to a prior advice letter filing as discussed in this decision.

17. PG&E shareholders will be required to contribute \$7.59 billion of additional contributions (the Additional Shareholder Contributions) funded by certain shareholder-owned tax deductions or net operating losses (the Shareholder Tax Benefits) to the Customer Credit Trust consistent with the discussion in this decision.

18. PG&E will be required to contribute a contingent supplemental shareholder contribution in 2040 (at which point the Additional Shareholder Contributions should be contributed), if needed, up to a limit of \$775 million to the Customer Credit Trust.

19. PG&E will be required to contribute the "Customer Credit Trust Returns" which are the expected returns on the investment of the assets in the Customer Credit Trust.

20. If, subsequent to the issuance of a financing order, PG&E receives, for Catastrophic Wildfire Amounts included in the recovery costs addressed in a

financing order, additional insurance proceeds, tax benefits other than Shareholder Tax Benefits or other amounts or reimbursements, PG&E should be required to credit customers, in a manner determined at the time by the Commission.

21. PG&E will be required to provide the Customer Credit using funds in the Customer Credit Trust to the extent such funds are available, and other sources identified herein, to affected consumers in an amount equal to the Fixed Recovery Charges to be paid by such consumers.

22. PG&E will be required to provide as part of the Customer Credit, a credit for servicing and administration expenses paid to PG&E regardless of the Customer Credit Trust Balance.

23. If assets in the Customer Credit Trust are insufficient to fund a Customer Credit equal to the Fixed Recovery Charges for a period of time, the future Customer Credit Trust balance will first be used (up to the amount of the balance) to make up any previous shortfalls in Customer Credits, including the amount of any Fixed Recovery Tax Amounts charged on the shortfall.

24. Once the Recovery Bonds are repaid and all Financing Costs have been paid in full and the Fixed Recovery Charges cease, the Customer Credit Trust will be terminated, and the assets liquidated. Consumers will receive at least 25 percent and PG&E will receive no more than 75 percent of any funds remaining in the Customer Credit Trust after payment of the Customer Credit Trust expenses, including computed taxes.

25. Because PG&E believes the Customer Credit Trust is expected to end up with a substantial surplus, sharing 25 percent of any surplus represents a significant benefit for customers.

26. The Customer Credit Trust should be governed by a committee composed of five members, three of whom will be independent of PG&E. Members of the Committee would be nominated by PG&E management and confirmed by PG&E's board of directors. No more than two of the members may be employees, officers, agents or otherwise affiliated with PG&E except with respect to their service as members on the Committee. At least three members will be independent, whose nominations to the Committee will be confirmed by the Commission as well as PG&E's board of directors.

27. We adopt the transaction structure proposed by PG&E, including the Customer Credit Trust, subject to the Commission maintaining regulatory authority as discussed in Section 4.4 of this decision.

28. PG&E's modifications developed at and from the evidentiary hearing provide a higher level of assurance that the securitization plan will be neutral, on average.

29. Increasing the amount of the Initial Shareholder Contribution, resequencing the realization of the NOLs, monitoring the Customer Credit Trust, and agreeing to provide up to \$775 million if needed after a proceeding in 2040, lead us to determine that overall, the transaction and regulatory structure we approve herein will be neutral, on average to ratepayers.

30. Consideration of any impact of municipal departing load on treatment of the Customer Credit can be deferred to specific municipalization proceedings, if any occur in the future.

Conclusions of Law

1. The Customer Credit Trust should be created at the same time as Recovery Bonds are issued if approved in A.21-01-004.

2. If Recovery Bonds are approved in A.21-01-004, upon their issuance PG&E should be allowed to exclude the amount of securitized debt up to a total of \$7.5 billion from its ratemaking capital structure, even though it will appear on PG&E's consolidated financial statements.

3. PG&E should exclude from its ratemaking capital structure any non-cash accounting charges related to future revenue credits associated with the Customer Credit Trust.

4. The United States Bankruptcy Code expressly provides that any rate change proposed by a plan of reorganization must be approved by the government regulatory authority with proper jurisdiction. The Commission will avail itself of any and all similar provisions of state and federal law to ensure the Customer Credit Trust operates as intended in any situation where a change of control (for tax purposes) might occur, and should take into account the Customer Credits in any review of future proposed transactions.

5. PG&E's modifications are logical outgrowths of issues raised at the evidentiary hearing.

6. The utility charges that will be created pursuant to the approvals made in this decision comply with the statutory scheme set forth in §§ 451 to 451.3. Section 850.1(a)(1)(A)(ii) does not provide an additional basis to apply § 451 to this proceeding.

7. The Stress Test process and statutory relief allowed under §§ 451.2 and 850 *et. seq.* is available to PG&E post-bankruptcy.

8. This order construes, implements or interprets the provisions of Public Utilities Code Article 5.8. Therefore, applications for rehearing and judicial review of this Order are subject to §§ 1731(d) and 1756. These laws provide that any application for rehearing of this decision must be filed within 10 days of the

issuance of a final decision. The Commission must issue its decision on any application for rehearing within 210 days of the filing for rehearing.

9. The Customer Credits will, by subsequent Commission order, be subject to true-up mechanisms that enable adjustments to the Customer Credits when the related Fixed Recovery Charges are adjusted pursuant to the Fixed Recovery Charge True-up mechanisms and in other situations. Such Customer Credit True-Ups will be consistent with the timing and approval requirements applicable to the related Fixed Recovery Charge True-Up mechanisms.

10. Without further action from the Commission, PG&E should be permitted to make withdrawals from the Customer Credit Trust as necessary to pay the Customer Credit.

11. PG&E should be permitted to make withdrawals from the Customer Credit Trust as necessary to pay Reimbursable Trust Expenses specified in the Customer Credit Trust Agreement.

12. To the extent consumers of electricity in PG&E's service territory are billed by other entities, PG&E (as servicer for the recovery property) would bill such consumers directly or would require these other entities to bill for the Fixed Recovery Charges, if such charges are authorized in A.21-01-004, and to remit the Fixed Recovery Charge revenues to PG&E on behalf of such consumers. Relevant here, such consumers would also be eligible to receive the Customer Credit equal to the amount of any Fixed Recovery Charges collected and remitted to PG&E.

13. The Motion submitted by A4NR for leave to file a confidential version of its opening brief should be granted for a period of 3 years.

14. The Motion submitted by TURN for leave to file a confidential version of its opening brief should be granted for a period of 3 years.

15. The Motion submitted by A4NR for leave to file a confidential version of its reply brief should be granted for a period of 3 years.

16. The Motion submitted by PG&E for leave to file a confidential version of its reply brief should be granted for a period of 3 years.

17. The Motion submitted by TURN for leave to file a confidential version of its reply brief should be granted for a period of 3 years.

18. All pending motions in this proceeding not specifically addressed in this decision, or not previously addressed, should be denied as moot.

O R D E R

IT IS ORDERED that:

1. Pacific Gas & Electric Company shall create a Customer Credit Trust consistent with the form agreement in Attachment A to this Decision and described in this Decision. Pacific Gas & Electric Company shall submit a Tier 2 Advice Letter to the Commission's Energy Division before June 30, 2021, for approval of the final form of the Customer Credit Trust Agreement negotiated with the Trustee.

2. Pacific Gas & Electric Company shareholders shall contribute no less than \$1 billion to the Customer Credit Trust in 2021. Pacific Gas & Electric Company shareholders may contribute the \$1 billion in 2021 pro rata to the amount of the issuance of Recovery Bonds (as a proportion of the authorized \$7.5 billion), if approved in Application 21-01-004.

3. Pacific Gas & Electric Company (PG&E) shareholders shall contribute an additional \$1 billion contribution to the Customer Credit Trust before March 31, 2024. PG&E shall file a Tier 2 Advice Letter within 30 days of its first issuance of Recovery Bonds, demonstrating that the second \$1 billion contribution will not be credit negative to PG&E, or PG&E must propose

modified timing for this contribution to avoid adversely impacting PG&E's credit statistics.

4. Pacific Gas & Electric Company shareholders shall contribute \$7.59 billion of additional contributions (the Additional Shareholder Contributions) funded by certain shareholder-owned tax deductions or net operating losses (the Shareholder Tax Benefits) to the Customer Credit Trust consistent with the discussion in this decision.

5. If determined to be needed, Pacific Gas & Electric Company shall contribute a contingent supplemental shareholder contribution in 2040 (at which point the Additional Shareholder Contributions should be contributed), up to a limit of \$775 million to the Customer Credit Trust.

6. Pacific Gas & Electric Company shall contribute the "Customer Credit Trust Returns" which are the expected returns on the investment of the assets in the Customer Credit Trust.

7. If, subsequent to the issuance of a financing order, Pacific Gas & Electric Company receives, for Catastrophic Wildfire Amounts included in the recovery costs addressed in a financing order, additional insurance proceeds, tax benefits other than Shareholder Tax Benefits or other amounts or reimbursements, Pacific Gas & Electric Company shall credit customers, in a manner determined at the time by the Commission.

8. Pacific Gas & Electric Company shall provide the Customer Credit using funds in the Customer Credit Trust to the extent such funds are available, and other sources identified herein, to affected consumers in an amount equal to the Fixed Recovery Charges to be paid by such consumers.

9. Pacific Gas & Electric Company shall provide as part of the Customer Credit, a credit for servicing and administration expenses paid to PG&E regardless of the Customer Credit Trust Balance.

10. The Customer Credits will, by subsequent Commission order be subject to true-up mechanisms that enable adjustments to the Customer Credits when the related Fixed Recovery Charges are adjusted pursuant to the Fixed Recovery Charge True-up mechanisms and in other situations. Such Customer Credit True-Ups will be consistent with the timing and approval requirements applicable to the related Fixed Recovery Charge True-Up mechanisms.

11. If assets in the Customer Credit Trust are insufficient to fund a Customer Credit equal to the Fixed Recovery Charges for a period of time, the future Customer Credit Trust balance will first be used (up to the amount of the balance) to make up any previous shortfalls in Customer Credits, including the amount of any Fixed Recovery Tax Amounts charged on the shortfall.

12. Once the Recovery Bonds are repaid and all Financing Costs have been paid in full and the Fixed Recovery Charges cease, the Customer Credit Trust will be terminated, and the assets liquidated. Consumers will receive at least 25 percent and Pacific Gas & Electric Company will receive no more than 75 percent of any funds remaining in the Customer Credit Trust after payment of the Customer Credit Trust expenses, including computed taxes.

13. The Customer Credit Trust shall be governed by a committee composed of five members, three of whom will be independent of Pacific Gas & Electric Company (PG&E). Members of the Committee would be nominated by PG&E management and confirmed by PG&E's board of directors. No more than two of the members may be employees, officers, agents or otherwise affiliated with PG&E except with respect to their service as members on the Committee. At

least three members will be independent, whose nominations to the Committee will be confirmed by the Commission as well as PG&E's board of directors.

14. Pacific Gas & Electric Company is permitted to make withdrawals from the Customer Credit Trust as necessary to pay the Customer Credit, without further action from the Commission.

15. Pacific Gas & Electric Company is permitted to make withdrawals from the Customer Credit Trust as necessary to pay Reimbursable Trust Expenses specified in the Customer Credit Trust Agreement.

16. Any future proposed transaction that impacts the Customer Credit shall ensure its continuity for the duration of the period costs are charged to customers.

17. The Securitization structure proposed by Pacific Gas & Electric Company is adopted, including the Customer Credit Trust, subject to the Commission's regulatory authority as discussed in Section 4.4 of this decision.

18. If Recovery Bonds are approved in Application 21-01-004, upon their issuance Pacific Gas & Electric Company (PG&E) may exclude the amount of securitized debt, up to a total of \$7.5 billion, from its ratemaking capital structure, even though it will appear on PG&E's consolidated financial statements.

19. Pacific Gas & Electric Company is allowed to exclude from its ratemaking capital structure any non-cash accounting charges related to future revenue credits associated with the Customer Credit Trust.

20. To the extent consumers of electricity in Pacific Gas & Electric Company's service territory are billed by other entities, Pacific Gas & Electric Company (as servicer for the recovery property) shall bill such consumers directly or may require these other entities to bill for the Fixed Recovery Charges, if such charges

are authorized in Application 21-01-004, and to remit the Fixed Recovery Charge revenues to Pacific Gas & Electric Company on behalf of such consumers.

Relevant here, such consumers shall also be entitled to receive the Customer Credit equal to the amount of any Fixed Recovery Charges collected and remitted to Pacific Gas & Electric Company.

21. Motions by the Alliance for Nuclear Responsibility and The Utility Reform Network to designate as confidential and protect the material under seal of the confidential versions of their opening briefs are granted and the above referenced documents shall be filed under seal for a period of 3 years.

22. Motions by the Alliance for Nuclear Responsibility, Pacific Gas & Electric Company, and The Utility Reform Network to designate as confidential and protect the material under seal of the confidential versions of their reply briefs are granted and the above referenced documents shall be filed under seal for a period of 3 years.

23. All pending motions in this proceeding not specifically addressed in this decision, or not previously addressed, are denied as moot.

24. Application 20-04-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California

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ATTACHMENT A