

Decision 21-08-023

August 11, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas & 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 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).

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

**ORDER DENYING APPLICATION FOR REHEARING OF
DECISION 21-04-030**

I. INTRODUCTION

This decision denies the applications for rehearing of Decision (D.) 21-04-030, as the applicants fail to demonstrate good cause for granting rehearing.

On April 23, 2021, the Commission issued Decision (D.) 21-04-030, in which we granted the application of Pacific Gas and Electric Company (PG&E) for administration of the Stress Test Methodology developed pursuant to Public Utilities Code Section 451.2(b),¹ and determined 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 Sections 850 *et. seq.*

As explained in D.21-04-030, the Legislature enacted Senate Bill (SB) 901 in 2018 and Assembly Bill (AB) 1054 in 2019 to, among other things, address electrical

¹ Further statutory references are to the California Public Utilities Code unless otherwise noted.

corporations' exposure to financial liability resulting from wildfires that were caused by utility equipment and increased costs to ratepayers. SB 901 adopted Section 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. AB 1054 adopted, among many other things, an amended Division 1, Part 1, Chapter 4, Article 5.8, commencing with Section 850. 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 Section 451.2(b). Decision 19-06-027 (Stress Test Decision) adopted a methodology for conducting a financial "Stress Test" to implement the directives of Section 451.2.

PG&E filed an application (Securitization Application) asking the Commission to apply that methodology because it had incurred costs and expenses from 2017 wildfires that it claimed should be disallowed and thus be eligible for recovery pursuant to section 451.2, and sought to issue recovery bonds for a portion of those costs and expenses pursuant to Section 451.2(c) and Sections 850 *et. seq.* D.21-04-030 approved PG&E's securitization plan of \$7.5 billion dollars to be financed through the issuance of recovery bonds. The Decision authorized PG&E to establish a Customer Credit Trust, funded by PG&E shareholders, which 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. We created the Fixed Recovery Charge and associated authorization to issue the recovery bonds in a coordinated proceeding, Application 21-01-004. We issued a companion decision in that proceeding, D.21-05-015 (Financing Order), authorizing issuance of the recovery bonds.

On May 3, 2021, The Utility Reform Network (TURN), the City and County of San Francisco (CCSF), and the Wild Tree Foundation (Wild Tree) filed timely applications for rehearing of D.21-04-030 (the decision was subject to 10-day limit for applications for rehearing). In its rehearing application, TURN argues that the

Commission committed legal error by failing to provide a conclusion of law adopting a clear and explicit definition of ratepayer neutrality, by failing to ensure ratepayer neutrality, by approving PG&E's proposal in violation of Section 850.1(f) that securitized bond costs may not be imposed on certain customers, by failing to address credit rating agencies' evaluation that PG&E's securitization proposal will have no effect on its credit ratings, by relying on biased evidence, by not supporting its decision with substantial evidence, by making an erroneous finding that PG&E's proposal puts it on a path to an investor grade credit rating, and in concluding that this decision will benefit ratepayers without substantial evidence. TURN also alleges numerous evidentiary errors in the conduct of the proceedings.

In its rehearing application, the CCSF alleges that the Commission 1) failed to properly implement the Stress Test Decision's requirement for achieving an investment grade issuer credit rating and ignored undisputed evidence, 2) erred in approving PG&E's securitization plan because there is no evidence in the record that the approved plan is ratepayer neutral, and 3) erred in approving modifications to PG&E's securitization plan that were raised in briefs and comments and not supported by record evidence.

In its rehearing application, Wild Tree argues that the Commission violated due process, made a biased decision by permitting PG&E to amend its application after the scoping memo issued and after submission of testimony and evidentiary hearings, did not base its decision on the record, and limited parties' rights to appeal by shortening the deadline for applications for rehearing from 30 to 10 days.

II. DISCUSSION

The applications for rehearing mainly concern two factual issues addressed in the Decision: (1) that PG&E has demonstrated a path back to an investment-grade issuer credit rating, and (2) that the Securitization satisfies the standard established in D.20-05-053 that it be "ratepayer neutral." In claiming that the Commission erred in these factual findings, Applicants also claim that the Commission did not properly

interpret or apply statutory provisions or its own prior decisions. These arguments are without merit for the reasons discussed below.

As an initial matter, TURN's application alleges that the Decision makes numerous errors under Public Utilities Code Sections 1705² and 1757(a)³. While CCSF's rehearing application does not specifically mention either Sections 1705 or 1757(a), it does raise several allegations that the Decision is not based on sufficient evidence and/or was made without considering all of the evidence in the record.⁴

However, the rehearing applications are no more than an attempt to relitigate how we weighed the record evidence. An application for rehearing should raise legal error and should not be used as a vehicle for relitigation of policy positions or to reweigh

² Pub. Util. Code § 1705 provides, in relevant part: "...the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."

³ Pub. Util. Code § 1757(a) provides: "(a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

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

⁴ Wild Tree also claims that the Decision ignores record evidence in finding PG&E met its burden of proof that its application met the requirement of Section 451.2. However, for reasons explained below, Wild Tree's rehearing application fails to specifically identify any error, contrary to Section 1732, and should be denied on that basis.

evidence.⁵ The requirement is clear that the purpose of an application for rehearing is to set forth legal error. The fact that we did not weigh the evidence in TURN or CCSF's favor does not constitute legal error.

Moreover, TURN and CCSF point to instances where they introduced evidence contrary to the evidence offered by other parties—and that we relied upon in making our decision—and complain that we did not explicitly address or rebut that evidence in our findings. Although we are required by Section 1705 to include in our decision “separately stated[] findings of fact and conclusions of law . . . on all issues material to the order or decision,” we are “not required to make express legal and factual findings as to each and every issue or sub-issue raised by a party to a Commission proceeding.”⁶ The governing standards do not require the Decision to provide detailed explanations of every piece of evidence; rather, the Decision need only include statements that provide the appellate court a meaningful opportunity to ascertain the principles and facts on which the Commission relied.⁷ While TURN and CCSF focus on the Decisions Findings of Fact or Conclusions of Law, they ignore the numerous pages of discussion in the Decision that precede those sections and address at length whether PG&E has demonstrated a path back to an investment-grade issuer credit rating, and whether the Securitization satisfies the standard established in D.20-05-053 that it be “ratepayer neutral”.

TURN also asserts throughout its application that the Commission acted in excess of its powers and contrary to the matter required by Section 1757 in considering the evidence presented. Section 1757(a)(4) states that “review by the court shall not extend further than to determine” whether “[t]he findings in the decision of the

⁵ See, *Application of Pacific Gas and Electric Company for Approval of the 2009-2011 Low Income Energy Efficiency and California Alternate Rates for Energy Programs and Budget* [D.09-10-029], pp. 3-4, fn. 4.

⁶ See *In Re San Diego Gas & Elec. Co.* [D.03-08-072] 2000 Cal. PUC LEXIS 1136, pp. *20-21.

⁷ *Clean Energy Fuels Corp. v. Pub. Util. Comm'n* (2014) 227 Cal. App. 4th 641, 653.

commission are not supported by substantial evidence in light of the whole record.”

We have interpreted this “substantial evidence” standard as follows:

Conflicts of evidence are to be resolved in favor of the findings of the administrative agency, and the fact that evidence is contradicted does not have a bearing on whether that evidence meets the substantial evidence test. Moreover, if findings are based on inferences reasonably drawn from the record, an administrative order is considered to be supported by substantial evidence in light of the whole record, and it will not be reversed.⁸

The fact that the Decision’s findings differ from those proffered by TURN does not mean that we refused to consider relevant evidence. The fact that TURN and CCSF disagree with the conclusions in the Decision does not demonstrate legal error, and there is no reason to reweigh the evidence in response to TURN and CCSF’s allegations.

A. The Decision Did Not Err in Concluding PG&E Has Demonstrated a Path to Investment-Grade Issuer Credit Rating Sufficient to Access the Stress Test in D.19-06-027

Applicants claim we erred in concluding PG&E has demonstrated a path to investment-grade issuer credit rating sufficient to access the Stress Test Methodology established in D.19-06-027 (Stress Test Decision).⁹ The Stress Test Decision implements Section 451.2, which expressly delegates authority to the Commission to “consider the electrical corporations’ financial status and determine the maximum amount” of 2017 wildfire costs that “the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service.”¹⁰ The Stress Test Decision states that, for a utility (like PG&E) that does not have an investment-grade issuer credit rating at the time of submitting an application for recovery of wildfire costs, the Commission “may still authorize Stress Test Costs if the utility can demonstrate a path

⁸ *In Re San Diego Gas & Elec. Co.* [D.03-08-072] 2000 Cal. PUC LEXIS 1136, pp. *20-21.

⁹ TURN Reh’g App., at pp. 19-29; CCSF Reh’g App., at pp. 4-7; 12-16.

¹⁰ Pub. Util. Code § 451.2(b).

back to investment grade.”¹¹ Applicants take issue with the Decision’s interpretation of the Stress Test Decision, and raise several allegations that the Decision’s conclusion that PG&E met the requirements to access the Stress Test lacks substantial evidence.

1. The Decision Properly Interprets the Stress Test Decision

CCSF disagrees with the Decision’s interpretation of the Stress Test Decision. CCSF claims the Decision’s finding that “PG&E has shown that the securitization provides a sufficient path to an investment grade credit rating” disregards the plain language of the Stress Test Decision.¹² According to CCSF, the Decision “waters down” the Stress Test Decision’s clear guidance that a “utility that has a credit rating below investment grade at the time of a Stress Test application must demonstrate how it will achieve an investment grade rating through the Stress Test process.”¹³ CCSF states that if we had properly applied the Stress Test Methodology, we would have found that PG&E failed to show that approval of the Securitization Application will lead to PG&E obtaining an investment grade issuer credit rating.

TURN also claims that, because of numerous substantial evidence errors (addressed in more detail below), the Decision commits legal error in concluding that PG&E is entitled to recover Stress Test costs under Section 451.2(b) and to seek a financing order under Section 451.2(c).¹⁴ TURN’s claim also seems to rest on its interpretation that the Stress Test Decision requires that securitization itself would improve PG&E’s credit ratings.

As an initial matter, courts recognize that “the commission’s interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purpose and language.”¹⁵ As noted above, Section 451.2 expressly

¹¹ D.19-06-027, Attachment, at p. 13.

¹² CCSF Reh’g App., at p. 3, citing D.21-04-030, at p. 36.

¹³ CCSF Reh’g App., at pp. 3-4, citing D.19-06-027, Finding of Fact (FOF) 20.

¹⁴ TURN Reh’g App., at pp. 28-29.

¹⁵ *Greyhound Lines, Inc. v. Pub. Util. Comm.* (2014) 68 Cal. 2d 406, at 410-411.

delegated authority to the Commission to consider an electrical corporation's financial status and determine the maximum amount the corporation can pay for 2017 catastrophic wildfire costs without harming ratepayers or materially impacting its ability to provide adequate and safe service. Moreover, that deference "may, if anything, be even greater" with respect to guidance promulgated by the Commission itself: "[T]he PUC's interpretation of its own regulations and decisions 'is entitled to consideration and respect by the courts. [Citation omitted.] ... "' "A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another."'"¹⁶ Hence, our authority to interpret and apply the Stress Test Methodology we established in a previous decision is appropriately exercised here and has been recognized by the Courts.

Against this background, we reasonably interpreted and applied our earlier decision in requiring PG&E show a path back to an investment-grade credit rating.

As noted in the Decision:

For the reasons stated in D.19-06-027, we continue to believe utility ratings below investment grade have negative impacts that harm ratepayers. [Citation omitted.] 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.¹⁷

¹⁶ *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n* (2015) 237 Cal.App.4th 812, 840, citing *Clean Energy Fuels Corp. v. Pub. Util. Comm'n*, (2014) 227 Cal.App.4th 641, 649; *The Utility Reform Network v. Pub. Util. Comm'n*, (2014) 223 Cal.App.4th 945, 958.

¹⁷ D.21-04-030, at p. 36.

Section 451.2 requires us to undertake additional considerations resulting from a utility application to recover costs and expenses incurred as a result of a catastrophic wildfire with an ignition date in 2017. If we find that some costs would be disallowed for recovery in rates under the ordinary just and reasonable standard in Section 451, then we must undertake a further consideration of the utility's financial status when allocating costs between shareholders and ratepayers, and "determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."¹⁸

The purpose of Section 451.2 is to "maintain financially viable utilities to provide safe and reliable service and not saddle ratepayers with costs associated with utilities that have difficulty accessing the financial markets."¹⁹ As the Stress Test Decision explained, that meant "ensur[ing] that utilities achieve investment grade credit ratings,"²⁰ as that is a "predictable indicator of a utility's ability to access capital markets on reasonable, acceptable terms, which is critical to avoid materially impacting its ability to provide adequate and safe service."²¹

Contrary to the rehearing applications' contentions, the Stress Test Decision does not state that a utility must demonstrate that approval of the application will lead to investment grade issuer credit rating. Rather, the Stress Test Decision states only that a utility "must demonstrate an ability (pathway) to achieving an investment grade credit rating to access the Stress Test. A demonstrated ability to achieve a minimum investment grade credit rating could include, for example, the allowance of wildfire related liabilities for recoveries in rates, equity issuances, asset sales, or other forms of capital infusions."²²

¹⁸ Pub. Util. Code § 451.2(b).

¹⁹ D.19-06-027, at pp. 6, 53 (FOF 4).

²⁰ *Id.*, at p. 56 (Conclusion of Law (COL) 7).

²¹ *Id.*, Attachment, at pp. 4-5.

²² *Id.*, Attachment, at pp. 13.

D.21-04-030 correctly applies the plain language of the Stress Test Decision, and contains discussion that expressly reviews the background and purpose of Section 451.2 that identifies the requirement that an applicant utility establish a path toward financial health. There is no legal error in the Commission's interpretation of Section 451.2 or the Stress Test Decision.

2. The Finding that PG&E Has Demonstrated A Path to Investment-Grade Issuer Credit Rating Sufficient to Access the Stress Test is Supported by Substantial Evidence

The TURN and CCSF rehearing applications raise several arguments that the Decision's conclusion that PG&E has demonstrated a path to investment-grade issuer credit rating sufficient to access the Stress Test Methodology is not supported by substantial evidence.²³

As discussed above, findings of fact and conclusions of law must be based on the evidence in the proceeding. Contrary to the rehearing applications' contentions, the record contains sufficient evidence for the Decision's findings and conclusions of law consistent with Public Utilities Code Section 1705. (*See also* Section 1757, subd. (a)(3).)

As noted above, Section 1705 does not require the Commission to make express legal and factual findings for each and every issue or sub-issue raised by a party. Rather, Section 1705 only requires sufficient findings and conclusions in order to assist the Court in ascertaining the principles relied upon by the Commission, and assist the parties in preparing for rehearing or court review.²⁴ D.21-04-030 complies with these requirements.

The Stress Test Decision states that the Commission may authorize Stress Test Costs for a utility, like PG&E, that does not have an investment-grade issuer credit rating at the time of submitting an application for recovery of 2017 wildfire costs, if the utility can demonstrate a path back to investment grade. D.21-04-030 determined that

²³ TURN Reh'g App., at pp. 19-29; CCSF Reh'g App., at pp. 4-7.

²⁴ *Clean Energy*, *supra*, at pp. 653, 659.

PG&E has shown that the proposed securitization provides a sufficient path to an investment grade credit rating for PG&E.²⁵ In making this finding, we conducted a detailed analysis of the record evidence. Applicants take issue with the evidence relied upon by the Commission. However, many of these allegations stem from TURN and CCSF's incorrect interpretation of the Stress Test Decision, as discussed above. The evidentiary allegations are addressed more specifically below.

a) Rating Agency Reports

According to TURN, the Decision fails to address the ratings agencies evaluations that conclude that PG&E's proposal would have no effect on its credit ratings. Citing *Northern California Power Agency*,²⁶ TURN claims that ignoring the issues raised by these evaluations relating to a central issue in the case constitutes legal error.²⁷

The Stress Test Decision identified Moody's and S&P as the rating agencies whose analytical rating frameworks would be used to identify the maximum incremental debt capacity for the underlying utility.²⁸ TURN states that the instant decision fails to give sufficient weight to Moody's and S&P's conclusions that the proposed securitization would not improve PG&E's credit ratings.

TURN's allegations rest on its contention that these rating reports, in isolation, do not support a finding that securitization would have an impact on PG&E's credit ratings. However, we placed greater weight on PG&E's analysis contextualizing these reports. Moreover, the credit ratings reports are only part of the equation in determining the maximum a utility can pay for disallowed wildfire liability costs while maintaining a minimum investment grade rating (aka, the "Customer Harm Threshold"). We also consider excess cash and the Regulatory Adjustment, where we adjust the

²⁵ D.21-04-030, at p. 84, FOF 7.

²⁶ *Northern California Power Agency v. Pub. Util. Comm'n* (1971) 5 Cal. 3d 370.

²⁷ TURN Reh'g App., at pp. 19-23.

²⁸ D.19-06-027, Attachment, at p. 6.

Customer Harm Threshold up or down to reflect the record developed in our regulatory proceedings.

As explained in D.19-06-027, the credit ratings are a proxy for debt capacity.²⁹ The fact that neither S&P nor Moody’s placed significant weight on the proposed Securitization plan itself does not negate the fact that we found, after considering all the factors, that Securitization is a relevant step on the path back to an investment grade issuer rating. As the Decision discusses, the relevant issue is not PG&E’s credit rating in the short term—the point addressed by the rating agency reports—but rather PG&E’s ability to regain an investment-grade credit rating over time.³⁰

Contrary to TURN’s assertion, we did not “ignore” the March 2020 rating agency reports, but viewed them for what they were—a snapshot of a limited point in time—and looked to other evidence showing PG&E’s credit rating trajectory over time. For example, the Decision notes that “PG&E calculated its Maximum Overall Debt Capacity using methodologies outlines by the ratings agencies and its calculation of threshold levels required to achieve investment grade credit ratings.”³¹ We found this and other record evidence more controlling in finding that Securitization supports and accelerates the return to investment-grade issuer credit rating.³²

²⁹ D.19-06-027, at pp. 26-27.

³⁰ D.21-04-030, at pp. 24-27.

³¹ *Id.* at p. 21.

³² *See, e.g.*, D.21-04-030, at p. 23, citing PGE-05 at 5-19 to 5-34; PGE-14 at 5-2 to 5-12; 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&Ps 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

For this reason, TURN's reliance on *Northern California Power Agency* is inapposite. In that case, the California Supreme Court annulled our decision because it failed to address antitrust implications in granting a CPCN, even though judicial precedent, and the Commission itself, stated it was a relevant factor in weighing the public interest. There, we found that "[t]here is no need to determine the [antitrust] issues raised by" the petitioner. The Court found the Commission must take into account the antitrust aspects of applications before it, and "failed to perform this essential duty in the instant case."³³ By contrast, here we identified and extensively evaluated PG&E's credit rating trajectory as a material issue, and the role the ratings reports played in this evaluation.³⁴ As the Decision notes, "[t]he issue of how rating agencies, and in particular S&P, will treat the financial elements of the structure was heavily developed in the record."³⁵ The Decision discusses the parties' positions with regard to the ratings agencies' reports, and whether they support PG&E's achievement of investor grade credit ratings. Upon weighing the evidence and arguments, we found that PG&E met the requirement to show it has a path to an investment grade credit rating.³⁶ Treatment of the rating agencies' reports are a sub-set of this larger issue. This exceeds the deficient analysis that constituted error in *Northern California Power*. The Decision is supported by substantial evidence and TURN's claims of legal error are without merit.

b) Witness Bias

TURN contends the Commission committed error in crediting the testimony of PG&E's expert witness, Joseph Sauvage, an executive with Citigroup, as Mr. Sauvage

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).

³³ *Northern Power*, *supra*, at p. 379.

³⁴ D.21-04-030, at pp. 20-36.

³⁵ *Id.*, at p. 25.

³⁶ D.21-04-030, at pp. 23-24, 83-84 (FOF 4 & 7).

has a financial bias.³⁷ According to TURN, the allegation of bias is a material issue the Decision fails to address in violation of Section 1705. TURN's claim of bias stems from its assertion that PG&E has committed to using Citigroup as its lead underwriter for securitization, and therefore Citigroup has a financial interest in the outcome of this proceeding. However, at the hearing, Mr. Sauvage testified that Citigroup did not have an agreement with PG&E to be lead underwriter.³⁸ Even so, the record reflects that it is common practice in a bond transaction for the structuring advisor and the lead underwriter to be one and the same.³⁹ There is no evidence in the record that Mr. Sauvage personally would receive any monetary compensation or other financial benefit based on Citigroup's participation as an underwriter.

The party asserting bias must set forth legally sufficient facts to demonstrate bias. TURN was provided the opportunity to impeach Mr. Sauvage's credibility with evidence of financial bias, but ultimately failed to provide any such evidence. TURN's allegations of bias are unsupported, and the Commission did not err in relying on Mr. Sauvage's testimony. As such, TURN's reliance on *TURN v. Pub. Util. Comm'n*⁴⁰ is inapposite. In that case, the decision failed to satisfy the substantial evidence standard because it violated the rule under California law that "uncorroborated hearsay cannot constitute substantial evidence."⁴¹ Here, we did not rely on hearsay or other evidence of limited probative value. We appropriately exercised our discretion in relying on Mr. Sauvage's testimony and not TURN's unsubstantiated allegation of bias. As TURN's allegations of witness bias are without merit, so too are its allegations that the

³⁷ TURN Reh'g App., at pp. 25-26. In making this argument, TURN seems to concede that there is, in fact, evidentiary basis for the decision's conclusions with respect to the impact of securitization on PG&E's credit rating, but for TURN's allegation of witness bias. ("[W]ithout crediting Mr. Sauvage's testimony, there is no evidentiary basis for the Decision's findings and conclusions with respect to PG&E's ratings." TURN Reh'g App. at p. 25.)

³⁸ Record Transcript (RT), at p. 1058.

³⁹ RT, at p. 1059.

⁴⁰ *TURN v. Pub. Util. Comm'n (Oakley II)* (2014) 223 Cal. App. 4th 945.

⁴¹ *Id.*, at p. 962.

Commission's conclusions with respect to the impact of securitization on PG&E's credit rating lack record support.

Finally, there is no violation of Section 1705. It is within our discretion to determine what factors are material to our decisions, and we can reasonably reject a party's contention without making findings on the relative merits on the argument.⁴² TURN's allegations of error are without merit.

c) Credit Rating Factors

CCSF alleges we committed factual errors in finding PG&E's quantitative and qualitative credit factors will improve, supporting PG&E's effort to achieve an investment-grade credit rating.⁴³ CCSF first alleges error in accepting PG&E's argument that S&P would deem PG&E's proposal to be off-credit, thereby improving PG&E's funds from operations to total debt ratio metrics. CCSF also faults acceptance that approval of the plan would demonstrate effective cooperation between PG&E and its key stakeholders and regulator, which in turn would support the rating agency views of PG&E's business risk. Third, CCSF alleges error in accepting that PG&E's commitment to significantly improving its operations, safety, and governance would lead to improvement in the applicable qualitative factors the rating agencies would evaluate. CCSF claims we accepted these arguments without considering all of the evidence in the record on these issues.

Again, it is within our discretion to weigh the evidence and resolve conflicting evidence. The fact that our findings differ from those proffered by CCSF does not mean that we refused to consider relevant evidence.

As to quantitative credit factors, in discussing the possibility of requiring a PG&E guarantee or dollar-for-dollar rate credit, the Decision recognizes that if S&P deemed the ultimate structure to be on-credit, as would likely occur from a PG&E

⁴² See, e.g., *TURN v. Pub. Util. Comm'n* (1978) 22 Cal.3d 529, 540 ("a complete summary of all proceedings and evidence leading to the decision" is not required).

⁴³ CCSF Reh'g App., at pp. 4-7.

guarantee, the forecasted improvements in S&P's financial metrics would not occur.⁴⁴ Ultimately, we found that securitization would improve S&P financial credit factors, and will improve quantitative elements of PG&E's credit analysis, thereby supporting PG&E's path back to an investment grade credit rating.

CCSF further argues that our modifications to PG&E's proposal for the Customer Credit Trust –allowing the Commission to require PG&E to make additional contributions to the Customer Credit Trust if there are any shortfalls— call into question whether S&P will continue to treat the Recovery Bonds as off-credit. According to CCSF, these modifications would appear to make PG&E the guarantor of the Fixed Recovery Charges (thus, presumably, giving rise to S&P treating such amounts as an enforceable contractual commitment and precluding the forecasted improvement in credit metrics). However, the Decision identifies that risk and clearly rejects any proposals to require guaranteed dollar-for-dollar rate credits or guarantees.⁴⁵

As to qualitative factors, CCSF claims that the Decision wrongly agrees with PG&E's argument that its commitment to improving its operations, safety, and governance would lead to improvement in the applicable qualitative factors the rating agencies would evaluate. According to CCSF, the Decision ignores evidence from S&P and Moody's indicating that PG&E's credit ratings could be downgraded if the company is not successful at reducing wildfire risks, among other things. CCSF further argues that the Commission ignored undisputed evidence demonstrating that, since emerging from bankruptcy, PG&E has not improved its governance, management, and safety performance in any meaningful way that would lead the rating agencies to reduce their concerns about PG&E.

Again, this is a matter of the Commission's discretion to weigh and resolve conflicting evidence. The Decision recognizes that several factors can and likely will

⁴⁴ D.21-04-030, at p. 25, citing PG&E Reply Br. at pp. 1-7, RT, at p. 503-504, PGE-01 at 1-15.

⁴⁵ *Id.*, at pp. 25, 67.

affect PG&E's credit ratings,⁴⁶ and acknowledges CCSF's argument that these other factors could impede improvement in PG&E's credit rating.⁴⁷ Ultimately, we relied on other evidence showing that PG&E has "committed to significantly improving its operations, safety, and governance," and that approval of the Securitization will improve rating agency assessments of PG&E's regulatory environment and business risk.⁴⁸ The Decision is supported by substantial evidence; there is no legal error.

B. The Decision Did Not Err in its Application of the Ratepayer Neutrality Standard

CCSF and TURN argue that the Decision fails to comply with the ratepayer neutrality requirements established by D.20-05-053 and Section 3292(b).⁴⁹ CCSF asserts that we should not have approved the Application unless "there was certainty that the Customer Credits would fully reimburse ratepayers for 30 years of Fixed Recovery Charges."⁵⁰ Moreover, CCSF states that the Decision errs in accepting modifications to PG&E's original proposal after the evidentiary hearings concluded.⁵¹ TURN argues that, foremost, the Commission has to adopt a clear and explicit definition of ratepayer neutrality that complies with Section 1705 and, secondly, apply it anew to the

⁴⁶ D.21-04-030, at p. 23 (noting PG&E's claim that "Securitization will support and accelerate that return" to an investment-grade issuer credit rating, "even taking into consideration the fact that other factors are involved"); *id.* at p. 24 ("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 *Id.*, at p. 28 ("CCSF states...the qualitative metrics will continue to be a more significant barrier to any improvement in PG&E's credit rating.").

⁴⁸ *Id.*, at p. 24, relying on PG&E's commitment to improvements described in I.19-09-016, PGE-05 at 5-25 to 5-26, 5-28 to 5-29 & Figure 5-5; PGE-14 at 5-5; ("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." *Id.*, at p. 24 citing PGE-05 at 5-27 to 5-30, PGE-14 at 5-5, 5-8, RT, at p. 412.)

⁴⁹ TURN Reh'g App., at pp. 8-6; CCSF Reh'g App., at pp. 7-12.

⁵⁰ CCSF Reh'g App., at p. 8.

⁵¹ CCSF Reh'g App., at pp. 9-12.

Application since the determinations the Decision makes here are insufficient.⁵² For TURN, the clear and explicit standard is that “neutrality must be achieved by actual results that cause no net increase in rates and that ratepayer neutrality cannot be satisfied by a forecast.”⁵³

The Decision evaluates PG&E’s proposal and intervenors’ counterproposals and objections, and holds that:

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. In particular, increasing the amount of the Initial Shareholder Contribution, resequencing the realization of the NOLs [Net Operating Losses], 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.20-05-053.⁵⁴

The Decision also notes:

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 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.⁵⁵

⁵² TURN Reh’g App., at pp. 8-15.

⁵³ TURN Reh’g App., at p. 11.

⁵⁴ D.21-04-030, at pp. 53-54; Findings of Fact 28-29.

⁵⁵ D.21-04-030, at pp. 66-67.

The Decision recognized objections by intervenors, and especially TURN, that “the structure does not technically satisfy the rate neutrality commitments made by PG&E” but concludes that “the amount and timing of the contributions PG&E proposes should prevent a shortfall from occurring in any period.”⁵⁶ Finally, the Decision sets up a failsafe to open a subsequent Commission proceeding in the “unlikely” event of “shortfalls [in the Customer Credit Trust] triggered by catastrophic events (including without limitation, change of ownership, bankruptcy or government ownership or intervention in 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 action investment returns and projections at that time....”⁵⁷

D.20-05-053 approved PG&E’s bankruptcy reorganization plan. In approving the plan, we were guided by the requirements of AB 1054 which, as relevant here, required the Commission to determine whether the plan was “neutral, on average, to PG&E ratepayers.”⁵⁸ The Decision found that the plan’s proposed recovery of approximately \$154 million financing-related costs was consistent with the “neutral, on average” requirement “based on the projected interest costs savings to ratepayers... subject to a condition that PG&E demonstrate they are ‘neutral, on average’ at such time as PG&E requests rate recovery.”⁵⁹

D.20-05-053 went on to discuss PG&E’s proposed securitization, at issue here. It noted PG&E’s commitment that PG&E would not “seek to recovery in rates any portion of the amounts paid in respect of Fire Claims under the Plan” even if the Commission did not approve the securitization.⁶⁰ In light of that commitment, we held

⁵⁶ *Id.*, at p. 68.

⁵⁷ *Id.*, at p. 71.

⁵⁸ D.20-05-053, at p. 13, citing Pub. Util. Code, § 3293, subd. (b)(1)(D).

⁵⁹ *Id.*, at p. 72.

⁶⁰ *Id.*, at pp. 73-74.

that due to “the close connection between the [reorganization] 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.”⁶¹ No further standard was specified. Section 3293(b)(1)(D) similarly does not establish any test for establishing “neutral, on average, to ratepayers,” nor does it require the Commission to establish any such test.

As noted above, Section 1705 only requires the Commission decisions to “contain, separately stated, findings of facts and conclusions of law... on all issues material to the order or decision.” As discussed previously, the Commission has “discretion to determine what factors are material to its decision based on the issues before it.”⁶²

Neither CCSF’s nor TURN’s characterization of the “neutral, on average” standard are compelled by Section 3293, Section 1705, or D.20-05-053. The courts have long recognized the “strong presumption of validity of the [C]ommission’s decisions, and the [C]ommission’s interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language.”⁶³ “The Commission’s interpretation of its own rules and regulations is entitled to consideration and respect by the courts.”⁶⁴ Even if the courts conclude that “the Commission has failed to proceed in the manner required by law, [they] will annul [the Commission’s] decision only if that failure was prejudicial.”⁶⁵ The Commission merely must “articulate a

⁶¹ D.20-05-053, at p. 78.

⁶² *Clean Energy Fuels Corp. v. Pub. Utils. Comm’n*, 227 Cal.App.4th 641, 659 (2014) (“Section 1705 merely ‘requires [the Commission] to state what [the material] factors are and to make findings on the material issues that ensue therefrom.’”)

⁶³ *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411 (internal citations omitted).

⁶⁴ *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 958.

⁶⁵ *Ibid.*

satisfactory explanation for its action including a rational connection between the facts found and the choice made.”⁶⁶

Findings of Fact 28 and 29 makes the necessary findings that the securitization plan will be neutral, on average, with the adopted modifications. There findings are supported by extensive discussion of PG&E’s projections and calculations, as well as intervenors’ counterproposals and separate calculations.⁶⁷ The Decision also examines the consequences of a denial of the securitization, concluding that “[o]n balance, denial of the application is more likely to result in long-term costs to ratepayers that exceed any short-term benefits” and “[t]he Legislature did not prefer this outcome given the overarching public interest risks associated with the catastrophic wildfire costs.”⁶⁸ Moreover, the Decision concludes, the securitization results in “transferring” the benefit in retaining the Net Operating Losses (NOLs) from the shareholders to the ratepayers which “(even with the associated risks) better balances the costs and rewards of PG&E’s service,” “ensures ratepayer costs do not increase, and provides a likely significant benefit to ratepayers at the conclusion of the 30-year period.”⁶⁹

Aside from contending that the Decision reaches the wrong—in their opinion—conclusion, CCSF and TURN do not otherwise present any evidence or grounds for a finding of legal error.

C. There are No Due Process Errors in the Decision

TURN and Wild Tree both allege that the Commission violated due process by adopting PG&E’s modified proposal without providing the parties with an opportunity to present evidence to rebut PG&E’s contention that the modified proposal reduces the risk of shortfall to miniscule levels.⁷⁰ These allegations lack merit.

⁶⁶ *Motor Vehicle Mfrs. Assn. v. State Farm Mut.* (1983) 463 U.S. 29, 43; see, e.g., *McPherson v. Public Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 308-309.

⁶⁷ See, D.21-0-030, at pp. 41-72.

⁶⁸ *Id.*, at p. 69.

⁶⁹ *Id.*, at pp. 69-70.

⁷⁰ TURN Reh’g App., at p. 34; Wild Tree Reh’g App., at pp. 8 – 11.

TURN alleges that our consideration of PG&E's late proposal without allowing the parties to submit additional evidence or conduct discovery and cross-examination violate Commission Rules 10.1 and 13.1 *et seq.*, as well as the Due Process Clause of the Fourteenth Amendment of the United States Constitution.⁷¹ TURN also claims that our adoption of the proposal violates Section 1757.

Wild Tree alleges that PG&E's modified proposal could not be considered since it constitutes an amended application. According to Wild Tree, by adopting the modified proposal, the Commission exceeded the scope of the proceeding, demonstrated bias for PG&E, and violated the parties' Constitutional due process rights. Wild Tree also contends that PG&E's modified proposal violates Rule 1.12 which requires an amendment to an application to be submitted prior to the issuance of the scoping memo.

1. Commission Rules

Both parties argue that our adoption of the modified proposal without providing additional process violates Commission rules. Neither Wild Tree nor TURN succeed in identifying any Commission Rule violation.

a) Rules 10.1 and 13.1 *et seq.*

TURN claims that our consideration of modifications to PG&E's original proposal, which PG&E outlined in its opening brief, violates Commission Rule 10.1, which provides for parties to conduct discovery, and Article 13 of the Rules, which governs evidence and cross-examination.⁷² TURN provides few specifics about which provisions of those Rules were violated and how. Instead TURN generally alleges that we were required to allow more discovery, evidence, and cross-examination concerning the risk of shortfall from PG&E's proposals.⁷³

⁷¹ TURN Reh'g App., at p. 34.

⁷² TURN Reh'g App., at p. 34.

⁷³ Wild Tree also makes general allegations that it should have had an opportunity to respond to PG&E's proposed modifications, and attempts to incorporate by reference TURN's allegations of legal error. Although we address TURN's allegations of legal error here, we deny Wild Tree's application for rehearing for the same reasons discussed in Section II.I below.

Rule 10.1 allows parties to conduct discovery of relevant material, ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

TURN and the other parties had ample opportunity to conduct discovery and submit evidence earlier in the proceeding. Moreover, nothing in Rule 10.1 guarantees discovery rights late in a proceeding, after the evidentiary record has closed and no further evidence will be admitted. In addition, as PG&E notes, TURN does not demonstrate that it was unable to conduct discovery even after PG&E filed its opening brief.⁷⁴ Accordingly, TURN fails to demonstrate any manner in which the Commission violated Rule 10.1 when it adopted PG&E's modified proposal.

Similarly, TURN does not demonstrate any violation of Article 13 of the Commission Rules. That section outlines procedural requirements for hearings and the taking of evidence. There is no provision in Article 13 that requires such processes after post-evidentiary briefing, and, again, TURN points to no specific provision that was violated. TURN's implication that another round of hearings and evidence must occur whenever a brief proposes modifications to an earlier proposal is not found in Article 13.

b) 10-K Submission

The one specific example of evidence TURN alleges it was unable to submit is PG&E's February 25, 2021 10-K submission with the Securities and Exchange Commission (SEC).⁷⁵ After the record was closed and the case submitted, TURN filed a motion to file that document as an exhibit on March 5, 2021, and that motion was denied in the Decision in a general denial of pending motions.⁷⁶ According to TURN, the Commission's denial of its motion to file the 10-K submission is an abuse of discretion in

⁷⁴ PG&E Response, at p. 37, fn. 214.

⁷⁵ TURN Reh'g App., at pp. 34-37.

⁷⁶ D.21-04-030, at p. 94, Ordering Paragraph 23.

violation of Section 1757 (a)(5) and the Commission's failure to consider that evidence violates the Section 1757 (a)(4) requirement that findings be based on the whole record.

TURN makes no showing demonstrating that we were required to reopen the record to admit its late-filed exhibit at that late stage of the proceeding. TURN requested that its new evidence be admitted on March 5, 2021, after the evidentiary record was closed and briefing was completed. This was less than 20 days before the Proposed Decision was issued on March 23, 2021 in a proceeding where the Legislature contemplated quick resolution.⁷⁷

Given this timing, TURN would have needed to demonstrate a compelling reason to delay the proceeding, akin to the new material changes to fact or law standard, which it did not.⁷⁸ TURN's stated reason for its request was to rebut PG&E's assertions in its opening brief that the risk to ratepayers of its proposal is minimal. TURN claims that in the 10-K submission PG&E's characterization of ownership change risk directly contradicts PG&E's assertions in its opening brief that and the Commission's holdings that "full realization of the NOLs is either certain or virtually certain."⁷⁹ PG&E disputes TURN's characterization.

In any event, the risk to ratepayers was at issue throughout the proceeding and therefore PG&E's opening brief did not raise new topics. TURN fails to demonstrate that the ownership change risk is any kind of new information, and PG&E states that the risk was previously disclosed publicly.⁸⁰ Moreover, as explained in PG&E's response to TURN's motion, the language at issue—that it is "more likely than not" that Section 382 limits will not apply to PG&E—is simply the language of the Financial Accounting Standards Board ("FASB") standard, ASC 740, that is to be applied in evaluating whether or not a tax benefit of a tax position can be recognized for financial reporting

⁷⁷ See D.21-04-030, at p. 79.

⁷⁸ See Commission Rules of Practice and Procedure, Rule 13.15.

⁷⁹ TURN Reh'g App., at p. 36.

⁸⁰ PG&E Response, at p. 45.

purposes based on the technical merits of the position.⁸¹ Rather than demonstrate a contradiction between the use of that phrase in the 10-K and PG&E's briefing, the use of this language in the 10-K reflects the governing standard for recognition of tax benefits to clarify and enhance the understanding of the tax benefit recorded in its financial statements. The risk disclosure in the 10-K is not materially different from that included in prior SEC filings or PG&E's position in briefings.⁸²

TURN cites to no authority that requires the Commission to reopen the evidentiary record whenever a new contention is argued, or new evidence is available. Although TURN argues that its evidence is "relevant and reliable," even if it were, that alone does not meet the required showing to reopen the evidentiary record after it has closed. For the reasons discussed above, the risk disclosed in the Form 10-K that TURN cites as "highly relevant" to the Decision was not a material change, and was not new.

Because it was reasonable not to reopen the record given the context and the stage of the proceeding, we did not abuse our discretion or act arbitrarily or capriciously.

TURN also incorrectly complains that we were wrong to characterize its motion to admit the 10-K submission as moot in the Decision's general denial of all motions.⁸³ The motion was moot at the time of the ruling because the Decision was issued and granting the motion at that point could not impact any holdings. Although TURN refers to rehearing and other review processes,⁸⁴ those administrative review processes cannot consider new evidence admitted after a Decision is issued.

For these reasons, TURN fails to demonstrate any illegality or impropriety in the Commission's declining to reopen the evidentiary recording after the post-evidentiary briefing.

⁸¹ PG&E further explains that this language was specifically requested by PG&E's outside auditor in connection with the audit of PG&E's financial statements for the year ending December 31, 2020. (See, PG&E Response to TURN Motion for Admission of Additional Evidence (filed Mar. 17, 2021) at p. 6, fn. 14.)

⁸² See, *id.*, at pp. 5-6.

⁸³ TURN Reh'g App., at p. 36.

⁸⁴ See *ibid.*

c) Rule 1.12 and Scope of Proceeding

Wild Tree argues that PG&E's modifications are substantive changes to its application and therefore constitute an improper amendment pursuant to Rule 1.12.⁸⁵ This argument is closely related to Wild Tree and TURN's claims that the modifications are beyond the announced scope of the proceeding. Both claims lack merit.

Rule 1.12 provides:

An amendment is a document that makes a substantive change to a previously filed document. An amendment to an application, protest, complaint, or answer must be filed prior to the issuance of the scoping memo.

Beyond general allegations, Wild Tree does not support its assumption that the modifications are a significant enough departure that they should be considered a new application. The Commission has held that modifications that do not exceed the scope of the scoping memo do not require an amended application pursuant to Rule 1.12.⁸⁶

As PG&E notes, its modifications to the original proposal⁸⁷ do not exceed the scope of its application.⁸⁸ As the Decision explains those modifications, "they address areas of concern identified during the proceeding, and do not alter the basic transaction...."⁸⁹ PG&E's original application seeks a "determination that \$7.5 billion of

⁸⁵ Wild Tree Reh'g App., at pp. 10-11.

⁸⁶ *Re Diablo Canyon Retirement Costs* [D.18-09-052], at p. 4.

⁸⁷ PG&E's proposed modifications as described in the Decision, pp. 61-62 are: A. Modifying the sequencing of the monetization of NOLs, accelerating \$89 million of contributions from 2024 into 2023; B. Modifying the Customer Credit Trust portfolio allocation to reduce reliance on equity returns (*i.e.*, more fixed income investments relative to equity investments); C. Increasing shareholder cash contributions by \$200 million, and delaying a portion of the initial contributions to the first quarter of 2024; 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; 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.

⁸⁸ PG&E Response, at pp. 36-37.

⁸⁹ D.21-04-030, at p. 63.

2017 wildfire costs and expenses are Stress Test Costs that may be recovered through issuance of recovery bonds pursuant to Section 451.2 and 850 et seq.”⁹⁰ Moreover, the scope of the proceeding at all times included:

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.⁹¹

Both TURN and Wild Tree cite *Edison v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, a scoping memo case, for the proposition that the Commission must follow its own rules and statutory directives.⁹² But TURN and Wild Tree fail to identify any law that the Commission did not follow.

Regarding the scope of the proceeding, the facts that mandated reversal in *Edison* bear no relation to the current case. Rule 7.3 requires a scoping memo to determine the “issues to be addressed.” In *Edison* the Commission added an entirely new topic, prevailing wage, to a rulemaking about bid shopping and reverse auctions in utility contracting, over a year after the rulemaking opened, with the utilities having three business days to respond.⁹³ Here, as discussed, available alternatives to PG&E’s securitization, as well as risks to ratepayers, was always within the scope of the proceeding.⁹⁴

Because the modifications do not exceed the recognized scope of the proceeding, no Rule 1.12 amendment was required and there is no scoping memo violation.

⁹⁰ PG&E Application, at p. 50.

⁹¹ Scoping Memo, at p. 5.

⁹² TURN Reh’g App., at p. 38; Wild Tree Reh’g App., at p. 25.

⁹³ *Edison*, *supra*, at pp. 1091-1092, 1106.

⁹⁴ Scoping Memo, at p. 5.

2. Bias

Wild Tree argues that it was deprived of due process because of the Commission's bias towards PG&E in considering its modified proposal.²⁵ Wild Tree fails to support these claims.

As it has in previous filings at the Commission, Wild Tree selectively cites *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731 for general statements regarding administrative bias. But as we previously responded, "*Morongo* concerns a type of potential bias that can exist in the absence of an internal separation between advocates and decisionmakers within an agency."²⁶ There is not an issue here. "More generally on the topic of bias, *Morongo* notes, 'Unless they have a financial interest in the outcome [citation], adjudicators are presumed to be impartial....'"²⁷

Wild Tree provides no argument that would rebut the presumption of impartiality on the part of the Commission. That Wild Tree disagrees with our actions does not demonstrate bias. As we have explained to Wild Tree:

... the Commission bears regulatory responsibility over the operations of PG&E and is responsible for overseeing the provision of utility service within the state. (See, e.g., § 451.) That those responsibilities influence our regulatory decisions cannot be considered bias, but rather are part of our Constitutional mandate.²⁸

3. Application for Rehearing Deadline

Wild Tree argues that we erred in classifying this Decision as an order issued pursuant to Article 5, triggering the shorter 10-day deadline to file applications for rehearing.²⁹ According to Wild Tree, because the order was issued pursuant to Section

²⁵ Wild Tree Reh'g App., at pp. 9, 11.

²⁶ D.20-05-016, at p. 12; *Morongo*, at p. 737.

²⁷ D.20-16-016, at p. 12.

²⁸ D.20-05-016, at p. 12.

²⁹ Wild Tree Reh'g App., at pp. 12-14; § 1731(b)(1), (d).

451.2 and not Section 850 *et seq.*, which is part of Article 5.8, our decision to apply the 10-day deadline violates Wild Tree’s due process rights. Wild Tree fails to demonstrate that the 30-day deadline should have been applied.

In interpreting the statutory language to decide whether the Section 1731(d) 10-day limits applies, the Commission aims to determine,

... the intent of the Legislature by construing in context the language of the statute. [Citations] ... In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented by the legislation. [Citations]¹⁰⁰

Section 1731(d) provides parties cannot raise any cause of action in Court “arising out of an order or decision of the Commission construing, applying, or implementing the provisions of Article 5.7 ... or Article 5.8 ...,” without having filed an application for rehearing of the order with the Commission within 10 days of the order’s issuance. Tracking this statutory language, the Decision explains that it “construes, implements or interprets” the provisions of Article 5.8, and therefore the 10-day application for rehearing deadline applies.¹⁰¹ Independently, Section 1731(b) separately provides that a 10-day deadline applies more generally to orders, “issued pursuant to ... Article 5 ... or Article 6....”

The Decision triggers the Section 1731(d) time limit because it “construes and applies” provisions of Section 850.1(a)(1)(A)(ii) in the discussion and findings.¹⁰² For instance, the Decision holds that the Section 451 reasonableness standard is coextensive with that of Section 850.1(a)(1)(A)(ii).¹⁰³ Although the main application of Section 850.1 occurs in A.21-04-004, we emphasized that the proceedings were interconnected and approval of the financing decision was contingent on the approval of

¹⁰⁰ *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159.

¹⁰¹ D.21-04-030, at p. 79.

¹⁰² *See id.*, at pp. 75-79, 88-89 [Conclusions of Law 6, 8].

¹⁰³ *Id.*, at p. 79, 88 [Conclusion of Law 6].

the instant decision.¹⁰⁴ Accordingly, the Decision construes and applies Section 850.1, triggering the 10-day limitation.¹⁰⁵ Due to the high degree of interconnection, the Decision can also reasonably be understood as “issued pursuant” to Article 5. Looking at the statutory scheme as a whole, it would make no sense to impose shorter limitations on one decision that is necessary to complete a financing transaction, while the connected decision is still pending with longer limitations.

Citing the language in Section 1731(b)(1), Wild Tree argues that the Decision was not “issued pursuant” to Section 850.1. In addition to being an incorrect analysis of the Section 1731(b)(1) language, Wild Tree’s argument is misplaced because the Decision does not rely on Section 1731(b) to support its 10-day deadline conclusion. Rather, the Decision cites the independent provision for triggering the 10-day in subdivision (d), holding that the order “construes, implements or interprets” the provisions in Article 5.7 and 5.8 specifically. Section 1731(d) provides an independent and expansive basis for applying the 10-day application for rehearing limit for Article 5.7 and 5.8 decisions specifically. The language of Section 1731(b) cannot be read as limiting Section 1731(d) in any manner, and Wild Tree presents no argument suggesting any such limiting language. Therefore, even if Wild Tree were correct that the order was not “issued pursuant” to Article 5 as mentioned in subdivision (b), it clearly “construed” and “applied” provisions in Article 5.8.

In addition, there is no basis to Wild Tree’s allegation that the 10-day limit deprived it of due process.¹⁰⁶ Wild Tree fails to support its claim that it was unable to file an adequate application for rehearing in the time provided. Parties were aware in advance of the 10-day limitation, which was identified in the Proposed Decision.¹⁰⁷ Parties were largely able to get a 30-day head start on drafting their applications for

¹⁰⁴ *Id.*, at p. 5.

¹⁰⁵ *See* § 1731(d).

¹⁰⁶ *See* Wild Tree Reh’g App., at p. 13.

¹⁰⁷ *See* Proposed Decision, at p. 75.

rehearing, particularly since there is a good deal of overlap between comments the Proposed Decision and rehearing allegations. Moreover, we provided a warning about this short deadline to assist the parties in filing their applications for rehearing, even though there is no requirement that we announce the limitation in advance.

4. Other Due Process Claims

Beyond their claims of specific statutory and rules violations, TURN and Wild Tree allege that consideration of PG&E's modifications was unfair and deprived them of an opportunity to rebut PG&E's assertions in violation of due process.¹⁰⁸ Contrary to TURN and Wild Tree's implications, additional process is not required for all new issues raised in briefing. As the decision states, PG&E's proposed modification are logical outgrowth of the issues raised during the proceeding, with the exception of the surplus sharing proposal which was not adopted.¹⁰⁹ Moreover, since the modifications largely seek to mitigate identified risks, we would be remiss not to consider these proposed solutions.¹¹⁰

If the issue is within the scope of the proceeding and supported by evidence in the record, there is no prohibition against raising new ideas or proposals at the briefing stage. As discussed above, TURN and Wild Tree fail to identify any rule or statute that we violated or any type of unfairness that resulted from our consideration of PG&E's modifications to its proposal.

Without supporting argument, both TURN and Wild Tree claim that the consideration of modifications raised at the briefing stage violates their Constitutional due process rights. Under the federal Constitution, "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property'

¹⁰⁸ TURN Reh'g App., at p. 34, Wild Tree Reh'g App., at p. 8.

¹⁰⁹ D.21-04-030, at pp. 62, 70.

¹¹⁰ See *id.*, at p. 66.

interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”¹¹¹

As we recently reminded Wild Tree, it has been well established the Commission is not adjudicating vested interests in ratesetting proceedings and therefore ratepayer interests do not fall within the Constitutional due process protections.¹¹² Although intervenors in rate cases have statutory and regulatory process rights, they do not have life, liberty or property interests that would trigger any stricter Constitutional protections.¹¹³ It is worth noting, as well, that even if Constitutional due process standards applied here, Wild Tree and TURN have made no showing that they were deprived of adequate process. For these reasons, claims that the Commission failed to provide Constitutional rights to due process lack any basis.

D. The Decision Does Not Err in Its Treatment of Low-Income Customers

TURN alleges the Decision fails to ensure compliance with Section 850.1(i)’s requirement that securitized bond costs not be imposed on low-income customers.¹¹⁴ Section 850.1(i) states that “recovery costs shall not be imposed upon customers participating in the California Alternative Rates for Energy [CARE] or Family Electric Rate Assistance [FERA] programs....” TURN claims that unless there is a dollar-for-dollar offset of fixed recovery charges, CARE and FERA rates will increase.

TURN’s allegations are without merit. The Decision approved the “Customer Credit Trust Agreement”, attached as Attachment A to the order (“Trust Agreement”), which does not impose the Fixed Recovery Charge (FRC) on CARE and FERA customers.

¹¹¹ *Mathews v. Eldridge* (1976) 424 U.S. 319, 332; see also, *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, 283.

¹¹² D.20-12-015, at p. 21, citing *Wood v. Public Utilities Com.* (1971) 4 Cal.3d 288, 292.

¹¹³ See *Wood*, at p. 92; *Consumers Lobby Against Monopolies v. Public Utilities Com.* (“CLAM”) (1979) 25 Cal.3d 891, 909.

¹¹⁴ TURN Reh’g App., at pp. 16-19.

Contrary to TURN's assertion that the Decision fails to address the issue of CARE and FERA customers, the Decision affirms PG&E's approach as consistent with Section 850.1(i) and the implementation of exemptions for other Commission-related charges:

PG&E correctly states that Pub. Util. Code § 850.1(i) ("Recovery costs shall not be imposed upon customers participating in the [CARE] or [FERA] 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.

D.21-04-030, at 73 n.265 (citing PGE-09 at 9-2, 9-4 to 9-5). TURN further claims that, in the case when no customer credit is provided because of a Customer Credit Trust shortfall, CARE and FERA customer rates would increase by the same percentage that the FRCs caused all other charges to increase. In other words, according to TURN, FRCs would be imposed on CARE and FERA customers in this situation, in violation of Section 850.1(i).

TURN is incorrect. As noted above, the FRCs are not imposed on CARE and FERA customers. However, Section 850.1(i) does not alter the CARE and FERA customer discounts prescribed in Sections 739.1(c)(1) and 739.12.¹¹⁵ Applying Section 850.1(i)'s exemption without allowing for adjustment to these statutorily prescribed discounts could result in discounts that exceed these limits. As PG&E notes, if bills for non-CARE and non-FERA customers increase due to the FRC (i.e., if the FRC is greater than the Customer Credit), PG&E will adjust CARE and FERA customers' residual distribution discount to maintain the prescribed discounts.¹¹⁶ There is no support, either

¹¹⁵ Section 739.1(c)(1) provides that the average CARE discount must be "not less than 30 percent or more than 35 percent" and Section 739.12 provides that the FERA discount "shall be" 18 percent.

¹¹⁶ See, PGE-09 at 9-4 to 9-5 ("[I]f the FRC is larger than the Customer Credit, residential CARE and non-CARE charges will increase as necessary to retain the prescribed CARE percentage

in the plain language of Section 850.1 or in the Legislative history, for TURN's suggestion that the Legislature somehow intended the CARE and FERA discounts to increase above the maximum statutorily prescribed discounts. As we noted in the Financing Decision, D.21-05-015, "CARE and FERA rates both increase and decrease proportionately such that the net impact for all customers is zero."¹¹⁷

Contrary to TURN's argument, there is no conflict between Section 850.1(i) and Sections 739.1(c)(1) and 739.12 requiring the later-enacted statute, in this case Section 850.1, to prevail. There is no clear intent to repeal or otherwise override Sections 739.1(c) and 739.12, and as noted above, the treatment of CARE and FERA customers is similar to the approach used with the DWR bond charge. When interpreting statutory language, we "must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions."¹¹⁸ In this case, we have appropriately harmonized and given effect to both statutes.

E. The Decision Does Not Err in Concluding that Rejection of Securitization Would Increase Ratepayer Costs

TURN claims the Decision states that PG&E testified that, absent securitization, it would likely be required to refinance the \$6 billion of temporary utility debt at higher interest rates, resulting in higher costs of borrowing.¹¹⁹ TURN states that the next sentence of the Decision concludes: "On balance, denial of the application is more likely to result in long-term costs to ratepayers that exceed any short-term benefits." According to TURN, basing this conclusion on increased borrowing costs to refinance the temporary utility debt is an incorrect assumption—that, absent securitization, ratepayers would be affected by borrowing costs to refinance the debt that PG&E took on

discount. Similarly, FERA customer bills will increase to retain the FERA percentage discount when standard rates increase.").

¹¹⁷ D.21-05-015, at p. 57.

¹¹⁸ *State Dep't of Pub. Health v. Superior Ct.* (2015) 60 Cal.4th 940, 955.

¹¹⁹ TURN Reh'g App., at p. 29, citing D.21-04-030, at p. 69.

to pay for 2017 and 2018 wildfire liabilities. TURN states that in fact, the temporary utility debt and any subsequent refinancing of that debt relate entirely to wildfire liabilities for which PG&E shareholders bear full financial responsibility. Since the Commission stated that it will hold PG&E to its promise that, absent securitization, PG&E will not seek recovery of any costs related to the 2017 and 2018 wildfire claims, TURN claims that the Decision's conclusion that ratepayers would be affected in the long-term by borrowing costs related to this debt constitutes arbitrary and capricious decision-making in violation of Section 1757(a)(5). In addition, TURN claims there is no evidentiary support for this conclusion, so the decision is not reasonable in violation of Section 1757(a)(4).

TURN mischaracterizes the Decision by incorrectly asserting that the two sentences follow each other, when they do not. The full text of this paragraph is (with intervening sentence italicized):

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 [net operating loss] were realized. [Citation omitted.] *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. [Citation omitted.] 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, ensures ratepayer costs do no increase, and provides a likely significant benefit to ratepayers at the conclusion of the 30-year period.¹²⁰

¹²⁰ D.21-04-030 at pp. 69-70, emphasis added.

As this italicized sentence indicates, we were referring to the overall premise that having PG&E get to an investment grade credit rating as soon as possible is beneficial to ratepayers, and denial of the application is more likely to result in long-term costs to ratepayers. The Decision refers to PG&E's Reply Brief at pages 11-14, which describe how securitization provides benefits to customers from de-levering PG&E, expediting PG&E's path to an investment-grade issuer credit rating, lowering the cost of new debt PG&E will issue in the future (which customers pay), and maximizing the value of the tax benefits from the payment of wildfire claims and applying those for the benefit of customers. The Decision then states, correctly: "Further, PG&E explained denial of this application would result in higher costs for borrowing."¹²¹ Only then does the Commission state that on balance, denial of the application is more likely to result in long-term costs to ratepayers that exceed any short-term benefits. TURN's allegations are based on its inaccurate description of the Decision, and provide no basis that the conclusion is arbitrary, capricious, or lacking in substantial evidence.

F. The Decision Does Not Err in Concluding That Transferring Net Operating Loss Tax Benefits from Shareholders to Ratepayers Constitutes a Ratepayer Benefit Compared to the Status Quo

The Decision determines that transferring the risk of realization of the Net Operating Loss tax benefits (NOLs) is beneficial to ratepayers and in the public interest.¹²² For reasons similar to TURN's claim above, TURN asserts that this finding is incorrect and based on a fundamental misunderstanding of the status quo that would remain in place absent securitization (because, according to TURN, absent securitization, ratepayers bear no financial responsibility for paying the 2017 and 2018 wildfire liabilities and therefore bear no risk).¹²³ According to TURN, absent a guarantee of ratepayer neutrality, which TURN claims the Decision does not provide, the Decision

¹²¹ *Id.*, at p. 69.

¹²² D.21-04-030, at p. 69.

¹²³ TURN Reh'g App., at pp. 31-32.

transfers the risks of realization of NOLs and investment returns from shareholders to captive ratepayers. Similar to TURN's argument above, TURN asserts this conclusion constitutes arbitrary and capricious decision-making contrary to Section 1757(a)(5).

For the reasons discussed in the section above, TURN's allegations are without merit. TURN's claims ignore our determination that PG&E has \$7.5 billion of Stress Test Costs, costs that create ratepayer harm pursuant to the Stress Test methodology, that are eligible to be recovered through securitization.¹²⁴ It is in light of this determination that we found that the transfer of the Shareholder Tax Benefits to the Customer Credit Trust to fund the Customer Credit is beneficial to ratepayers. Further, TURN's argument rests on its mistaken assumption that the Decision does not provide for ratepayer neutrality. TURN's allegations concerning ratepayer neutrality are without merit, for the reasons discussed above.

Contrary to TURN's assertion of arbitrary and capricious decision making, the Decision contains extensive discussion of the various harms of denying the application and the overall benefits of approving it, including immediate de-levering of PG&E, the impact on PG&E's credit profile, the ability to achieve an investment-grade credit rating faster, the reduction of borrowing costs, the waiver of recovery of wildfire costs other than through rate-neutral securitization, the acceleration of payments to wildfire victims, and the sharing of surplus of the Customer Credit Trust.¹²⁵ There is no legal error.

**G. There is No Error in the Decision's Statement that
Rejection of Securitization of Stress Test Costs Would**

¹²⁴ *Id.*, at p. 84 (FOF 6).

¹²⁵ *See, e.g., id.*, at p. 53 ("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."); *id.*, at p. 69 ("On balance, denial of the application is more likely to result in long-term costs to ratepayers that exceed any short-term benefits."); *id.*, at pp. 44-45, 53, 63, 67-70.

Increase Safety Risks and Hinder Achievement of Climate Goals

The Decision states: “We are convinced that rejection of this securitization would ultimately result in higher costs to ratepayers, increase safety risks and hinder achievement of our state climate and greenhouse gas goals.”¹²⁶ TURN alleges this statement constitutes legal error.¹²⁷

First, TURN claims with respect to higher costs to ratepayers, this statement constitutes legal error for the same reasons TURN raises regarding the Decision’s findings that securitization would improve PG&E’s credit ratings and otherwise benefit ratepayers by avoiding higher costs that would be imposed on ratepayers absent securitization. For the same reasons as discussed above, there is no legal error in this statement.

TURN next claims that the notion that denial of securitization would increase safety risks and hinder climate and greenhouse gas goals lacks evidence in the record. Further, TURN claims there is no explanation how disposition of PG&E’s application would have any impact on safety or climate goals, contrary to Section 1757(a)(4). TURN further claims that these issues (impact of PG&E’s proposal on safety and climate change goals) were not listed in the Scoping Ruling, and that therefore the Commission failed to proceed in the manner required by law, contrary to Section 1757(a)(2).

As we explained in the Decision, AB 1054 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.”¹²⁸ The Decision clearly identifies evidence in the record

¹²⁶ *Id.*, at p. 53.

¹²⁷ TURN Reh’g App., at pp. 37-38.

¹²⁸ D.21-04-030, at p. 53; *see also* AB 1054, Sec. 1(a)(4): “Electrical corporation need capital to fund ongoing operations and make new investments to promote safety, reliability, and California’s clean energy mandates and ratepayers benefit from low utility capital costs in the form of reduced rates.”

concerning the impact of Securitization on safety and reliability. For example, the Decision states, “PG&E also committed to significantly improving its operations, safety, and governance, as described in other proceedings, which it indicates will also support its pathway to an investment-grade issuer credit rating.”¹²⁹ The Decision further states, in discussing the Securitization Application, “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.”¹³⁰ The transcript is replete with numerous references to safety and wildfire risks, and the impact the Securitization plan would have on safety and reliability, including cross examination of PG&E’s witnesses by TURN’s counsel.¹³¹ There are also references to assumptions about electric growth and rates, and the need to anticipate significant electric load growth to meet California’s ambitious greenhouse gas reduction targets.¹³²

Moreover, in D.16-01-017, we adopted an amendment to Rule 2.1(c) requiring utilities’ applications to clearly state the relevant safety considerations. We have previously explained that the “safe and reliable provision of [utility services] at predictable rates promotes public safety.”¹³³ PG&E identifies relevant safety considerations in its Securitization Application at page 45.

Further, the Scoping Memo identifies the following issues to be addressed in this proceeding:

- 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:

¹²⁹ *Id.*, at p. 24, citing PGE-05 at 5-25 to 5-26, 5-28 to 5-29 & Figure 5-5; PGE-14 at 5-5.

¹³⁰ *Id.*, at p. 7; *see also*, PG&E Securitization Application, at pp. 4-5, 45.

¹³¹ *See e.g.*, RT Vol. 2, at pp. 237, 273, Vol. 3, at pp. 435, 517.

¹³² *See, e.g.*, RT Vol. 5, at pp. 755-787; PGE-18.

¹³³ D.14-12-053, at pp. 12-13.

- a) Whether PG&E's application satisfies all applicable legal requirements.

- c) Whether the proposed securitization provides a sufficient path to an investment grade rating for PG&E.

(Scoping Memo, at 4.)

The impact of safety on Securitization on safety is relevant to PG&E's pathway to an investment-grade issuer credit rating. As PG&E stated in its Securitization Application, its Securitization plan will help it continue to make critical safety and reliability improvements in its electric system, and claimed that Securitization is in the public interest and satisfies the requirements of Section 850.1(a)(1)(A). We concluded, based on the substantial evidence discussed in the Decision, that granting the Application provides benefits to PG&E and customers as it improves PG&E's financial profile and credit ratings in conformance with the intent, purposes, and requirements of the Stress Test Decision.¹³⁴ Whether PG&E's Application satisfies all applicable legal requirements and whether the proposed Securitization provides a sufficient path to investment grade rating are issues identified by the Scoping Memo. There is no legal error.

H. The Decision Does Not Err by Not Addressing TURN's Characterizations of Arguments Not Material to the Decision

TURN asserts that the Decision fails to address PG&E's proposal to require ratepayers to make interest free loans in the event of any trust shortfalls occurring over the next 30 years.¹³⁵ According to TURN, since the Decision does not address this issue, it is unclear whether the Commission has endorsed or rejected this proposal, resulting in a violation of Section 1705 as the Decision fails to provide findings and conclusions on all

¹³⁴ D.21-04-030, at pp. 44-45; 53; 63; 67-70.

¹³⁵ TURN Reh'g App., at pp. 38-39.

material issues. According to TURN, the issue is material because it is relevant to the question of whether PG&E's proposal satisfies the ratepayer neutrality requirement.

This argument constitutes TURN's characterization that the Customer Credit Trust's repayment of shortfalls equates to requiring ratepayers to make zero-interest loans. We need not address every argument or characterization of every argument raised by the parties. Moreover, this is a sub-element of the overall issue of whether the securitization is ratepayer neutral, an issue which the Decision addresses at length and includes material findings and conclusions.¹³⁶ The repayment of interim shortfalls are part of the overall customer cost/benefit calculation, which includes customers' sharing 25% of the ultimate Customer Credit Trust surplus. The Decision acknowledges that Intervenor's have concerns regarding the risk of interim shortfalls and recoveries in the Customer Credit Trust, but ultimately the Decision rejects these criticisms and adopts the CCT offset mechanism.¹³⁷

TURN also claims the Decision errs by failing to address PG&E's proposal to require ratepayers to pay a "gross up" to cover PG&E's tax obligations if there is a trust shortfall.¹³⁸ Again, this argument is TURN's characterization of PG&E's proposal to require ratepayers to pay an additional 38.9% tax gross up on payments for securitized debt any time there is a shortfall in funds available in the Customer Credit Trust.

These are subsets of the larger issue of whether securitization is ratepayer neutral, and as discussed above, the Decision appropriately discusses and disposes of the Customer Credit Trust's repayment of shortfalls and the tax gross-up provision.

¹³⁶ D.21-04-030, at pp. 41-72, 87 (FOFs 27, 28, 29).

¹³⁷ See *id.*, pp. 64-72; see also, Section 4.3. Contrary to TURN's claim that the Decision is unclear as to whether it adopts PG&E's proposal, the Decision clearly states that the CCT offset mechanism was adopted: "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." (D.21-04-030, FOF 27.)

¹³⁸ TURN Reh'g App., at pp. 39-41.

I. Wild Tree’s Remaining Allegations of Legal Error Should Be Denied

Wild Tree claims PG&E “failed it [sic] burden of proof that its application met any of the requirements of section 451.2” Wild Tree claims it argued these points extensively in the proceeding and attempts to incorporate by reference the “allegations it has made in its Opening Brief, Reply Brief, and Comments on the Proposed Decision regarding PG&E’s failure to demonstrate the following: Compliance with SB 901 and D.19-06-027 Stress Test Methodology; Necessity of recovery bond to prevent harm to ratepayers or provide adequate and safe service; \$7.5 billion of 2017 wildfire claims costs are eligible for securitization; Bond will be Ratepayer neutral.”¹³⁹ Wild Tree also purports to “endorse[] all allegation of legal error made by TURN” in its rehearing application.

Wild Tree’s application for rehearing does not meet the statutory criteria for a permissible application for rehearing. Pursuant to Section 1732, applications for rehearing must “set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.”¹⁴⁰ The purpose for requiring specific and supported claims is to “alert the Commission to legal error, so that the Commission can correct it...”¹⁴¹ It is not sufficient for a party to just identify broad legal principles, or make general statements and arguments, or to incorporate arguments made outside of the application for rehearing. The rehearing application must explain how the law and its arguments apply to the case and facts in question.

Wild Tree did not do this. Its allegations summarily assert the Decision lacks record evidence and consist of one cursory paragraph in its rehearing application, purporting to incorporate by reference all of its previous briefs and comments and/or arguments raised by other parties.

¹³⁹ Wild Tree Reh’g App., at p. 14.

¹⁴⁰ Pub. Util. Code § 1732; *see also* Rule 16.1(c) of the Commission’s Rules of Practice and Procedure.

¹⁴¹ Commission Rule 16.1(c).

Section 1732 does not contemplate nor allow a rehearing applicant to simply incorporate by reference its earlier arguments or piggyback on arguments raised by other parties.¹⁴² A party must submit its own stand-alone document that meets the requirement stated in Section 1732. Because Wild Tree failed to specify legal error in its application for rehearing, its application for rehearing should be rejected.

III. CONCLUSION

Finding no merit to the allegations of legal error, we deny rehearing of D.21-04-030.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.21-04-030 is denied.
2. The proceeding, Application 20-04-023, is closed.

This Order is effective today.

Dated August 11, 2021, at San Francisco, California.

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
Commissioners

¹⁴² See also, *In re Southern California Edison* [D.11-04-034] (2011) 2011 Cal. PUC LEXIS 246, p. *51 (“It is particularly improper for a party to state in its rehearing application that error is alleged on all of the grounds contained in a list of pleadings incorporated by reference. A cross-reference to another document does not “set forth” its claims in a rehearing application.” (citing Pub. Util. Code, § 1732.))