

Decision PROPOSED DECISION OF ALJ PARK (Mailed 3/15/2024)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U39E) and Pacific Generation LLC for Approval to Transfer Certain Generation Assets, for a Certificate of Public Convenience and Necessity, for Authorization to File Tariffs and to Issue Debt, and for Related Determinations.

Application 22-09-018

**DECISION DENYING APPLICATION**

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## DECISION DENYING APPLICATION

### Summary

This decision denies the application of Pacific Gas and Electric Company (PG&E) and Pacific Generation LLC (Pacific Generation) seeking authorization for PG&E to transfer substantially all of its non-nuclear generation assets to Pacific Generation; the issuance of a certificate of public convenience and necessity to Pacific Generation to operate as a utility subject to the California Public Utilities Commission's jurisdiction; and other authorizations and determinations.

This proceeding is closed.

### 1. Background

#### 1.1. Factual Background

Pacific Gas and Electric Company (PG&E) is an investor-owned public utility regulated by the California Public Utilities Commission (Commission) providing natural gas and electric service in northern and central California. Pacific Generation LLC (Pacific Generation) is a Delaware limited liability company, currently wholly owned by PG&E.

In this proceeding, PG&E and Pacific Generation (jointly, Applicants) request that the Commission approve the transfer of substantially all of PG&E's non-nuclear generation assets to Pacific Generation. The generation assets proposed to be transferred have a combined generation capacity of approximately 5.6 gigawatts consisting of approximately 3,848 megawatts (MW) of hydroelectric power,<sup>1</sup> 1,400 MW of natural gas, 152 MW of solar, and 182 MW

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<sup>1</sup> PG&E's hydroelectric generation fleet consists of 62 powerhouses located on watersheds in the Sierra Nevada, Cascade, and Coastal mountain ranges. (Exhibit (Ex.) PGE-02 at 2-8.) In addition to the powerhouses, PG&E's hydroelectric system encompasses approximately 97

of battery energy storage.<sup>2</sup> The 2023 weighted average forecasted rate base of these assets is approximately \$3.5 billion, equal to approximately seven percent of PG&E's current total rate base.<sup>3</sup> As part of the transaction, PG&E would also convey or grant to Pacific Generation real property interests in the land on which PG&E's generation facilities are located and the land used by PG&E to operate and maintain the generation assets.<sup>4</sup>

The proposed transfer of assets would be accomplished through a Separation Agreement between PG&E and Pacific Generation, and the conveyance documents, assumption and assignment agreements, and other agreements contemplated therein.<sup>5</sup> Included as exhibits to the Separation Agreement would be various intercompany agreements entered into between PG&E and Pacific Generation, pursuant to which PG&E would continue to operate and maintain Pacific Generation's assets and business, and schedule and dispatch the output from Pacific Generation's facilities.<sup>6</sup>

The Applicants plan to compile and complete the various schedules and exhibits referenced in and attached to the Separation Agreement and submit them to the Commission in a Tier 2 advice letter, prior to closing.<sup>7</sup> Pacific

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reservoirs, 72 diversions within natural waterways, 167 dams, over 400 miles of water conveyance systems, and various roads and bridges. (*Ibid.*)

<sup>2</sup> Applicants Opening Brief (OB) at 5. A list of the generation facilities proposed to be transferred can be found at Table 2-1 of Ex. PGE-02.

<sup>3</sup> Applicants OB at 5.

<sup>4</sup> Ex. PGE-02 at 2-15 to 2-17. These real property interests include fee simple, leasehold, operational easements, and permits.

<sup>5</sup> A draft form of the Separation Agreement is provided as Attachment A to Ex. PGE-02-S.

<sup>6</sup> Applicants OB at 7-8; Ex. PGE-02 at 2-5.

<sup>7</sup> Ex. PGE-02 at 2-5. An advice letter is generally an informal request by a utility for Commission approval, authorization, or other relief. (General Order (GO) 96-B, Rule 3.1.)

Generation would not pay PG&E any cash consideration for the contribution of the assets. According to the Applicants, PG&E would instead receive the economic benefit of the asset contribution through its ownership of all of Pacific Generation's equity.<sup>8</sup>

Following contribution of the assets to Pacific Generation and entry into intercompany agreements, PG&E intends to contribute one percent of Pacific Generation's equity to a new wholly owned subsidiary of PG&E (New HoldCo) to be formed for the purpose of holding this Pacific Generation equity. The purpose of having this new entity hold a portion of Pacific Generation prior to any sale of Pacific Generation equity to third-party investors (Minority Investor(s)) is due to certain tax advantages.<sup>9</sup>

Following a marketing process and solicitation of bids, PG&E aims to sell up to a 49.9 percent equity interest in Pacific Generation to one or more Minority Investor(s).<sup>10</sup> PG&E anticipates granting the winning bidder(s) a limited set of governance rights.<sup>11</sup> Following a decision in this proceeding, Applicants propose to submit a Tier 2 advice letter identifying the Minority Investor(s) and attaching the signed Minority Sale Agreement, which will set forth terms of the purchase and sale of the Minority Equity Interests, and the Amended and Restated Limited Liability Company Agreement of Pacific Generation (LLC Agreement),

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GO 96-B sets forth three tier classifications for advice letters with different procedures for each tier.

<sup>8</sup> Applicants OB at 6.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Id.* at 78.

which will set out the proposed structure of Pacific Generation and the provisions that govern its management and operations.<sup>12</sup>

The application also requests that the Commission grant a certificate of public convenience and necessity (CPCN) to Pacific Generation to operate as a rate-regulated generation-only public utility under the jurisdiction of the Commission; establish Pacific Generation's revenue requirement and cost of capital consistent with PG&E's most recent General Rate Case (GRC), Energy Resource Recovery Account (ERRA) forecast, and Cost of Capital proceedings; approve a ratemaking proposal and proposed tariffs for Pacific Generation; grant financing authorizations for Pacific Generation; and other relief.<sup>13</sup>

## **1.2. Procedural Background**

On September 28, 2022, the Applicants filed the instant application requesting the Commission authorize PG&E to transfer substantially all of its non-nuclear generation assets to Pacific Generation; issue a CPCN to Pacific Generation to operate as a utility subject to the Commission's jurisdiction; authorize Pacific Generation to issue long-term and short-term debt secured by utility property; and make other authorizations and determinations. The Applicants concurrently served testimony and exhibits supporting their application.

The following entities timely filed a protest or response to the application and were granted party status: the Energy Producers and Users Coalition (EPUC), Placer County Water Agency (PCWA), The Utility Reform Network (TURN), California Community Choice Association (CalCCA), City of

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<sup>12</sup> *Id.* at 9, 15. Draft forms of the LLC Agreement and Minority Sales Agreement are attached as Attachment A and Attachment B, respectively, to Ex. PGE-05.

<sup>13</sup> Applicants OB at 16-23.

Santa Clara (dba Silicon Valley Power) (Santa Clara), Nevada Irrigation District (NID), the Coalition of California Utility Employees (CUE), and the Northern California Power Agency.

The following entities filed motions for party status and were granted party status: the Public Advocates Office at the California Public Utilities Commission; the Western Canal Water District; the California Hydropower Reform Coalition (CHRC), including American Whitewater, California Outdoors, California Sportfishing Protection Alliance, California Trout, Inc., Foothill Conservancy, Friends of the River, South Yuba River Citizens League, and Trout Unlimited; East Bay Municipal Utility District (EBMUD); County of Lake; Pit River Tribe; and Potter Valley Tribe.

A prehearing conference was held on December 2, 2022, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

The assigned Commissioner issued a Scoping Memo and Ruling on January 20, 2023 (Scoping Memo), setting forth the scope of issues and schedule for the proceeding.

On March 17, 2023, PG&E served amended and restated testimony for Chapter 4 of its testimony. Due to the new information provided in the amended and restated testimony, on March 30, 2023, the assigned Administrative Law Judge (ALJ) issued a ruling modifying the proceeding schedule.

Intervenors NID, CHRC, Santa Clara, CalCCA, EBMUD, PCWA, and TURN, and TURN and EPUC jointly, served testimony on June 16, 2023.

PG&E served rebuttal testimony on July 7, 2023.

Evidentiary hearings were held on August 21-22, August 24-25, and August 28, 2023.



On September 18, 2023, the Applicants, CUE, NID, PCWA, TURN, CalCCA, EPUC, CHRC, and Santa Clara filed opening briefs.

On October 5, 2023, the Applicants, CUE, NID, PCWA, TURN, CalCCA, EPUC, CHRC, and Santa Clara filed reply briefs.

### **1.3. Submission Date**

This matter was submitted on October 5, 2023, upon the filing of reply briefs.

## **2. Legal Standards**

As the applicants, PG&E and Pacific Generation have the burden of proof to demonstrate the reasonableness of the relief sought in the application.<sup>14</sup> The standard of proof an applicant must meet in ratesetting cases is that of a preponderance of the evidence.<sup>15</sup> Preponderance of the evidence usually is defined “in terms of probability of truth, *e.g.*, ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’”<sup>16</sup>

### **2.1. Public Utilities Code Section 851<sup>17</sup>**

Pursuant to Section 851, a public utility must receive prior authorization from the Commission to “sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its ... line, plant, system, or other property necessary or useful in the performance of its duties to the public.”

There is no dispute that the proposed transfer of substantially all of PG&E’s non-nuclear generation assets to Pacific Generation is subject to

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<sup>14</sup> Decision (D.) 22-12-032 at 11.

<sup>15</sup> *Ibid.*

<sup>16</sup> D.08-12-058 at 19, citing Witkin, Calif. Evidence, 4th Edition, Vol. 1 at 184.

<sup>17</sup> All section references are to the Public Utilities Code unless otherwise specified.

Section 851. There is also no dispute that the Commission performs a public interest analysis in determining whether to authorize a transaction under Section 851. However, parties disagree as to the public interest review standard that the Commission should apply to this case.

The Applicants contend that the applicable standard under Section 851 is that the transaction is “not adverse to the public interest,” and that a showing of affirmative benefits to customers is not required.<sup>18</sup> CHRC also states that the Commission may grant the application if it determines the proposed transaction would not be adverse to the public interest.<sup>19</sup> NID and PCWA note that the Commission has previously stated that while this is the minimal standard, the Commission fosters and encourages transactions that are in the public interest.<sup>20</sup>

CalCCA notes the Commission has imposed varying iterations of the public interest review standard to evaluate Section 851 transactions, including a “ratepayer indifference” standard and a “tangible ratepayer benefit” standard.<sup>21</sup> According to CalCCA, when the proposed transaction triggers review under both Section 851 and Section 854, the higher “ratepayer benefit” standard and the specific requirements set forth in Section 854 generally guide the Commission’s analysis.<sup>22</sup> CalCCA argues that Section 854 applies to the proposed transaction.<sup>23</sup> If, however, the Commission were to find that Section 854 does not apply, CalCCA urges the Commission to review the proposed transaction under the

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<sup>18</sup> Applicants OB at 24 citing D.11-05-048 at 9; D.22-08-005 at 14; D.11-06-032 at 12.

<sup>19</sup> CHRC OB at 3.

<sup>20</sup> NID OB at 13 citing D.09-07-035; PCWA OB at 4 citing D.11-05-048 at 8.

<sup>21</sup> CalCCA OB at 11-12.

<sup>22</sup> *Id.* at 12-13.

<sup>23</sup> *Id.* at 13.

“tangible ratepayer benefit” standard given the novelty and risks of the proposed transaction.<sup>24</sup> EPUC also concurs with CalCCA’s assessment.<sup>25</sup>

The Commission has broad discretion to determine whether the sale of a public utility’s property should be approved under Section 851.<sup>26</sup> As noted by parties, the Commission has used varying standards in conducting its public interest review under Section 851. The minimal standard the Commission considers is whether a proposed transaction is “adverse to the public interest.”<sup>27</sup> The Commission may also consider whether the transaction will serve the public interest.<sup>28</sup>

The proposed transaction is novel and unprecedented and does not represent a routine Section 851 application. The Commission has previously explained that it sets a high bar for determining that novel transactions meet the “public interest” and “tangible benefits” standards.<sup>29</sup> The Commission has also found that a heightened standard of review should apply to an application, which potentially impacted rates and the Commission’s jurisdiction, among other factors.<sup>30</sup>

Here, the proposed transaction would impact the structure of the largest electrical corporation regulated by the Commission. It would result in the transfer of approximately \$3.5 billion in rate base assets, the transfer of public

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<sup>24</sup> *Ibid.*

<sup>25</sup> EPUC Reply Brief (RB) at 5-6.

<sup>26</sup> D.02-09-024 at 3.

<sup>27</sup> D.11-05-048 at 9; D.09-07-035 at 13.

<sup>28</sup> D.05-04-022 at 9; D.04-08-048 at 12; D.04-07-032 at 11-12.

<sup>29</sup> D.22-12-032 at 33.

<sup>30</sup> D.11-06-032 at 12.

utility operations associated with those assets, and the creation of a new electrical corporation whose gross annual operating revenues in California would exceed \$1 billion.<sup>31</sup> It would create an unprecedented situation where a generation-only investor-owned utility (IOU) has the same service territory as an existing electric IOU. It also has the potential to impact the Commission's jurisdiction and regulatory authority.

Given the above considerations, we find this application warrants review under a heightened standard of review with the Applicants having the burden of affirmatively demonstrating that the proposed transaction will serve the public interest. In this case, we do not find that the Applicants have met the burden of demonstrating that the proposed transaction meets even the minimal public interest standard.

## **2.2. Public Utilities Code Section 854**

Section 854(a) prohibits any person or corporation from directly or indirectly merging, acquiring, or controlling a public utility organized and doing business in this state without prior Commission approval. To approve a transaction under Section 854, Section 854(b) requires the Commission to find that the transaction: provides short-term and long-term economic benefits to ratepayers; equitably allocates 50 percent of forecasted economic benefits to ratepayers; does not adversely affect competition; and ensures the resulting corporation will have an adequate workforce to maintain the safe and reliable operation of the utility assets.<sup>32</sup> Pursuant to Section 854(a), the Commission has

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<sup>31</sup> Ex. PGE-09E at 9-5, Table 9-1.

<sup>32</sup> In addition, Section 854 requires the Commission to consider specified criteria and find, on balance, that the proposed transaction is in the public interest pursuant to Section 854(c) (if an entity to the proposed transaction has gross annual California revenues exceeding \$500 million) and Section 854(d) (if an entity to the proposed transaction has gross annual California revenues

the authority to establish, by order or rule, the definitions of what constitutes a merger, acquisition, or control activity that is subject to Section 854.

The Applicants argue Section 854 does not apply to the proposed transaction. The Applicants contend that PG&E already controls Pacific Generation and that the application is requesting the following authorizations, which are not subject to Section 854: (1) authorization for PG&E to contribute non-nuclear generation utility assets to Pacific Generation, a request that is subject to Section 851; and (2) the grant of a CPCN to Pacific Generation to operate as a public utility under the Commission's jurisdiction pursuant to Section 1001.<sup>33</sup> According to the Applicants, CPCN proceedings involve separate and distinct issues from Section 854 change-in-control proceedings and the Commission has never construed Section 854 as applying to a request for the Commission to grant an entity a CPCN.

CalCCA argues that PG&E newly establishing control of Pacific Generation, a public utility, as a result of the proposed transaction is a "control activity" subject to Section 854.<sup>34</sup> CalCCA argues the Applicants mischaracterize the statute as only applying to changes in control, whereas the plain language of the statute provides that a corporation "shall not ... control ... any public utility organized and doing business in this state without first securing authorization."<sup>35</sup> CalCCA notes the Commission's authority to establish the definitions of what constitutes a merger, acquisition, or control activity subject to

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exceeding \$400 million and the proposed transaction is regarding an electrical or gas corporation organized and doing business in the state).

<sup>33</sup> Applicants RB at 3-4.

<sup>34</sup> CalCCA OB at 7.

<sup>35</sup> *Id.* at 7-8

Section 854 and that the Commission has previously emphasized the importance of reviewing the specific facts and potential impacts to determine whether a transaction necessitates review under Section 854.<sup>36</sup>

The Commission determines the applicability of Section 854 on a case-by-case basis.<sup>37</sup> In this case, we do not find that the proposed transaction constitutes “a merger, acquisition, or control activity of a public utility” within the meaning of Section 854 because: (1) there would be no merger, acquisition, or control activity of PG&E; and (2) any merger, acquisition, or control activity of Pacific Generation would not be subject to Section 854 until and unless Pacific Generation has acquired status as a public utility.<sup>38</sup>

The proposed transaction would not result in another entity merging, acquiring, or controlling the existing public utility, PG&E. The proposed transfer of PG&E’s non-nuclear generation assets to Pacific Generation does not constitute a merger, acquisition, or control activity of a public utility but an asset transfer that is subject to review under Section 851, which as discussed above also involves a public interest analysis.<sup>39</sup> Pacific Generation would not merge with, acquire, or control PG&E as a result of the proposed transaction.

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<sup>36</sup> *Id.* at 8.

<sup>37</sup> D.05-03-010 at 10.

<sup>38</sup> Given this decision denies Pacific Generation’s request for a CPCN, we do not reach the question of whether a subsequent sale of minority interests in Pacific Generation after the issuance of a CPCN, as proposed in the application, would involve a change in control of a public utility subject to Section 854.

<sup>39</sup> The Commission has applied Section 854 where a proposed transfer of assets would result in the transfer of a small portion of a company’s assets but all of a company’s public utility operation in California and transfer of CPCN. (*See, e.g.*, D.05-03-010 at 10-11.) Here, although the proposed transaction would result in transfer of some of PG&E’s public utility operations to Pacific Generation, PG&E would retain most of its public utility operations in the state, including some generation operations, and there is no request for a transfer of PG&E’s CPCN.

Pacific Generation is not currently a public utility but rather, seeks to become a public utility through the instant application. Since Section 854 applies to any merger, acquisition, or control activity of a public utility, it would only apply to Pacific Generation after Pacific Generation has acquired public utility status. PG&E's actions to acquire and control Pacific Generation occurred prior to the filing of the application. Pacific Generation is currently not a public utility, and therefore, approval under Section 854 for PG&E's acquisition of Pacific Generation was not required.

In this proceeding, Pacific Generation seeks a CPCN to operate as a public utility. No party points to any precedent for the Commission to apply Section 854 to an application for a new CPCN. Rather, in a CPCN application, the Commission evaluates the entity seeking public utility status in determining whether the public convenience and necessity require the proposed service pursuant to Section 1001.

The intent of Section 854 is to ensure the Commission has had an opportunity to scrutinize a person or entity acquiring control of a regulated utility in order to evaluate whether the change in control would be consistent with and promote the public interest.<sup>40</sup> The Commission is still required to undertake a public interest analysis of the proposed transaction in reviewing the requested transfer of assets pursuant to Section 851 and request for CPCN. The fact that we find that Section 854 does not apply to the proposed transaction does not preclude the Commission from considering many of the public interest factors set forth in the statute, including the impact the proposed transaction will have on the financial condition of the public utility, quality of service, quality of

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<sup>40</sup> D.86-02-005 at 4; D.09-09-005 at 29.

management, and the Commission's jurisdiction and the capacity of the Commission to effectively regulate and audit public utility operations.<sup>41</sup>

### **3. Whether the Proposed Transaction is Adequately Justified, Reasonable, and in the Public Interest**

In order for the Commission to approve the requests in the application, the Applicants must demonstrate, among other things, that their requests are adequately justified, reasonable, and in the public interest.<sup>42</sup> We find that the Applicants have failed to meet this burden. As discussed throughout this decision, there is a lack of information and implementation details in Applicants' showing. Applicants provide few specifics on many issues, such as potential impact on rates and issues regarding the Minority Investor(s), and defer consideration of these issues to future proceedings. However, the question of whether the application should be approved is currently before us in this proceeding. In considering whether the application should be approved, we must and can only consider the record that is before us in this proceeding, not what may be presented in a future showing.

Based on the record of this proceeding, we conclude the proposed transaction is, on balance, not in the public interest. Our reasons for this conclusion include:

1. The proposed transaction will result in additional costs, which would contribute to rate increases, with no evidence of rate savings to offset the rate increases;
2. The impact of the proposed transaction on PG&E's credit rating is unclear;

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<sup>41</sup> See D.01-06-007 at 17 (noting the Commission's use of Section 854(c) criteria to evaluate Section 851 transactions).

<sup>42</sup> See Scoping Memo at 3.



3. There are many unknowns regarding how Pacific Generation's role as owner and PG&E's new role as a contracted service provider to Pacific Generation will impact operations and no evidence that this organizational structure would better enable the safe and reliable operation of the generation assets relative to the status quo;
4. There would be decreased legal accountability for PG&E with regard to the safe and reliable operation of the generation assets;
5. There are many unknown risks related to the Minority Investor(s) who will own up to a 49.9 percent interest in Pacific Generation, including the identity, affiliations, and business dealings of the Minority Investor(s), the governance rights the Minority Investor(s) will possess, and the code of conduct that would apply to the Minority Investor(s) to address conflicts of interest and improper use of Pacific Generation's confidential information;
6. The proposed transaction will increase administrative burdens relative to the status quo and the full impacts on regulatory processes and frameworks are unknown at this time due to the unprecedented nature of the proposed transaction;
7. It is uncertain whether the Commission would have plenary jurisdiction over Pacific Generation if Pacific Generation does not voluntarily submit to the Commission's jurisdiction; and
8. The Applicants fail to demonstrate that there are likely to be benefits of the proposed transaction that would outweigh the adverse public interest impacts of the proposed transaction.

### **3.1. Impact on Customer Costs and Rates**

The Applicants claim the proposed transaction will not result in an overall increase in customer rates.<sup>43</sup> The Applicants propose to divide the existing

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<sup>43</sup> Applicants OB at 37.

revenue requirements approved by the Commission for PG&E<sup>44</sup> between PG&E and Pacific Generation with no change in the overall total rates. The Applicants assert that the operations and maintenance and capital costs recovered in rates related to the non-nuclear generation business will not change as a result of the transaction; the associated revenue requirement will merely shift from PG&E to Pacific Generation.<sup>45</sup>

Applicants are correct that there would be no immediate change in customers' rates as a result of the transaction. However, starting in 2027, there would be changes to customers' rates attributable to the transaction. Under the Applicants' proposal, the Commission would review costs separately for Pacific Generation and PG&E beginning with the first jointly filed GRC for Test Year 2027.<sup>46</sup>

Applicants argue that they are not currently requesting to recover any incremental costs in customer rates and that the Commission should defer consideration of this issue to a future proceeding, if and when PG&E or Pacific Generation requests to do so.<sup>47</sup> In considering whether the proposed transaction is in the public interest and should be approved, the Commission cannot ignore consideration of potential rate impacts that extend beyond PG&E's current GRC cycle, especially costs that are likely to have an ongoing impact on rates.<sup>48</sup>

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<sup>44</sup> The Commission approved PG&E's revenue requirement for Test Year 2023 and 2024-2026 attrition years in D.23-11-069.

<sup>45</sup> Applicants OB at 37-38.

<sup>46</sup> *Id.* at 38.

<sup>47</sup> *Id.* at 39.

<sup>48</sup> Furthermore, to the extent Applicants propose to defer consideration of whether there are incremental costs due to the proposed transaction and whether the incremental costs should be rate recoverable, as discussed further in Section 3.5.1, below, this would greatly increase the Commission's administrative burden in setting rates.

### **3.1.1. Potential for Rate Increases**

#### **3.1.1.1. Potential Increase to Administrative Costs**

CalCCA argues that the proposed transaction will increase ongoing administrative costs due to the need to hire additional employees and/or contractors for the increase in administrative workload, including financial statement preparation and audits, investor relations, monitoring intercompany agreements, legal representation, tariff preparation, and revenue and cost accounting.<sup>49</sup> CalCCA estimates the ongoing costs for this incremental work will increase labor costs by approximately \$3 million per year and also argues there may be additional costs.<sup>50</sup>

The Applicants state that they expect the total increase in ongoing administrative or overhead costs to be negligible given the structure of the proposed transaction and PG&E's continued role in operating the assets in the same manner today.<sup>51</sup>

The proposed transaction will result in an increase in administrative workload. As a separate company, Pacific Generation will require separate financial statements, rates, tariffs, and accounts. There will also be additional work related to monitoring intercompany agreements and allocating costs between PG&E and Pacific Generation, which is currently not necessary.

Given the increase in administrative workload, the Applicants' basis for stating that the increase in administrative costs will be negligible is unclear. The fact that PG&E may have a continued role in operating the assets does not

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<sup>49</sup> CalCCA OB at 27.

<sup>50</sup> *Id.* at 28.

<sup>51</sup> Applicants OB at 38.

obviate the need for incremental administrative work for Pacific Generation to operate as a separate company with its own financial statements, rates, tariffs, accounts, compliance obligations, and employees, as well as the incremental administrative work to monitor the intercompany agreements and allocation of costs between PG&E and Pacific Generation.

It is reasonable to expect that the increase in administrative workload will increase ongoing administrative costs relative to the status quo. CalCCA provides one estimate that labor costs will increase by \$3 million per year. PG&E states that it projects minor incremental ongoing administrative costs as a result of the transaction, although in fewer categories than put forth by CalCCA.<sup>52</sup> However, PG&E does not provide any further detail regarding the projected ongoing administrative costs or explain why costs for the categories put forth by CalCCA will not result in incremental costs. PG&E also does not provide any estimate of its own for these costs. Therefore, Applicants do not provide a basis for discounting CalCCA's estimate. In fact, CalCCA's estimate may not fully quantify the increase in costs since it is unclear if it is based on a comprehensive examination of all activities and associated costs likely to be impacted.

### **3.1.1.2. Potential Increase to Generation Rates**

CalCCA states that PG&E has not set forth a clear proposal for how various costs billed from PG&E to Pacific Generation pursuant to the intercompany agreements will be allocated in the future and how that allocation may differ from the status quo allocation policy.<sup>53</sup> CalCCA argues that shifting additional administrative costs to the generation function, will increase Power

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<sup>52</sup> Ex. PGE-20 at 9-4.

<sup>53</sup> CalCCA OB at 30.

Charge Indifference Adjustment (PCIA) rates relative to the status quo.<sup>54</sup>

CalCCA argues that PG&E customers, particularly departed customers no longer taking service from the assets in question, should not be required to pay incrementally higher costs for PG&E to oversee the same resource portfolio producing the same economic benefits.<sup>55</sup>

PG&E does not set forth a proposed cost allocation methodology but states that any future modifications to the cost allocation methodology can be reviewed and approved by the Commission in a future GRC.<sup>56</sup> Therefore, the extent to which the proposed transaction would result in the reallocation of costs to the generation function resulting in an increase in generation rates,<sup>57</sup> and whether such reallocation would be reasonable and in the public interest, is unknown.

### **3.1.2. Potential for Rate Decreases**

Although not fully quantified, the evidence reflects that the proposed transaction will likely result in additional costs and cause some increase in rates. Therefore, the proposed transaction would need to generate rate savings, which would offset any potential rate increases, in order for the rate impacts of the proposed transaction to be, on balance, in the public interest. However, the potential for rate decreases due to the transaction is speculative.

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<sup>54</sup> *Id.* at 31. PG&E currently recovers the net cost of the generation resources at issue in this proceeding through PCIA and Cost Allocation Mechanism (CAM) surcharges. (*Id.* at 30.) All but one of the resources to be transferred to Pacific Generation are recovered through PCIA rates. (*Ibid.*)

<sup>55</sup> *Id.* at 31.

<sup>56</sup> Applicants RB at 33.

<sup>57</sup> PG&E argues that any potential future reallocation of existing costs among different functions of the business does not represent new or additional costs. (*Id.* at 32.) However, it does have the potential to increase rates for generation service relative to the status quo.

The only potential decrease to rates specifically mentioned by Applicants is the potential for lower incremental debt costs.<sup>58</sup> According to Applicants, all other things being equal, customers would experience rate decreases attributable to the transaction if the enterprise cost of debt post-transaction is less than the enterprise cost of debt with no transaction, as reflected in the Applicants' approved cost of capital. The Applicants contend that there will be no overall increase in the enterprise cost of debt between the transaction and no-transaction scenarios.<sup>59</sup> However, the record does not support a finding that there is likely to be an overall decrease in the enterprise cost of debt if the transaction is effectuated. Therefore, the record does not demonstrate that there are likely to be rate savings to offset the rate increases due to the proposed transaction.

#### **3.1.2.1. Pacific Gas and Electric Company's Cost of Debt Post-Transaction**

PG&E explains that a utility's credit rating is closely tied to and often determinative of its cost of borrowing.<sup>60</sup> PG&E further explains that PG&E's credit ratings and cost of debt largely reflect expectations regarding PG&E's ability to withstand an adverse financial event.<sup>61</sup> PG&E states it expects the proposed transaction will not have a negative impact on PG&E's credit rating and that it would not move forward with the proposed transaction if it were to cause a downgrade for PG&E.<sup>62</sup>

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<sup>58</sup> Applicants OB at 38-39.

<sup>59</sup> *Id.* at 39-40.

<sup>60</sup> Ex. PGE-07 at 7-2.

<sup>61</sup> *Ibid.*

<sup>62</sup> Applicants OB at 39.

CalCCA argues that PG&E's claims are unsupported and that the risk of a negative impact on PG&E's credit rating has not been meaningfully evaluated on the record.<sup>63</sup> TURN also argues that PG&E's claims that its credit rating would be unaffected is unsupported and unrealistic.<sup>64</sup> CalCCA and TURN both argue that PG&E does not adequately explain why transferring generation assets that have an arguably lower risk profile would not result in a lower credit rating for PG&E.<sup>65</sup> Several parties note that credit rating agencies have not provided an opinion regarding the potential impact of the proposed transaction on PG&E's credit rating and that PG&E has not sought such an opinion.<sup>66</sup>

We agree with the intervenor parties that there is insufficient information in the record to meaningfully evaluate the potential impact of the transaction on PG&E's credit rating. For example, the impact of the transaction on PG&E's forward-looking funds from operations to total debt ratio to be utilized by rating agencies in their credit analysis is unclear. The extent to which PG&E would have access to cash and earnings associated with Pacific Generation is also unclear. A full assessment of the business risks associated with the assets proposed to remain with PG&E and assets proposed to be transferred to Pacific Generation has also not been provided. PG&E assures the Commission that PG&E would not undertake the transaction if it were to harm PG&E's credit rating. However, the Commission cannot leave this determination to the sole discretion of the entity we are charged with regulating.

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<sup>63</sup> CalCCA OB at 62-63.

<sup>64</sup> TURN OB at 11-12.

<sup>65</sup> CalCCA OB at 62; TURN OB at 11.

<sup>66</sup> CalCCA OB at 62-63; CHRC OB at 9; SVP OB at 38-39; TURN OB at 11-12.

In any event, although PG&E argues there will be no negative impact on PG&E's credit rating, PG&E does not present any evidence demonstrating that the proposed transaction would have a positive effect on PG&E's credit rating such that PG&E's cost of debt would decrease post-transaction compared to a no-transaction scenario.

### **3.1.2.2. Pacific Generation LLC's Cost of Debt Post-Transaction**

Applicants assert that Pacific Generation's debt costs are expected to be the same or less than PG&E's debt costs.<sup>67</sup> According to the Applicants, to the extent Pacific Generation is able to achieve a lower incremental cost of debt than PG&E, those savings would flow through to customers as part of the next cost of capital proceeding.<sup>68</sup>

The Applicants do not provide adequate justification for their expectation as to Pacific Generation's debt costs. According to Applicants, Moody's will rate Pacific Generation primarily as a standalone company, with some consideration given to its linkages to PG&E.<sup>69</sup> Applicants state that credit rating agencies will likely compare Pacific Generation to other utilities of similar size that own generation assets in their regulated asset base.<sup>70</sup> However, Applicants note that Pacific Generation's lack of scale compared to larger regulated utilities may also

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<sup>67</sup> Applicants OB at 34.

<sup>68</sup> *Ibid.* If the embedded cost achieved by Pacific Generation on the long-term debt issued for its initial capitalization is lower than PG&E's authorized cost of debt set in D.22-04-008, Applicants propose to reflect this lower debt cost in Pacific Generation's initial revenue requirement. (*Id.* at 34-35.) However, by Applicants' own admission, such a scenario is unlikely in light of the current interest rate environment. (*Id.* at 34.)

<sup>69</sup> Ex. PGE-06 at 6-5.

<sup>70</sup> *Id.* at 6-4 to 6-5.



serve as a credit consideration.<sup>71</sup> Applicants also note that as a generation-only utility, Pacific Generation will have a unique operating profile in comparison to other regulated utilities of similar size.<sup>72</sup> Applicants do not provide any further explanation and there is a lack of information in the record regarding how Pacific Generation's lack of scale and unique operating profile will impact Pacific Generation's credit rating compared to PG&E's current rating.

Applicants also do not explain how Pacific Generation will compare to PG&E based on the numerous other factors a credit rating agency may evaluate in assessing Pacific Generation's business risk and financial leverage to assign a corporate credit rating.<sup>73</sup> In arguing that Pacific Generation's credit profile will benefit from a number of important qualitative factors, Applicants rely on the fact that PG&E will continue to control and operate Pacific Generation.<sup>74</sup> Although PG&E's continued control and operation of Pacific Generation's assets may perhaps support assigning Pacific Generation a comparable credit rating to PG&E, there is no explanation provided as to why this would support assigning Pacific Generation an improved credit rating compared to PG&E.

Applicants note that TURN witness Dowdell opines that Pacific Generation's debt costs are "likely to be lower than PG&E or PG&E Corporation."<sup>75</sup> Witness Dowdell's opinion appears to be primarily based on

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<sup>71</sup> *Id.* at 6-5.

<sup>72</sup> *Id.* at 6-3 to 6-4.

<sup>73</sup> *See, id.* at 6-3 to 6-4.

<sup>74</sup> *Id.* at 6-4 to 6-6.

<sup>75</sup> Applicants OB at 34 quoting Ex. TURN-01 at 7.

assertions in PG&E's testimony, which as explained above are not adequately justified, and evaluation of Pacific Generation's exposure to wildfire risk.<sup>76</sup>

Although wildfire risk is a factor in assessing a utility's risk profile, it is not the sole determinative factor.<sup>77</sup> The record does not reflect a comprehensive assessment of the risk profile of the generation assets proposed to be transferred. For example, CHRC argues that although PG&E may carry an increased risk of catastrophic wildfire, Pacific Generation may carry an increased risk of hydropower assets causing catastrophic flooding.<sup>78</sup> Moreover, as discussed above, other factors that may impact Pacific Generation's credit rating were not examined on the record by the Applicants or other parties.

Based on the above, the record does not support a finding that Pacific Generation's incremental cost of debt will be lower than PG&E's cost of debt, which would result in rate savings.<sup>79</sup> In fact, in rebuttal testimony, the Applicants refuted intervenors' claims that Pacific Generation's return on equity should be set lower than PG&E's and asserted that the Commission should defer consideration of arguments regarding Pacific Generation's return on equity so as not to "prejudge an issue without a fully developed record."<sup>80</sup>

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<sup>76</sup> See Ex. TURN-01 at 6-7, 24-26.

<sup>77</sup> See, e.g., Ex. TURN-04 (factors evaluated by S&P Global Ratings to rate PG&E and PG&E Corp. include ratio of funds from operations to debt, regulatory risk, track record of safety and reliability, and environmental, social, and governance factors).

<sup>78</sup> CHRC OB at 10.

<sup>79</sup> Even if a finding could be made that Pacific Generation's incremental cost of debt will be lower, the collective cost of debt for Pacific Generation and PG&E, as authorized in rates, would have to be lower compared to a no transaction scenario in order for customers to experience rate savings from the transaction overall.

<sup>80</sup> Ex. PGE-18 at 6-4.

## **3.2. Impact on Operations**

### **3.2.1. Party Positions**

Applicants assert that “the Proposed Transaction is fundamentally a financial transaction, not an operational one, and thus there will be no change to the day-to-day operations of PG&E’s existing fleet of non-nuclear generation assets.”<sup>81</sup> Applicants contend that the assets will continue to be maintained and operated by PG&E pursuant to intercompany agreements in the same manner as they are today, using the same PG&E processes and personnel.<sup>82</sup> Applicants argue that by virtue of PG&E’s role as operator pursuant to the intercompany agreements and its majority ownership and control of Pacific Generation, PG&E will have both the obligation and strong incentive to ensure the assets operate reliably and safely.<sup>83</sup>

TURN argues that PG&E’s claims that the proposed transaction would have no effect on its operations or interfere with its operation of Pacific Generation are contradicted by the record because: (1) the proposed transaction includes several minority investor governance rights that would likely result in situations where PG&E could lose operational or financial control over Pacific Generation; (2) the proposed transaction would result in redundant functions and increased costs; and (3) PG&E’s reliance on intercompany agreements and a service provider/client relationship between PG&E and Pacific Generation will likely affect operation of the assets to some degree.<sup>84</sup>

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<sup>81</sup> Applicants OB at 40.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Id.* at 41.

<sup>84</sup> TURN OB at 9-11.

PG&E and Santa Clara are co-owners of the Bucks Creek Project and co-licensees of the Bucks Creek Project License, and jointly and severally liable as to the hydroelectric project's rights and responsibilities.<sup>85</sup> Santa Clara is concerned that the proposed transaction will not enable Pacific Generation, which will have limited financial resources and a single employee, to operate and maintain the hydroelectric assets that comprise the Bucks Creek Project License safely and reliably, thereby exposing Santa Clara to joint and several liability.<sup>86</sup> Santa Clara argues that as a new entity with only one proposed employee, Pacific Generation does not have "demonstrated and significant experience and ability" operating and maintaining hydroelectric facilities, or complying with regulatory requirements, which would qualify it to be the Operations Manager of the Grizzly Development, which is part of the Buck Creek Project.<sup>87</sup>

PCWA raises concerns specifically relating to PG&E's proposed transfer of the Drum-Spaulding Project, which in addition to providing generating capacity, delivers consumptive waters to Placer and Nevada Counties. The Drum-Spaulding Project currently delivers water that: (1) PCWA uses to provide water supplies to over 4,200 agricultural customers and 150,000 treated water customers; (2) NID uses to serve over 25,000 customers in Nevada and Placer Counties; and (3) PG&E conveys to PG&E's remaining water customers in Placer

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<sup>85</sup> Santa Clara OB at 22. PG&E and Santa Clara have entered into two contracts, the Grizzly Development and Mokelumne Settlement Agreement (GDMSA) and the Grizzly Operation and Maintenance Agreement (Grizzly OMA), that shape their relationship as co-owners of the Bucks Creek Project and co-licensees under the Bucks Creek Project License. (*Ibid.*) According to Santa Clara, the GDMSA and Grizzly OMA each contain provisions for written consent to assign the agreements, which Santa Clara has not provided. (*Id.* at 27.)

<sup>86</sup> *Id.* at 23.

<sup>87</sup> *Id.* at 31-32.

County.<sup>88</sup> PCWA argues that given the novelty of the proposed transaction and complete lack of operational history of Pacific Generation, it is unclear whether Pacific Generation will be a capable and responsible steward of the waters.<sup>89</sup> PCWA also echoes NID's concerns that the introduction of an additional layer of management and PG&E acting in an unfamiliar capacity as a vendor of operations and maintenance services at a large scale to another utility will unnecessarily complicate the conveyance of water from the Drum-Spaulding Project.<sup>90</sup>

NID is the licensee of the Federal Energy Regulatory Commission (FERC) licensed Yuba-Bear Project, which is physically and operationally intertwined with PG&E's FERC-licensed Drum-Spaulding Project.<sup>91</sup> NID argues Pacific Generation will not have the employees, equipment, or expertise necessary to perform the required operation and maintenance of the Drum-Spaulding System.<sup>92</sup> NID raises concerns that Pacific Generation will instead rely on PG&E to perform this work pursuant to an intercompany agreement, the terms of which are not yet final and subject to amendment, and which NID will have no ability to enforce.<sup>93</sup> NID also raises concerns that the Minority Investors will possess significant consent rights concerning Pacific Generation's budgets and capital expenditures, as well as the potential for PG&E to lose control of Pacific

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<sup>88</sup> PCWA OB at 6.

<sup>89</sup> *Id.* at 10, 16.

<sup>90</sup> *Id.* at 11.

<sup>91</sup> NID OB at 9. NID and PG&E are currently contracted to coordinate the operations of their respective water conveyance delivery projects pursuant to the Coordinated Operations Agreement, which was approved by the Commission in D.19-10-011.

<sup>92</sup> NID OB at 16.

<sup>93</sup> *Id.* at 16-18.

Generation to Minority Investors with potentially no experience operating complex hydroelectric and water supply systems.<sup>94</sup>

CHRC notes PG&E's hydropower assets are critical generation assets that are operated for multiple beneficial uses, including water supply, environmental mitigation, recreation, and flood control.<sup>95</sup> CHRC also notes the assets have significant capital needs and carry high risk of causing catastrophic flooding.<sup>96</sup> CHRC argues that PG&E has not demonstrated the proposed transaction will enable PG&E and Pacific Generation to operate and maintain utility assets safely and reliably. CHRC further argues that PG&E's plan to continue existing operations and management, but under a much more complex corporate structure, is inadequate to support a finding that the proposed transaction will ensure the safe and reliable operation of the hydropower assets into the future.<sup>97</sup> CHRC raises concerns that PG&E has not provided an explanation of how PG&E's Dam Safety Program would be modified and implemented post-transaction or a description of Pacific Generation's responsibilities and accountabilities under the program even though Pacific Generation would be responsible for the consequences of dam failure.<sup>98</sup> CHRC also argues that PG&E has not shown Pacific Generation would have the financial capacity to cover emergent needs related to catastrophic failure at one or more of the hydropower assets.<sup>99</sup>

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<sup>94</sup> *Id.* at 22-24.

<sup>95</sup> CHRC OB at 2.

<sup>96</sup> *Id.* at 3.

<sup>97</sup> *Id.* at 17, 27-28.

<sup>98</sup> *Id.* at 27, 33-34.

<sup>99</sup> *Id.* at 21-22.

### **3.2.2. Pacific Generation LLC's and Pacific Gas and Electric Company's Roles Under Proposed Transaction**

The proposed transaction would result in a more complex ownership and governance structure. Currently, PG&E owns and operates the generation assets proposed to be transferred and is responsible for the safe and reliable operation of those assets. Under the proposed transaction, Pacific Generation will own the generation assets and be responsible for the safe and reliable operation of the assets. Although PG&E will be the majority owner of Pacific Generation, Pacific Generation will be a separate standalone business from PG&E.<sup>100</sup> As the legal owner of the assets, Pacific Generation will be legally accountable and responsible for the safe and reliable operation of the assets.<sup>101</sup>

Applicants do not anticipate Pacific Generation will have any direct employees other than the President of Pacific Generation.<sup>102</sup> Post-transaction, Pacific Generation intends to engage PG&E as a service provider to maintain and operate the assets. PG&E will maintain and operate the assets pursuant to a series of intercompany agreements governing PG&E's service to Pacific Generation.<sup>103</sup> These intercompany agreements are not yet final and subject to change.<sup>104</sup> PG&E will remain the sole employer of all personnel who provide services to Pacific Generation and all such personnel will be under the exclusive

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<sup>100</sup> Ex. PGE-05 at 5-7.

<sup>101</sup> Applicants RB at 51.

<sup>102</sup> Ex. PGE-03 at 3-5.

<sup>103</sup> An overview of the intercompany agreements and drafts of the agreements are provided in Ex. PGE-04A.

<sup>104</sup> Applicants OB at 63-64. Applicants propose to submit the initial intercompany agreements as exhibits to the Separation Agreement via a Tier 2 advice letter filing. (Ex. PGE-02 at 2-5.) Applicants do not believe advance Commission approval should be required for subsequent amendments or new agreements. (Applicants OB at 64.)

direction, control, and supervision of PG&E.<sup>105</sup> However, according to the draft operations and service agreement, PG&E will perform these services under the general direction and instruction of Pacific Generation.<sup>106</sup> There is also nothing that would prohibit Pacific Generation from deciding to retain a different service provider and Pacific Generation does not propose to seek advance Commission approval for such a change.<sup>107</sup>

There are many unknowns regarding how Pacific Generation's and PG&E's roles post-transaction will impact operations. Applicants dismiss intervenors' concerns regarding Pacific Generation's lack of employees and operational expertise arguing that the same experienced PG&E personnel who operate and maintain the generation assets will continue to do so after the assets are transferred to Pacific Generation.<sup>108</sup> However, post-transaction, PG&E personnel will be providing services as a contractor to Pacific Generation at and under the direction and instruction of Pacific Generation.

Pacific Generation will be managed by a Board of Managers (Board), which will have the sole authority to manage the business and affairs of Pacific Generation, subject to the governance rights of the Minority Investor(s).<sup>109</sup> PG&E expects to control Pacific Generation by virtue of its ability to control the Board by appointing and removing a majority of the officers<sup>110</sup> but Pacific Generation

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<sup>105</sup> Ex. PGE-04A at 4-5.

<sup>106</sup> *Ibid.*

<sup>107</sup> See Applicants OB at 64.

<sup>108</sup> Applicants RB at 43.

<sup>109</sup> Ex. PGE-05 at 5-11.

<sup>110</sup> Applicants OB at 86.



will be a separate legal entity from PG&E with separate legal obligations and liabilities.

Even if PG&E appoints a majority of the Board, it is unclear whether PG&E would be able to make decisions regarding the assets in the same manner it does today. PG&E cannot directly manage Pacific Generation's business or assets and any direction or instruction would have to be funneled through Pacific Generation's Board. As discussed further below, the extent to which Pacific Generation's Minority Investor(s) and their governance rights would impact Pacific Generation's operations is also unclear.

Furthermore, since Pacific Generation and PG&E are separate legal entities with separate legal obligations and liabilities, there is the potential for a conflict of interest to arise between Pacific Generation and PG&E, and Applicants do not explain how such situations would be addressed. In such situations it is unclear whether the needs of PG&E or Pacific Generation would be prioritized and what the resulting impact on the operations of each company would be.

Under the proposed transaction, PG&E would have a new role and there would clearly be an organizational change as to how these assets will be managed. Pacific Generation would be responsible for providing "due oversight and supervision" and new procedures would need to be developed for Pacific Generation to supervise operations.<sup>111</sup> As an independent contractor to Pacific Generation, PG&E would be limited to providing services set forth in the intercompany agreements.<sup>112</sup> There is no evidence Applicants conducted an assessment to identify any hazards or risks that may be introduced by the

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<sup>111</sup> Applicants RB at 57-58.

<sup>112</sup> Ex. PGE-04A, Attachment A at 19, Section 5.1.

proposed organizational change. Applicants fail to demonstrate that the proposed organizational structure would better enable the safe and reliable operation of the assets as compared to the status quo.

### **3.2.3. Decreased Accountability for Pacific Gas and Electric Company**

It appears Pacific Generation expects to primarily rely on PG&E's expertise and personnel to operate the assets. However, post-transaction, PG&E will no longer be the entity legally responsible for meeting compliance obligations related to the safe and reliable operation of the assets. To the extent Applicants contend that PG&E would be the entity primarily making day-to-day decisions regarding the safe and reliable operation of the assets, decreasing legal accountability for PG&E would not better serve the public interest.

The Applicants argue PG&E's status as a majority owner of Pacific Generation will act to ensure accountability and further argue that Pacific Generation can act to hold PG&E accountable for any potential breach of the intercompany agreements.<sup>113</sup> It is unclear how likely it would be for Pacific Generation to hold PG&E accountable under the intercompany agreements given Applicants' assertions that PG&E will control Pacific Generation's Board. The Applicants also intend for the operations and services agreement to set forth limitations on PG&E's liability to Pacific Generation as agent and service provider.<sup>114</sup>

Any accountability PG&E may have as a majority owner of Pacific Generation would be different than PG&E's accountability as the legal owner of the assets. For example, if the Commission determines there is a violation of law

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<sup>113</sup> Applicants RB at 51-52.

<sup>114</sup> Ex. PGE-04A at 4-3, Attachment A at 26, Section 9.2.

by a public utility, the Commission may assess a fine or penalty to penalize the utility for the violation and to deter similar behavior in the future. In the event the Commission were to determine there was a violation of law related to an asset owned by Pacific Generation, any penalty would likely be imposed on Pacific Generation as the legal owner and entity responsible for the operation of the assets.

Moreover, in setting the appropriate level of a fine or penalty, one of the factors the Commission evaluates is the utility's financial resources.<sup>115</sup> Pacific Generation's financial resources will be less than PG&E's financial resources. In D.23-11-069, the Commission adopted a 2023 revenue requirement of \$13.521 billion for PG&E, \$2.294 billion of which is for electric generation.<sup>116</sup> Based on estimates provided by Applicants, Pacific Generation's revenue requirement is expected to be approximately 44 percent of PG&E's electric generation revenue requirement (or approximately \$1 billion).<sup>117</sup> Therefore, if there is a violation of law with respect to a generation asset that has been transferred to Pacific Generation, the penalty (and associated punitive and deterrent value) is likely to be lower than if the same violation had occurred while the generation asset was owned by PG&E. If it is, in fact, PG&E that will primarily be making decisions related to operation of the assets, it better serves the public interest for PG&E to be held fully accountable for its management of the assets.

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<sup>115</sup> D.98-12-075 at 38.

<sup>116</sup> D.23-11-069, Appendix A, Table 1.

<sup>117</sup> Ex. PGE-09E at 9-5, Table 9-1. This estimate is based on the February 28, 2022 update in PG&E's 2023 GRC, not the authorized 2023 revenue requirement.

### **3.2.4. Potential for Minority Investors to Impact Operations**

PG&E, by virtue of control of the Board, expects to maintain control over the approval of Pacific Generation's budget and business plan.<sup>118</sup> However, this control would be subject to the governance rights of the Minority Investor(s).<sup>119</sup>

According to the Applicants, the minority investor governance rights will be tailored to protect the integrity of the Minority Investor(s)' financial interests in Pacific Generation.<sup>120</sup> Applicants argue the minority investor rights will not confer on the Minority Investor(s) actual or potential managerial or operational control over Pacific Generation, nor create any potential for PG&E to lose such control, and will not interfere with Pacific Generation's ability to carry on operations as a regulated generation utility.<sup>121</sup>

TURN argues there are several minority investor governance rights that may result in situations where PG&E could lose operational or financial control over Pacific Generation. TURN highlights the following proposed minority investor rights as examples: a Minority Investor with five percent ownership would be able to veto a decision by Pacific Generation to declare bankruptcy; a Minority Investor with 20 percent ownership would be able to veto capital expenditures over \$50 million in each transaction or \$150 million in the aggregate per year, provided that the capital expenditure is not reasonably expected to be included in rate base; and a Minority Investor with 20 percent ownership would

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<sup>118</sup> PG&E will retain the power to control the Board, so long as it continues to own a majority of the Pacific Generation interests. (Ex. PGE-05 at 5-12.) The size and composition of the Board will vary depending on the number of Minority Investors and their percentage ownership. (*Ibid.*)

<sup>119</sup> *Id.* at 5-7.

<sup>120</sup> *Id.* at 5-13.

<sup>121</sup> *Id.* at 5-13 to 5-14.

be able to veto settlement of any third-party litigation where the amount of such settlement is more than five percent of rate base.<sup>122</sup>

NID also argues Minority Investors will possess significant consent rights concerning Pacific Generation's budgets and capital expenditures. NID points to the same minority investor consent right to veto certain capital expenditures highlighted by TURN.<sup>123</sup>

Santa Clara argues that Minority Investors will have the ability to express a range of views as to the operations and reliability of Pacific Generation's hydroelectric assets, such as whether Pacific Generation should request a different Operation Manager for the Grizzly Hydroelectric Plant and views as to reliability compliance.<sup>124</sup>

PCWA raises concerns that Pacific Generation will be subject to pressure from as-of-yet unknown Minority Investors, either formally through voting power or informally through financial influence, with respect to operations and maintenance of Pacific Generation's assets.<sup>125</sup>

The minority investor governance rights are not yet final and subject to change as a result of negotiations between PG&E and the Minority Investor(s).<sup>126</sup> PG&E intends to submit the final form of the LLC Agreement, which will set forth the minority investor rights, after signing the agreement with the Minority Investor(s) via a Tier 2 advice letter.<sup>127</sup>

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<sup>122</sup> TURN OB at 9-10.

<sup>123</sup> NID OB at 24.

<sup>124</sup> Santa Clara OB at 24-25.

<sup>125</sup> PCWA OB at 16.

<sup>126</sup> *Id.* at 5-14; Reporter's Transcript (RT), Vol. 2 at 253:15-25.

<sup>127</sup> Applicants OB at 15.

Since they are not final, based on the information provided to date, the Commission is unable to fully evaluate the extent to which the minority investor rights may impact the management and operations of Pacific Generation. Further, for the reasons discussed below, we do not find that the advice letter process is an appropriate process for finalizing these rights. Particularly given other unknowns regarding the Minority Investor(s), discussed below, Applicants have failed to demonstrate that the minority investor consent rights will not be adverse to the public interest.

### **3.3. Risks Related to Minority Investors**

CalCCA argues the transaction documents do not impose sufficient guardrails on the identity, affiliations, or business dealings of the Minority Investor(s), which exposes ratepayers to substantial risk that the proposed transaction will result in adverse competitive impacts or other ratepayer harms.<sup>128</sup> CalCCA points out that the draft Minority Sale Agreement and LLC Agreement contain few restrictions on the affiliations and identity of the original Minority Investor and even fewer restrictions after closing (*i.e.*, the sale of the interests to the Minority Investor) and for subsequent transfers of interest.<sup>129</sup> CalCCA provides illustrative examples of how this structure could result in ratepayer harm, such as due to conflicts of interest arising or a Minority Investor's improper use of confidential information of Pacific Generation.<sup>130</sup>

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<sup>128</sup> CalCCA OB at 33-34. As used by CalCCA, transaction documents include all documents put forward by PG&E in its application and testimony, including the Minority Sale Agreement, LLC Agreement, Intercompany Service Agreements, and Separation Agreement. (*Id.* at 5-6, footnote (fn.) 15.)

<sup>129</sup> *Id.* at 35-36, 38-41.

<sup>130</sup> *Id.* at 36-37.

Applicants propose to submit a Tier 2 advice letter identifying the Minority Investor(s) with related documentation after executing a Minority Sales Agreement with each winning bidder, which will be subject to disposition by Commission staff.<sup>131</sup> Applicants oppose any additional conditions on the identity, operations, and future dealings of the potential Minority Investor(s).<sup>132</sup> Applicants note that FERC will review each sale of Minority Equity Interests for market power concerns under Section 203 of the Federal Power Act (FPA) and the Commission will review the identity of each Minority Investor through the advice letter process.<sup>133</sup> Applicants argue that a sale of Minority Equity Interests that would expose ratepayers to a substantial risk of adverse competitive impacts or other harm would not survive this pair of regulatory checkpoints.<sup>134</sup> Applicants also argue that the LLC Agreement, FERC regulations, and Pacific Generation's code of conduct will provide overlapping safeguards against the unauthorized disclosure and use of confidential information.<sup>135</sup>

Intervenors, in particular CalCCA, argue that the protections identified by the Applicants are not adequate. CalCCA, CHRC, and TURN argue that Applicants' proposed post-signing advice letter process is unreasonable.<sup>136</sup> CalCCA argues that the proposed Tier 2 advice letter process would be insufficient for stakeholders to meaningfully evaluate the identity of the Minority

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<sup>131</sup> Applicants OB at 89.

<sup>132</sup> Applicants RB at 66.

<sup>133</sup> *Id.* at 74-75.

<sup>134</sup> *Id.* at 75.

<sup>135</sup> *Id.* at 79.

<sup>136</sup> CalCCA OB at 47, 59-61; CHRC OB at 41; TURN OB at 16-17.

Investor(s), as well as any changes to the underlying transaction documents.<sup>137</sup> CalCCA contends that new information on the selected Minority Investor, its market interests and affiliations, and the finalized contracts governing the operation and management of Pacific Generation are not ministerial changes appropriate to Tier 2 review.<sup>138</sup> CalCCA contends that these proposals will likely require discovery and further record development concerning the extent of the Minority Investor's market participation and affiliations, as well as any new contract terms or code of conduct that would mitigate the corresponding risks to ratepayers.<sup>139</sup>

CalCCA further argues that review by FERC under FPA Section 203 is necessary but not sufficient.<sup>140</sup> CalCCA states that FERC's public interest review under FPA Section 203 is more limited and will not cover all market impact issues relevant to a determination of whether the proposed transaction is in the public interest pursuant to Section 851 and Section 854.<sup>141</sup> CalCCA also notes that FERC review is only applicable when there is a transfer of a 10 percent or more voting interest.<sup>142</sup>

With regard to the code of conduct, CalCCA argues that neither PG&E's testimony nor transaction documents adequately address how conflicts of interest will be avoided through any code of conduct.<sup>143</sup> CalCCA notes that the

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<sup>137</sup> CalCCA OB at 47.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> CalCCA RB at 20.

<sup>141</sup> CalCCA OB at 48-49; CalCCA RB at 20. As discussed in Section 2.2, above, we do not find that Section 854 applies to the proposed transaction.

<sup>142</sup> CalCCA RB at 20.

<sup>143</sup> CalCCA OB at 42.



draft LLC Agreement contains one sentence requiring Pacific Generation to “establish and maintain a code of conduct that incorporates elements typical or advisable for a regulated utility” but does not clarify if or how it might address or mitigate conflicts of interest for the Minority Investor(s) that may arise.<sup>144</sup> PCWA also notes that the code of conduct has not been submitted for stakeholder review and that PG&E witness Rogers admitted that the code of conduct had not been finalized.<sup>145</sup>

Based on the information provided to date, the Commission is unable to make a finding that the Applicants’ proposal to sell up to a 49.9 percent ownership interest in Pacific Generation to Minority Investor(s) would have no adverse public interest impacts. To date, the Applicants have provided few details regarding who may or may not serve as a Minority Investor and limitations on the conduct of the Minority Investor(s). For example, PG&E anticipates providing a schedule of prohibited persons to whom interests in Pacific Generation may not be transferred, which PG&E would be able to update.<sup>146</sup> However, this schedule has not been provided in this proceeding and it is unclear what criteria PG&E would use to develop and update the schedule. Applicants also assert that Pacific Generation’s code of conduct will protect against the unauthorized disclosure and use of confidential information, but Applicants have not provided the code of conduct or specific details of the terms of the code of conduct for Commission or stakeholder review.<sup>147</sup>

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<sup>144</sup> *Id.* at 42-43 citing Ex. PGE-05, Attachment A at 5-AtchA-33 (Section 9.4 of the LLC Agreement).

<sup>145</sup> PCWA OB at 17.

<sup>146</sup> Applicants OB at 92-93.

<sup>147</sup> RT, Vol. 2 at 219:16-25.

We do not find Applicants' proposal to defer consideration of issues regarding the identity of the Minority Investor(s), code of conduct, governance rights, and other matters to a subsequent advice letter process to be adequate. A matter is appropriate for disposition by staff under a Tier 2 advice letter when such disposition would be a "ministerial" act.<sup>148</sup> Disposition by staff would be appropriate "where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity, that the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders."<sup>149</sup> Here, there is no statute or Commission order requiring the actions that would be proposed in the advice letters. Furthermore, given the lack of details provided to date, the Commission is not currently able to authorize actions related to Minority Investor(s) and transaction documents with sufficient specificity to enable Industry Division disposition.

The Applicants state that the Commission has discretionary authority to seek further information regarding the advice letters and to elevate the advice letters to Tier 3, which requires Commission approval.<sup>150</sup> However, this process would still not be adequate. As explained in GO 96-B, "[t]he advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions."<sup>151</sup> The advice letter process does not provide opportunities for

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<sup>148</sup> GO 96-B, Rule 7.6.1.

<sup>149</sup> *Ibid.*

<sup>150</sup> Applicants RB at 76.

<sup>151</sup> GO 96-B, Rule 5.1.

record development that would be provided in a formal proceeding, such as the opportunity for an evidentiary hearing.<sup>152</sup> As evidenced by parties' positions in this proceeding and the matters that remain to be resolved, we would expect the advice letters to be controversial and raise policy questions.

We also do not find the fact that FERC would undertake review of any sale or transfer of interests exceeding 10 percent or more in Pacific Generation to be sufficient for this Commission to make a finding that there are adequate safeguards against anticompetitive or other adverse public interest impacts. The Commission is required to undertake its own public interest review, which is different than FERC's review under FPA Section 203. As stated by FERC in its order addressing PG&E's application to transfer assets to Pacific Generation, "[FERC's] findings under FPA Section 203 do not affect other agencies' evaluation of the proposed transaction pursuant to their respective statutory authorities."<sup>153</sup>

### **3.4. Impact on Commission Jurisdiction and Regulatory Processes**

#### **3.4.1. Administrative Burden**

Applicants contend that the proposed transaction would not increase the administrative burdens associated with the GRC for PG&E, Pacific Generation, interested parties, or for Commission staff.<sup>154</sup> Applicants propose for PG&E and Pacific Generation to jointly file GRC Phase 1 and Phase 2 applications, which

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<sup>152</sup> *Ibid.*

<sup>153</sup> Order Authorizing Disposition of Jurisdictional Facilities issued in Docket No. EC23-38-000 on May 31, 2023, 183 FERC ¶ 61,159 at 5, fn. 15.

<sup>154</sup> Applicants OB at 56.

according to Applicants replicate existing processes since costs are already segregated today.<sup>155</sup>

CalCCA argues that the proposed transaction will cause the Commission's administrative burdens to increase significantly, both in terms of its obligations to develop and monitor rates, and its obligations to enforce various utility compliance obligations.<sup>156</sup>

CalCCA argues the proposal for PG&E and Pacific Generation to submit joint applications will complicate proceedings, including ERRA forecast and compliance proceedings, GRCs, and cost of capital proceedings.<sup>157</sup> CalCCA notes that PG&E's testimony lists 29 different preliminary statements that would be impacted by the proposed transaction, with most requiring duplicative accounts established for Pacific Generation and PG&E.<sup>158</sup> Taking the example of an ERRA proceeding, CalCCA notes that this would mean there would be two resource portfolios with their own costs and revenues, two Portfolio Allocation Balancing Accounts, two ERRA balancing accounts, two New System Generation Balancing Accounts, and two separate calculations for PCIA, CAM, and generation rates.<sup>159</sup> CalCCA argues there will inevitably be further implementation details that have not been anticipated or explained in the application.<sup>160</sup>

CalCCA also argues that PG&E is proposing to create a structure where two separate regulated utilities will share the same service territory but fails to

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<sup>155</sup> *Ibid.*

<sup>156</sup> CalCCA OB at 49.

<sup>157</sup> *Id.* at 50.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Id.* at 51.

<sup>160</sup> *Ibid.*

explain how the Commission would assess compliance obligations and determine the requisite penalties between the two utilities.<sup>161</sup> CalCCA argues that approval of the proposed transaction would increase regulatory burdens because PG&E submits at least 100 compliance filings each year and the onus will be on the Commission to figure out a new compliance framework for each one.<sup>162</sup>

Despite Applicants' assertions, the proposed transaction will unquestionably increase administrative burdens. The Commission would be tasked with regulating two different utilities in place of one, each with its own accounts, books, tariffs, and compliance obligations. This would unquestionably add complexity and additional work to proceedings, even if the Applicants made joint filings.

Further, as noted by CalCCA, many implementation details have not been addressed and would be left to be addressed in future proceedings. There is no precedent for the Commission to regulate two IOUs providing simultaneous electric service to the same retail customers in the same service territory. There is also no precedent for a load serving entity that is a generation-only electrical corporation. Given the unprecedented nature of the proposed transaction, the full impacts on regulatory processes and frameworks are unknown at this time. PG&E notes that the Commission has imposed numerous requirements on electrical corporations that potentially would apply to Pacific Generation.<sup>163</sup> PG&E contends that to the extent requirements apply to Pacific Generation, Pacific Generation will achieve compliance through the actions of PG&E

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<sup>161</sup> *Id.* at 54.

<sup>162</sup> *Ibid.*

<sup>163</sup> Ex. PGE-11 at 11-5.

personnel.<sup>164</sup> However, issues such as whether and how to apply requirements to Pacific Generation, which would be a separate electrical corporation and load serving entity from PG&E, would need to be addressed if the proposed transaction were approved.

Applicants also make proposals that would create new administrative burdens. For example, Applicants propose that in a future GRC proceeding, the Commission could evaluate whether and to what extent there are incremental costs as a result of the proposed transaction, whether the transaction has generated benefits that outweigh those costs, and, if so, whether the incremental costs should be rate recoverable.<sup>165</sup> This is currently an exercise that is not undertaken in PG&E's GRC, which already involves review of a multitude of issues and a voluminous record, and it is unclear whether this additional exercise would have to be undertaken in perpetuity if the proposed transaction were approved.

The Applicants also propose to submit new advice letters for approval of the identity of the Minority Investor(s) and transaction documents. The intercompany agreements may be amended in the future and/or additional agreements may be necessary.<sup>166</sup> Although Applicants do not propose to seek advance Commission approval for such amendments or new agreements, Applicants note the Commission may review the amendments or additions, including in future GRC proceedings.<sup>167</sup> There may also be a need for the

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<sup>164</sup> *Ibid.*

<sup>165</sup> Applicants OB at 39.

<sup>166</sup> *Id.* at 63.

<sup>167</sup> *Id.* at 64.

Commission to review PG&E's performance of its obligations under the intercompany agreements.<sup>168</sup>

Therefore, the proposed transaction would create new administrative burdens as compared to the status quo.

### **3.4.2. Potential to Evade Regulation**

Pursuant to Section 216(a)(1), a “public utility” includes “every ... electrical corporation ... where the service is performed for, or the commodity is delivered to, the public or any portion thereof.” Pursuant to Section 216(b), “Whenever any ... electrical corporation ... performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment is received, that ... electrical corporation ... is a public utility subject to the jurisdiction, control, and regulation of the commission.”

CalCCA argues that Pacific Generation does not meet the statutory definition of a public utility.<sup>169</sup> CalCCA argues PG&E, not Pacific Generation, will be the entity making retail sales by buying energy from the wholesale market and delivering it to customers, and therefore, Pacific Generation will not be providing any commodity to the public.<sup>170</sup> CalCCA further argues that since Pacific Generation does not fit the legal definition of a public utility, there is a risk that Pacific Generation will be able to evade regulation as a public utility in the future.<sup>171</sup>

Applicants argue that CalCCA's arguments overlook the relief requested in their application, which is for the Commission to grant Pacific Generation a

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<sup>168</sup> *Id.* at 63.

<sup>169</sup> CalCCA OB at 58.

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

CPCN as a public utility, specifically as an electrical corporation.<sup>172</sup> Applicants argue that this gives the Commission plenary jurisdiction to regulate Pacific Generation on the basis of cost of service.<sup>173</sup>

Contrary to CalCCA's arguments, Pacific Generation will own, control, operate, or manage electric plant for compensation within this state, and the electricity generated from Pacific Generation's electric plant will be delivered to the public or any portion thereof. It is not necessary for Pacific Generation to directly deliver electricity to retail customers for Pacific Generation to be deemed a public utility. Pursuant to Section 216(c), a person or corporation may be deemed a public utility even if they perform a service or deliver a commodity "to any person, private corporation, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof...."

The California Supreme Court has held that a company that has dedicated its property to public use meets the definition of a public utility even though it may serve only one or few customers or an entity that in turn serves the public.<sup>174</sup> Generation facilities that generate power that is purchased by a public agency on behalf of the public for transmission to the public, operate for the purpose of selling electricity in the competitive public marketplace, or use the statewide grid to sell their power to the public, have all been deemed to have dedicated their

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<sup>172</sup> Applicants RB at 48.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Richfield Oil Corp. v. Public Utilities Com.* (1960) 54 Cal.2d 419, 431.



facilities to the generation and sale of power to the public.<sup>175</sup> As is the case with PG&E's generation assets today, Pacific Generation's assets would be dedicated to the service of the public.<sup>176</sup>

However, the Commission does not currently rate regulate or have plenary jurisdiction over any person or corporation that solely provides generation services.<sup>177</sup> Although a person or corporation providing generation services may meet the definition of a public utility set forth in subdivisions (a)-(c) of Section 216, other subdivisions of Section 216 exempt persons and corporations that engage in certain generation-related activities from being a public utility within the meaning of Section 216. For example, Section 216, subdivision (h), provides:

The ownership, control, operation, or management of an electric plant used for ... sales into a market established and operated by the Independent System Operator or any other wholesale electricity market ... shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

Pacific Generation will not be directly selling its generation output to retail customers or to PG&E.<sup>178</sup> According to PG&E, the full output from Pacific Generation's facilities will be scheduled and dispatched by PG&E into the California Independent System Operator (CAISO) market.<sup>179</sup> PG&E will retain

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<sup>175</sup> *Independent Energy Producers Assn., Inc. v. State Bd. of Equalization* (2004) 125 Cal.App.4th 425, 443-444.

<sup>176</sup> Ex. PGE-03 at 3-3.

<sup>177</sup> The Commission does have limited jurisdiction over all load serving entities to address requirements, such as Resource Adequacy, Renewables Portfolio Standards, and Integrated Resource Planning requirements.

<sup>178</sup> Ex. PGE-04A at 4-9; Ex. PGE-03 at 3-4.

<sup>179</sup> Ex. PGE-04A at 4-9.

full responsibility for scheduling and purchasing energy from the CAISO market to serve retail load, and for delivering and selling electricity to the public.<sup>180</sup>

Given that Pacific Generation's full generation output will be scheduled and dispatched to the CAISO market, pursuant to Section 216, subdivision (h), Pacific Generation is arguably exempt from being considered a public utility within the meaning of Section 216.

Applicants and other parties did not address the extent to which Pacific Generation's activities would or could be configured to fall under the generation-related activities set forth in subdivisions of Section 216, including subdivision (h), which would exempt a corporation from being a public utility within the meaning of Section 216. In addressing arguments that Pacific Generation may be able to evade the Commission's jurisdiction, Applicants highlight that Pacific Generation is voluntarily submitting a CPCN and subjecting itself to the Commission's plenary jurisdiction. However, if Pacific Generation meets one of the statutory exemptions in Section 216, this will potentially have jurisdictional implications in the future. For example, if Pacific Generation later decides it does not want to be regulated by the Commission, it is uncertain whether the Commission could continue to subject Pacific Generation to its jurisdiction as a public utility if it is exempt from being considered a public utility under Section 216.

Applicants maintain that retail customers benefit from cost-of-service regulation of utility-owned generation because, among other things, it provides customers with a long-term hedge against wholesale market price fluctuations.<sup>181</sup>

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<sup>180</sup> Ex. CalCCA-01, Attachment C (PG&E's Responses to CalCCA's Fourth Data Request to PG&E, Questions 22 and 23).

<sup>181</sup> Ex. PGE-03 at 3-3.

The potential ratepayer benefits of Commission regulation of utility-owned generation and the broader public interest implications, such as impacts on reliability, rates, and state energy policies, of the Commission potentially no longer having plenary jurisdiction over the owner of these assets have not been fully addressed by parties in this proceeding. As compared to the status quo, the proposed transaction would create uncertainty regarding the Commission's jurisdiction over the entity owning the generation assets at issue in this proceeding, which does not better serve the public interest.

### **3.5. Purported Benefits of the Proposed Transaction**

The Applicants contend the proposed transaction would generate the following benefits for customers: (1) provide a source of equity capital to support PG&E's capital investments, which will improve the safety and reliability of PG&E's transmission and distribution system and help achieve the state's decarbonization and electrification goals; (2) provide a source of future equity capital to support Pacific Generation's investments in generation; (3) accelerate PG&E's contributions to the Customer Credit Trust; (4) provide customer savings to the extent Pacific Generation's incremental cost of debt is lower than PG&E's incremental cost of debt; and (5) support PG&E's deleveraging plans.<sup>182</sup>

For the reasons discussed below, we do not find that the Applicants demonstrate there are likely to be benefits of the proposed transaction that would outweigh the adverse public interest impacts of the proposed transaction discussed above. Therefore, on balance, we do not find the proposed transaction to be in the public interest.

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<sup>182</sup> Applicants OB at 27-37.

### 3.5.1. Source of Equity Capital for Pacific Gas and Electric Company

PG&E claims that the primary rationale for the proposed transaction, and the contemplated use of the proceeds from the sale of the Minority Equity Interests, is to support PG&E's utility capital expenditure program.<sup>183</sup> PG&E argues that it has a significant need for equity capital to help fund essential energy infrastructure investments in the coming years. PG&E expects to invest between \$40 billion and \$53 billion from 2022 to 2026.<sup>184</sup> PG&E argues the proposed transaction is an essential and efficient source of near-term funding for PG&E's capital plan, particularly for PG&E's capital expenditures in 2024.<sup>185</sup> PG&E estimates investing between \$8 billion and \$12 billion in 2024 alone.<sup>186</sup>

PG&E states it considered a variety of strategies to raise capital.<sup>187</sup> A stock issuance by its parent holding company, PG&E Corporation, is the main alternative PG&E considered when deciding to pursue the proposed transaction.<sup>188</sup> PG&E argues the proposed transaction is a preferred means of equity capital compared to a common stock issuance because: (1) it will generate equity proceeds at a better valuation than an issuance of stock by PG&E Corporation; and (2) a common stock issuance by PG&E Corporation would be potentially dilutive in the current environment.<sup>189</sup>

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<sup>183</sup> *Id.* at 31.

<sup>184</sup> *Id.* at 28. These amounts include funding required from both debt and equity sources. (RT, Vol. 1 at 114:18-21.) Funding of the \$40-\$53 billion would need to be consistent with PG&E's regulated capital structure.

<sup>185</sup> Applicants OB at 28.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Id.* at 29.

CalCCA argues that PG&E has failed to show that the proposed transaction is, on balance, the best funding source available to PG&E. CalCCA argues that PG&E has done no substantive analysis to support the claim that the proposed transaction will be a superior alternative.<sup>190</sup> Among other things, PG&E has not attempted to quantify or otherwise analyze the relative costs and benefits of the proposed transaction as compared to other alternatives.<sup>191</sup> According to CalCCA, PG&E admits that PG&E's conclusion that the proposed transaction is the best alternative is uncertain and dependent on certain factors that are unknown at this time.<sup>192</sup>

TURN argues PG&E's direct testimony misleadingly asserts that completing the proposed transaction by the end of 2023 "is critical in order to generate the proceeds PG&E needs to meet its capital expenditure program in 2024."<sup>193</sup> TURN states that PG&E's Chief Financial Officer was not able to affirm that the proposed transaction was necessary for PG&E to meet its capital needs for 2024 and conceded that PG&E has not presented evidence that PG&E would not be able to raise the necessary capital for 2024 absent approval of the proposed transaction.<sup>194</sup>

EPUC also argues that PG&E has failed to provide adequate justification for its claim that the proposed transaction offers a "less costly, more efficient, and ultimately more advantageous way to raise equity capital," compared to the sale

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<sup>190</sup> CalCCA OB at 24.

<sup>191</sup> *Id.* at 24-26.

<sup>192</sup> *Id.* at 24.

<sup>193</sup> TURN OB at 1-2 citing Ex. PGE-01 at 1-5.

<sup>194</sup> TURN OB at 2 citing RT, Vol. 1 at 60-61, 63.

of PG&E Corporation common stock.<sup>195</sup> EPUC argues that although the proposed transaction would be a less costly and advantageous alternative for PG&E's shareholders, it would not allow PG&E to accelerate its funding or deleveraging goals, or reduce ratepayer costs.<sup>196</sup>

CHRC argues PG&E has not provided a firm estimate of how much it expects to raise from the proposed transaction.<sup>197</sup> CHRC notes that PG&E has other alternatives available to fund its capital needs and that PG&E plans to further evaluate the merits of the proposed transaction even if the Commission approves the application.<sup>198</sup> CHRC argues the issuance of common stock would be a more efficient and less risky means of raising capital from a customer and public interest perspective.<sup>199</sup>

We agree with intervenors that PG&E has not provided substantive analysis to support its claim that the proposed transaction will be a superior alternative for raising equity capital. The record does not reflect that the proposed transaction will generate equity proceeds at a better valuation than an issuance of stock by PG&E Corporation. PG&E acknowledges that the relative efficiency will be based on facts and circumstances in the future, including but not limited to the then-prevailing price of PG&E Corporation's stock and the amount offered by Minority Investor(s) to purchase equity interests in Pacific Generation.<sup>200</sup>

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<sup>195</sup> EPUC OB at 12.

<sup>196</sup> *Id.* at 12-13.

<sup>197</sup> CHRC OB at 4.

<sup>198</sup> *Id.* at 5.

<sup>199</sup> *Id.* at 6.

<sup>200</sup> Ex. PGE-30; Applicants RB at 15-16.

There are many unknowns regarding the amount of equity proceeds the proposed transaction would be able to generate. PG&E did not provide estimates regarding the amount of equity proceeds likely to be generated from the proposed transaction.<sup>201</sup>

Among the unknowns is whether PG&E will be able to transfer all the assets included in its proposal even if the Commission were to approve the proposed transaction. For example, Santa Clara states that PG&E must receive FERC authority to transfer the Bucks Creek Project License, FERC Project No. 619, to which PG&E and Santa Clara are co-licensees. Santa Clara argues FERC will not grant such authority with regard to the Bucks Creek Project License as Santa Clara has not joined the transfer application and FERC will not permit a transfer without all co-licensees joining the transfer application.<sup>202</sup> PG&E states that if FERC does not approve the proposed license transfers, PG&E will not be able to transfer the hydroelectric projects regardless of this Commission's approval of the proposed transaction.<sup>203</sup> To the extent assets will be excluded from the transfer, this will diminish the amount of equity proceeds that the proposed transaction will be able to generate.

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<sup>201</sup> Confidential presentations made to PG&E's Board of Directors provided estimates of illustrative net proceeds under various scenarios. (Ex. TURN-07-C at TURNDR-00004.) However, it is unclear whether one of the scenarios presented is the proposed transaction and detailed information regarding the basis of these estimates has not been provided.

CalCCA witness Dickman estimated PG&E can expect to raise between \$1.1 billion and \$2.5 billion in equity proceeds. (Ex. CalCCA-01 at 7-8.)

<sup>202</sup> Santa Clara OB at 15-16. Santa Clara also argues that the GDMSA is condition of Mokelumne Project License and since Pacific Generation is unable to perform all of the obligations in the GDMSA, PG&E's proposal to transfer the Mokelumne Project License to Pacific Generation should also be rejected. (*Id.* at 35.)

<sup>203</sup> Applicants RB at 44.

PG&E also did not provide information or analysis about its assumptions regarding the PG&E Corporation stock price in evaluating the relative efficiency of the proposed transaction compared to a common stock issuance. When PG&E filed this application on September 28, 2022, the closing price of PG&E Corporation's common stock was \$12.72 per share compared to a closing price of \$16.72 per share on August 18, 2023.<sup>204</sup> There is insufficient information in the record to assess at what share price the proposed transaction would be more or less efficient compared to a common stock issuance. Based on the most up to date information regarding the stock price in the record, the relative efficiency of the proposed transaction compared to the issuance of common stock has likely decreased since the filing of the application.<sup>205</sup>

Based on the foregoing, there is a lack of information in the record to support that the proposed transaction is the superior alternative for raising equity, particularly for ratepayers. Furthermore, there is no evidence that PG&E would be unable to meet its equity capital needs in 2024 absent this transaction. Considering the value of the assets proposed to be transferred (rate base value of \$3.5 billion), the sale of a 49.9 percent interest in Pacific Generation is unlikely to be a significant source of equity capital compared to PG&E's stated needs.<sup>206</sup>

PG&E contends that if the proposed transaction was not the preferred and most efficient manner for PG&E to raise equity to support its capital plan, PG&E

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<sup>204</sup> Ex. PGE-30. PG&E claims that the proposed transaction has positively affected PG&E Corporation's share price. (Applicants RB at 16.) PG&E does not point to any evidence that supports this claim other than PG&E's own unsupported assertions. (*Id.* at 16, fn. 70.) The fact that the stock price has increased since the filing of the application does not necessarily signify that the increase was caused by news of the proposed transaction. As noted by CHRC, the share price is subject to numerous variables. (CHRC OB at 4-5, fn. 8.)

<sup>205</sup> See Ex. TURN-07-C at TURNDR-00033.

<sup>206</sup> See, *id.* at TURNDR-00022.



would not complete the proposed transaction.<sup>207</sup> PG&E states it will continue to evaluate the relative efficiency of a stock issuance by PG&E Corporation compared to PG&E's sale of equity interests in Pacific Generation, and would not move forward with the proposed transaction if it is not in its best interest and it was better for PG&E to issue common stock equity.<sup>208</sup>

PG&E did not provide details regarding the circumstances under which it would no longer consider the proposed transaction to be the superior alternative (e.g., low sale price of minority equity interests or higher share price of PG&E Corporation common stock). Considering the ratepayer and public interest implications of the proposed transaction, the Commission cannot leave this determination to the sole discretion of PG&E. PG&E acknowledges that PG&E should not have unfettered discretion to decide how to raise equity stating: "PG&E respectfully submits that the Commission should permit PG&E to exercise its discretion as to the preferred means of raising equity, assuming ... that PG&E's choice is not adverse to the public interest."<sup>209</sup> In this case, for the reasons discussed above, we find the proposed transaction would have adverse impacts on the public interest, and on balance, is not in the public interest.

### **3.5.2. Source of Equity Capital for Pacific Generation LLC**

PG&E argues that another benefit of the proposed transaction is that Minority Investor(s) can be expected to provide equity capital for future investments by Pacific Generation in electric generation and storage.<sup>210</sup> PG&E

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<sup>207</sup> Applicants OB at 30.

<sup>208</sup> Ex. PGE-30; Applicants OB at 30.

<sup>209</sup> Ex. PGE-13 at 1-14.

<sup>210</sup> Applicants OB at 32.

further argues that to the extent future equity capital is provided by the Minority Investor(s), this will reduce the amount of equity capital that PG&E must devote to the generation business, which, in turn, will enable PG&E to devote more equity capital to investments to promote the safety and reliability of transmission and distribution infrastructure.<sup>211</sup>

TURN, EPUC, and CHRC argue that PG&E's claim that Minority Investor(s)' future equity capital will provide a significant benefit to ratepayers is unsupported.

TURN argues that PG&E's Chief Financial Officer could not explain or support why future equity capital from Minority Investor(s) would be better or different from equity capital from other investors, such as when PG&E issues common stock.<sup>212</sup>

EPUC states that even PG&E recognizes that, beyond the initial transaction, these future capital benefits are only "potential benefits," to the extent Minority Investor(s) are inclined to reinvest.<sup>213</sup>

CHRC similarly argues that while PG&E has stated its expectation that Minority Investor(s) would be motivated and able to respond to future capital calls, PG&E has not demonstrated the reasonableness of that expectation such that it could be relied upon by the Commission to make a finding of benefit.<sup>214</sup> CHRC notes PG&E's Chief Financial Officer declined to speculate in terms of

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<sup>211</sup> *Id.* at 32-33.

<sup>212</sup> TURN OB at 4 citing RT, Vol. 1 at 65:13-70:23.

<sup>213</sup> EPUC OB at 14 citing Ex. PGE-13 at 1-3:5-15; RT, Vol. 1 at 48:3-7, 52:12-19, 53:6-10.

<sup>214</sup> CHRC OB at 9.

what the market circumstances will be in the future for purposes of affirming the potential benefit of future equity capital from Minority Investor(s).<sup>215</sup>

PG&E did not provide sufficient information to support its claim that Minority Investor(s)' future equity capital will provide a significant benefit to ratepayers. There is uncertainty regarding whether and to what extent the Minority Investor(s) will make future investments. Therefore, PG&E was unable to provide information regarding the amount or timing of any future investments by the Minority Investor(s). PG&E also did not provide an explanation or analysis as to why future investments by Minority Investor(s) would be superior to and more beneficial to ratepayers compared to other sources of equity for PG&E's electric generation business in the future. Therefore, PG&E has failed to demonstrate that the potential for future investments by Minority Investor(s) will provide benefits to ratepayers.

### **3.5.3. Accelerated Contributions to Customer Credit Trust**

In D.21-04-030, the Commission determined that PG&E may finance \$7.5 billion of 2017 catastrophic wildfire costs and expenses through the issuance of recovery bonds. D.21-04-030 also authorized the creation of a Customer Credit Trust, to be funded by PG&E shareholders, to provide a monthly customer credit equal to, and offsetting, the fixed recovery charge, which may be created to pay the costs and expenses of the recovery bonds.<sup>216</sup>

The Commission required PG&E shareholders to contribute \$7.59 billion funded by certain shareholder-owned tax deductions or net operating losses on

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<sup>215</sup> CHRC OB at 9 citing RT, Vol. 1 at 69:15-21.

<sup>216</sup> D.21-04-030 at 2.

PG&E's taxable income to the Customer Credit Trust.<sup>217</sup> If necessary, in the event of a deficit, the Commission will require PG&E to contribute a contingent supplemental contribution in 2040, up to a limit of \$775 million.<sup>218</sup> Once the recovery bonds have been paid in full and the fixed recovery charges cease, consumers will receive 25 percent and PG&E will receive 75 percent of any funds remaining in the trust after payment of trust expenses.<sup>219</sup>

PG&E argues the proposed transaction would benefit customers by accelerating PG&E's contributions to the Customer Credit Trust. PG&E argues that although the total shareholder contribution to the Customer Credit Trust does not change, accelerated contributions will give the trust greater opportunity to generate investment returns thereby reducing the probability of a deficit and increasing the probability of a surplus, 25 percent of which would be allocated to ratepayers.<sup>220</sup>

CalCCA argues that the structure of the Customer Credit Trust is such that the timing of contributions will not impact ratepayers in the near-term and will be unlikely to impact ratepayers in the long-term in any significant amount.<sup>221</sup> CalCCA states the proposed transaction will not change the amount of shareholder contributions or the amount of the Recovery Bond Credit on

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<sup>217</sup> *Id.* at 19.

<sup>218</sup> *Ibid.*

<sup>219</sup> *Id.* at 74.

<sup>220</sup> Applicants OB at 33.

<sup>221</sup> CalCCA OB at 18.

customers' bills.<sup>222</sup> CalCCA also states that even if there is a surplus, customers will only see 25 percent of it in 2040.<sup>223</sup>

TURN similarly argues that the potential ratepayer benefits of the accelerated contributions are uncertain at best, and even if realized in 2040, would be a fraction of shareholder benefits.<sup>224</sup>

We agree with the intervenors that the potential ratepayer benefits of the proposed transaction's accelerated contributions to the Customer Credit Trust are uncertain. As noted by CalCCA, the monthly customer credit and fixed recovery charge on customers' bills would not change as result of the proposed transaction until 2040. The Applicants have not provided estimates regarding the probability and amount of a surplus at the end of the securitization period due to the proposed transaction. Therefore, there is insufficient information to assess the likelihood and amount of potential benefit to ratepayers. In any event, we do not find that the unknown and unquantified potential for ratepayers to receive a one-time 25 percent share of any surplus in the Customer Credit Trust that may exist in 2040 is a sufficient benefit to outweigh the adverse impacts on the public interest of the proposed transaction.<sup>225</sup>

#### **3.5.4. Potential Customer Savings**

Applicants state that to the extent Pacific Generation is able to achieve a lower incremental cost of debt than PG&E, those savings will flow through to customers in the normal course as part of the next cost of capital proceeding for

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<sup>222</sup> *Id.* at 18-19.

<sup>223</sup> *Id.* at 19.

<sup>224</sup> TURN OB at 4.

<sup>225</sup> The Commission could also direct distribution of any surplus in the trust earlier if circumstances warrant. (D.21-04-030 at 19.)

Test Year 2026.<sup>226</sup> As addressed in Section 3.1.2.2, above, there is inadequate information in the record to support a finding that Pacific Generation's incremental cost of debt will be lower than PG&E's cost of debt.

### **3.5.5. Support Pacific Gas and Electric Company's Deleveraging Plans**

Finally, the Applicants claim the proposed transaction is consistent with and supports PG&E's deleveraging plans. Applicants argue that compared to the issuance of additional PG&E Corporation common stock, the relative efficiency of the proposed transaction as a means for raising equity helps facilitate deleveraging by PG&E.<sup>227</sup> In particular, Applicants argue a dilutive common stock issuance by PG&E Corporation would negatively impact share price, which could impair raising equity through a PG&E Corporation common stock issuance and deleveraging activities, such as paying down PG&E Corporation debt.<sup>228</sup>

TURN argues the proposed transaction would not result in more deleveraging. TURN notes PG&E's Chief Financial Officer could not identify why the proposed transaction would result in more deleveraging when compared to the option of issuing equity.<sup>229</sup>

EPUC argues that although PG&E claims the proposed transaction will help support deleveraging efforts, it fails to adequately commit to utilizing the entirety of the proceeds for this purpose.<sup>230</sup> EPUC argues that PG&E's

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<sup>226</sup> Applicants OB at 34.

<sup>227</sup> *Id.* at 35.

<sup>228</sup> *Ibid.*

<sup>229</sup> TURN OB at 12-13.

<sup>230</sup> EPUC OB at 10.

management would have the discretion to use the equity proceeds at their discretion, which could include funding shareholder dividends.<sup>231</sup> EPUC also argues that the amount of equity resulting from the proposed transaction represents only a fraction of what is needed to meet PG&E's total capital requirements and balance its capital structure.<sup>232</sup>

CalCCA also argues that there is nothing preventing PG&E from using the proceeds from the sale of Minority Equity Interests in Pacific Generation on dividends to shareholders.<sup>233</sup>

Applicants do not provide specifics regarding how the proposed transaction would support PG&E's deleveraging efforts. PG&E does not outline any specific deleveraging plan or provide a sources and uses table showing the use of proceeds from the proposed transaction. As discussed above, the relative efficiency of the proposed transaction compared to other alternatives to raise equity has also not been established.

PG&E states it is willing to commit, within 18 months of closing, to expend capital in an amount no less than the net proceeds from the sale of the Minority Equity Interests in Pacific Generation (after deducting tax liabilities and transaction costs) divided by 0.52.<sup>234</sup> In other words, PG&E is willing to commit to investing equity in capital expenditures in an amount that is no less than the net equity sale proceeds, which will then be matched by long-term debt financing consistent with PG&E's authorized capital structure.<sup>235</sup> PG&E,

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<sup>231</sup> *Id.* at 5-6.

<sup>232</sup> *Id.* at 13.

<sup>233</sup> CalCCA OB at 61.

<sup>234</sup> Applicants OB at 31.

<sup>235</sup> *Ibid.*

however, is opposed to suggestions, such as by CalCCA, that PG&E segregate the proceeds from the proposed transaction to ensure the sale proceeds are not used for purposes such as paying out dividends.<sup>236</sup>

PG&E's commitment does not demonstrate that proceeds from the proposed transaction would be used to invest in capital expenditures or support deleveraging, as opposed to being used for other purposes. CalCCA notes that PG&E would need to invest between \$8 billion and \$14 billion in capital expenditures annually through 2027.<sup>237</sup> Even absent the proposed transaction, PG&E would need to invest annually in capital expenditures well beyond the amount of net proceeds likely to be generated from the proposed transaction.

Without specifics regarding how the proceeds will be used and a deleveraging plan, and given the relatively modest contribution that the proceeds from the proposed transaction would represent compared with PG&E's projected investments through 2027, the record does not support that the proposed transaction will, in fact, support PG&E's deleveraging efforts.

#### **4. Conclusion**

For the foregoing reasons, we do not find that the Applicants have met their burden of demonstrating that the proposed transaction is adequately justified, reasonable, and in the public interest. Therefore, Applicants' requests for the Commission to authorize PG&E to transfer substantially all of its non-nuclear generation assets to Pacific Generation and to issue a CPCN to Pacific Generation to operate as a utility subject to the Commission's jurisdiction are denied. With our denial of these requests, all other requests in the

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<sup>236</sup> *Id.* at 32; CalCCA OB at 65.

<sup>237</sup> *Id.* at 62.



application are denied as moot. Additional issues in the scoping memo not addressed in this decision are also deemed moot.

## **5. Motions for Confidential Treatment of Briefs**

On September 18, 2023, CalCCA, EPUC, and TURN filed motions seeking leave to file the confidential versions of their opening briefs under seal.

On October 5, 2023, the Applicants filed a motion for leave to file the confidential version of their reply brief under seal.

CalCCA's, EPUC's, and TURN's opening briefs and the Applicants' reply brief include information from evidentiary exhibits that were admitted as confidential exhibits under seal, as well as portions of the evidentiary hearing transcripts that were designated as confidential. Therefore, the motions of CalCCA, EPUC, TURN, and Applicants to file their respective briefs under seal are granted.

## **6. Summary of Public Comment**

Rule 1.18 of the Commission's Rules of Practice and Procedure (Rules) allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Pursuant to Rule 1.18(a), public comments received prior to the submission of the record in the proceeding are entered into the administrative record of that proceeding. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

One public comment was received prior to the submission of the record in the proceeding with an inquiry regarding the proposed transaction. Following the submission date, tens of public comments were received, all expressing opposition to the proposed transaction.

## 7. Comments on Proposed Decision

The proposed decision of ALJ Sophia J. Park in this matter was mailed to the parties in accordance with Section 311 and comments were allowed under Rule 14.3. Comments were filed on \_\_\_\_\_, and reply April 3, 2024 by the County of Lake and on April 4, 2024 by Applicants, NID and PCWA (jointly), CHRC, and EPUC. Reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_ April 9, 2024 by Applicants, CUE, CalCCA, EPUC, TURN, PCWA and NID (jointly), and CHRC.

Pursuant to Rule 14.3(c), comments on a proposed decision must focus on factual, legal, or technical errors in the proposed decision and make specific references to the record or applicable law. Rule 14.3(c) provides that comments which fail to do so will be accorded no weight.

Overall, there was significant support among parties for the proposed decision with the County of Lake, CHRC, EPUC, CalCCA, and TURN all supporting the outcome in the proposed decision. PCWA and NID also expressed support for the outcome in the proposed decision but additionally recommended modifications relating to the issue of the rights of PCWA and NID to purchase the Drum-Spaulding Project.

In their comments, Applicants contend that the record supports approval of the proposed transaction. However, in light of the concerns identified in the proposed decision, Applicants recommend the Commission reopen the record for a second phase of the proceeding. The Applicants' proposal for a second phase is opposed by all parties who commented on it except CUE.

The appropriate scope for comments on a proposed decision is set forth in Rule 14.3(c). We have carefully reviewed the comments and find that they do not raise any factual, legal, or technical errors that would warrant modifications

to the proposed decision. We find Applicants' request to reopen the record, as well as PCWA and NID's requested modifications to the proposed decision, to be beyond the scope of what is appropriate for comments on a proposed decision. In accordance with Rule 14.3(c), we accord no weight to comments, which do not focus on factual, legal, or technical errors in the proposed decision with specific references to the record or applicable law.

## **8. Assignment of Proceeding**

President Alice Reynolds is the assigned Commissioner and Sophia J. Park is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The proposed transaction is novel and unprecedented and does not represent a routine Section 851 application.
2. The proposed transaction would not result in another entity merging, acquiring, or controlling the existing public utility, PG&E.
3. Pacific Generation is not currently a public utility but rather, seeks to become a public utility through the instant application.
4. Although there would be no immediate change in customers' rates, there would be changes to customers' rates attributable to the transaction starting in 2027.
5. The proposed transaction will result in an increase in administrative workload.
6. It is reasonable to expect that the increase in administrative workload will increase ongoing administrative costs relative to the status quo.
7. Applicants do not provide an estimate of the increase in costs and do not provide any basis for discounting CalCCA's estimate that costs will increase by \$3 million per year.

8. CalCCA's estimate may not fully quantify the increase in costs.
9. Because information has not been provided, the extent to which the proposed transaction would result in the reallocation of costs to the generation function resulting in an increase in generation rates, and whether such reallocation would be reasonable and in the public interest, are unknown.
10. Given the evidence that the proposed transaction will likely cause rates to increase, the proposed transaction would need to generate rate savings, which would offset any potential rate increases, in order for the rate impacts of the proposed transaction to be, on balance, in the public interest.
11. The potential for rate decreases due to the transaction is uncertain.
12. The only potential decrease in rates mentioned in the record is the potential for lower incremental debt costs.
13. All other things being equal, customers would experience rate decreases attributable to the transaction if the enterprise cost of debt post-transaction is less than the enterprise cost of debt with no transaction, as reflected in PG&E's and Pacific Generation's approved cost of capital.
14. There is insufficient evidence for a finding that there is likely to be an overall decrease in the enterprise cost of debt if the transaction is effectuated.
15. There is insufficient information in the record to meaningfully evaluate the potential impact of the transaction on PG&E's credit rating.
16. PG&E does not present any evidence demonstrating that the proposed transaction would have a positive effect on PG&E's credit rating such that PG&E's cost of debt would decrease post-transaction compared to a no-transaction scenario.

17. Applicants do not provide adequate justification for their expectation that Pacific Generation's incremental debt costs will be the same or less than PG&E's debt costs.

18. Among other factors, it is unclear how Pacific Generation's lack of scale and unique operating profile will impact Pacific Generation's credit rating compared to PG&E's current rating.

19. TURN witness Dowdell's opinion that Pacific Generation's debt costs are likely to be lower than PG&E or PG&E corporation is primarily based on unsupported assertions in PG&E's testimony and evaluation of Pacific Generation's exposure to wildfire risk.

20. Although wildfire risk is a factor in assessing a utility's risk profile, it is not the sole determinative factor.

21. The record does not reflect a comprehensive assessment of the risk profile of the generation assets proposed to be transferred.

22. The proposed transaction would result in a more complex ownership and governance structure.

23. Although PG&E will be the majority owner of Pacific Generation, Pacific Generation will be a separate standalone business from PG&E with separate legal obligations and liabilities.

24. As the legal owner of the assets proposed to be transferred, Pacific Generation will be legally accountable and responsible for the safe and reliable operation of the assets.

25. Applicants do not anticipate Pacific Generation will have any direct employees other than the President of Pacific Generation.

26. Post-transaction, Pacific Generation intends to engage PG&E as a service provider to maintain and operate the assets.

27. PG&E will maintain and operate the assets pursuant to a series of intercompany agreements governing PG&E's service to Pacific Generation, which are not yet final and subject to change.

28. PG&E will be required to perform services under the general direction and instruction of Pacific Generation.

29. There is nothing that would prohibit Pacific Generation from deciding to retain a different service provider and Pacific Generation does not propose to seek advance Commission approval for such a change.

30. There are many unknowns regarding how Pacific Generation's and PG&E's roles post-transaction will impact operations.

31. Applicants fail to demonstrate that the proposed organizational structure would better enable the safe and reliable operation of the assets as compared to the status quo.

32. To the extent Applicants contend that PG&E would be the entity primarily making day-to-day decisions regarding the safe and reliable operation of the assets, decreasing legal accountability for PG&E would not better serve the public interest.

33. It is unclear how likely it would be for Pacific Generation to hold PG&E accountable under the intercompany agreements given Applicants' assertions that PG&E will control Pacific Generation's Board.

34. Any accountability PG&E may have as a majority owner of Pacific Generation would be different than PG&E's accountability as the legal owner of the assets.

35. Since the minority investor governance rights are not yet final, the Commission cannot fully evaluate the extent to which the minority investor rights may impact the management and operations of Pacific Generation.

36. Based on the information provided to date, the Commission is unable to make a finding that the Applicants' proposal to sell up to a 49.9 percent ownership interest in Pacific Generation to Minority Investor(s) would have no adverse public interest impacts.

37. Applicants have provided few details regarding who may or may not serve as a Minority Investor and limitations on the conduct of the Minority Investor(s).

38. Applicants have not provided a minority investor code of conduct or specific details of the terms of the code of conduct for Commission or stakeholder review.

39. Applicants' proposal to defer consideration of issues regarding the identity of the Minority Investor(s), code of conduct, governance rights, and other matters to a subsequent advice letter process is not adequate.

40. Given the lack of details provided to date, the Commission is not currently able to authorize actions related to the Minority Investor(s) and transaction documents with sufficient specificity to enable Industry Division disposition of any advice letters related to the Minority Investor(s).

41. Given the parties' positions in this proceeding and the matters that remain to be resolved, it is expected that the advice letters regarding the identity of the Minority Investor(s), code of conduct, and governance rights would be controversial and raise policy questions.

42. The fact that FERC would undertake review of any sale or transfer of interests exceeding 10 percent or more in Pacific Generation is not sufficient for the Commission to make a finding that there are adequate safeguards against anticompetitive or other adverse public interest impacts.

43. The proposed transaction will increase and create new administrative burdens as compared to the status quo.

44. There is no precedent for the Commission to regulate two IOUs providing simultaneous electric service to the same retail customers in the same service territory.

45. Given the unprecedented nature of the proposed transaction, the full impacts on regulatory processes and frameworks are unknown at this time and would need to be addressed in future proceedings.

46. The Commission does not currently rate regulate or have plenary jurisdiction over any person or corporation that solely provides generation services.

47. The full output from Pacific Generation's facilities will be scheduled and dispatched by PG&E into the CAISO market.

48. The broader public interest implications of the Commission potentially no longer having plenary jurisdiction over the owner of the generation assets at issue in this proceeding have not been fully addressed by parties in this proceeding.

49. As compared to the status quo, the proposed transaction would create uncertainty regarding the Commission's jurisdiction over the entity owning the generation assets at issue in this proceeding, which does not better serve the public interest.

50. PG&E has not provided substantive analysis to support its claim that the proposed transaction will be a superior alternative for raising equity capital.

51. The record does not reflect that the proposed transaction will generate equity proceeds at a better valuation than an issuance of stock by PG&E Corporation.



52. The relative efficiency of the proposed transaction will be based on facts and circumstances in the future, including but not limited to the then-prevailing price of PG&E Corporation's stock and the amount offered by Minority Investor(s) to purchase equity interests in Pacific Generation.

53. PG&E did not provide estimates regarding the amount of equity proceeds likely to be generated from the proposed transaction.

54. It is uncertain whether PG&E will be able to transfer all the assets included in its proposal even if the Commission were to approve the proposed transaction.

55. To the extent assets included in Applicants' proposal will be excluded from the transfer, this will diminish the amount of equity proceeds that the proposed transaction will be able to generate.

56. Based on the most up to date information regarding PG&E Corporation's stock price in the record, the relative efficiency of the proposed transaction compared to the issuance of common stock has likely decreased since the filing of the application.

57. There is no evidence that PG&E would be unable to meet its equity capital needs in 2024 absent the proposed transaction.

58. PG&E's claim that Minority Investor(s)' future equity capital will provide a significant benefit to ratepayers is unsupported.

59. PG&E did not adequately explain why future investments by Minority Investor(s) would be superior to and more beneficial to ratepayers compared to other sources of equity for PG&E's electric generation business in the future.

60. The potential ratepayer benefits of the proposed transaction's accelerated contributions to the Customer Credit Trust are uncertain.

61. The potential for ratepayers to receive a one-time 25 percent share of any surplus in the Customer Credit Trust that may exist in 2040 is not a sufficient benefit to outweigh the adverse impacts on the public interest of the proposed transaction.

62. Without specifics regarding how the proceeds will be used and a deleveraging plan, the record does not support that the proposed transaction will, in fact, support PG&E's deleveraging efforts.

63. Applicants fail to demonstrate that there are likely to be benefits of the proposed transaction that would outweigh the adverse public interest impacts of the proposed transaction.

64. On balance, the proposed transaction is not in the public interest.

65. The opening briefs of CalCCA, EPUC, and TURN, and the reply brief of the Applicants include information from evidentiary exhibits that were admitted as confidential exhibits under seal, as well as portions of the evidentiary hearing transcripts that were designated as confidential.

### **Conclusions of Law**

1. As the applicants, PG&E and Pacific Generation have the burden of proof to demonstrate the reasonableness of the relief sought in the application.

2. The standard of proof an applicant must meet in ratesetting cases is that of a preponderance of the evidence.

3. Section 851 applies to the proposed transfer of substantially all of PG&E's non-nuclear generation assets to Pacific Generation.

4. The Commission has broad discretion to determine whether the sale of a public utility's property should be approved under Section 851.

5. The Commission uses varying standards in conducting its public interest review under Section 851.

6. This application warrants review under a heightened standard of review for Section 851 and requires a finding that the application is in the public interest.

7. The Commission determines the applicability of Section 854 on a case-by-case basis.

8. Since Section 854 applies to any merger, acquisition, or control activity of a public utility, it would only apply to Pacific Generation after Pacific Generation has acquired public utility status.

9. The proposed transaction does not constitute a “merger, acquisition, or control activity” within the meaning of Section 854.

10. The fact that Section 854 does not apply to the proposed transaction does not preclude the Commission from considering many of the public interest factors set forth in the statute.

11. In determining whether the proposed transaction should be approved, the Commission should consider potential rate impacts of the proposed transaction, including rate impacts that extend beyond PG&E’s current GRC cycle.

12. A matter is appropriate for disposition by staff under a Tier 2 advice letter when such disposition would be a ministerial act.

13. Pursuant to GO 96-B, the advice letter process is appropriate to provide a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions.

14. The Commission is required to undertake its own public interest review pursuant to Section 851, which is different than FERC’s review under FPA Section 203.

15. Although a person or corporation providing generation services may meet the definition of a public utility set forth in subdivisions (a)-(c) of Section 216, other subdivisions of Section 216 exempt persons and corporations that engage

in certain generation-related activities from being a public utility within the meaning of Section 216.

16. Given that Pacific Generation's full generation output will be scheduled and dispatched to the CAISO market, pursuant to Section 216, subdivision (h), Pacific Generation is arguably exempt from being considered a public utility within the meaning of Section 216.

17. If Pacific Generation later decides it does not want to be regulated by the Commission, it is uncertain whether the Commission could continue to subject Pacific Generation to its jurisdiction as a public utility if it is exempt from being considered a public utility under Section 216.

18. Applicants have failed to meet their burden of demonstrating that the proposed transaction is adequately justified, reasonable, and in the public interest.

19. The application should be denied.

20. The motions of CalCCA, EPUC, and TURN to file their respective opening briefs under seal and the motion of Applicants to file their reply brief under seal should be granted.

## **O R D E R**

**IT IS ORDERED** that:

1. Application 22-09-018 is denied.
2. The Motion of the California Community Choice Association for Leave to Submit Confidential Version of Opening Brief Under Seal filed on September 18, 2023, is granted.
3. The Motion of the Energy Producers and Users Coalition for Leave to File the Confidential Version of its Opening Brief Under Seal filed on September 18, 2023, is granted.

4. The Motion of the Utility Reform Network for Leave to File the Confidential Version of its Opening Brief Under Seal filed on September 18, 2023, is granted.

5. The Motion of Pacific Gas and Electric Company and Pacific Generation LLC for Leave to Submit Confidential Version of Reply Brief Under Seal filed on October 5, 2023, is granted.

6. Any outstanding motions not previously addressed are deemed denied.

7. Application 22-09-018 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California.

<b>Summary report:</b>	
<b>Litera Compare for Word 11.0.0.61 Document comparison done on 5/6/2024 2:20:35 PM</b>	
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<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>31</b>