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Exhibit No.:
Date: July 7, 2023
Witness(es): Various

PACIFIC GAS AND ELECTRIC COMPANY

S851 TRANSFER OF NON-NUCLEAR GENERATION PORTFOLIO AND SALE OF MINORITY INTEREST

REBUTTAL TESTIMONY

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A. Introduction

The Application requests California Public Utilities Commission (CPUC or Commission) approval of the contribution of substantially all of the Pacific Gas and Electric Company (PG&E) non-nuclear generation assets to Pacific Generation LLC (Pacific Generation or PacGen), a new rate-regulated utility, and PG&E's sale of up to 49.9 percent of the equity interests in Pacific Generation to one or more Minority Investor(s). The Proposed Transaction is an efficient means for PG&E to raise equity capital that will support critical investments to enhance the safety and reliability of PG&E's system. The Proposed Transaction would not change how the generation assets are operated or maintained, nor would it remove them from cost-of-service regulation by the Commission. The Proposed Transaction would not adversely affect the public interest, and in fact would produce benefits by introducing another source of equity for future capital expenditures, potentially reducing the incremental cost of debt, accelerating contributions to the Customer Credit Trust (CCT), and supporting the Fire Victim Trust. The Commission should approve the Application.

The following intervenors served testimony: California Community Choice Association (CalCCA), California Hydropower Reform Coalition, East Bay Municipal Power District, Energy Producers and Users Coalition (EPUC), Nevada Irrigation District, Placer County Water Agency, City of Santa Clara dba Silicon Valley Power, and The Utility Reform Network (TURN).

Notably, the Public Advocates Office at the California Public Utilities Commission—an independent organization with the Commission that advocates on behalf of utility customers,[1]—did not serve testimony.

Intervenors who oppose the Application misunderstand PG&E's proposal, raise concerns that are unrelated to the Proposed Transaction, and/or make

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[1] California Public Utilities Code (Pub. Util. Code) § 309.5(a).

recommendations that are unnecessary or contrary to Commission precedent. Intervenors' testimony does not address numerous key aspects of the Application.

Although we believe that the Commission could approve the Application without conditions, we do not object to most of the conditions proposed by CalCCA witness Brian Dickman[2] with certain modifications, as shown in Attachment A to this rebuttal chapter. Other rebuttal chapters discuss these suggested conditions in greater detail. These conditions, as modified, would clarify misunderstandings regarding the Proposed Transaction and provide further assurance that it would not negatively affect customers. In all other respects, intervenors' recommendations should be rejected as unnecessary and not in the public interest.

B. The Proposed Transaction Should Be Approved Under a "No Harm" Standard

The Proposed Transaction should be approved under a "no harm" standard: the Commission should grant the Application under Section 851 if persuaded that it is "not adverse to the public interest."[3] The Commission encourages transactions that are in the public interest, but affirmative benefits to customers are not required.[4] This standard is also applied to applications under Section 817 and Section 818 for authority to issue securities.[5] The only circumstance in which a showing of affirmative benefits is mandated is a change in control transaction subject to Section 854(b).[6] Because the Proposed

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2 See Dickman Testimony, Attachment B.

3 Decision (D.) 11-05-048 at 9 (citing D.09-07-035 and D.09-04-013).

4 *Id.*; see also D.22-08-005 at 14 (noting that the Commission more frequently applies a ratepayer indifference standard "which requires a finding that is no harm or adverse impact to the ratepayers" rather than requiring a tangible benefit); D.21-08-002 at 11 (finding a "large body of prior Commission decisions applying a 'ratepayer indifference standard['" to Section 851 and only "a few decisions applying a higher bar"); D.11-06-032 at 12 (stating that the Commission "has occasionally articulated" a standard requiring a showing that an application be "'in the public interest,'" but that "the legal standard of review for § 851" is that an application be "not 'adverse to the public interest'").

5 See Pub. Util. Code §§ 817, 818. See also, e.g., D.96-11-017, 69 CPUC 2d 167, 1996 WL 752962.

6 See Pub. Util. Code § 854(b)(1).

Transaction would not involve a change in control, this exception does not apply and the general "no harm" standard governs.

C. The Proposed Transaction Benefits Customers

Although a showing that the Proposed Transaction will not cause harm is sufficient to justify granting the Application, the Proposed Transaction will in fact provide tangible benefits.

First, a significant benefit of the Proposed Transaction is that Minority Investor(s) can be expected to provide equity capital for future capital expenditures by Pacific Generation.[7] This additional source of capital will support Pacific Generation's investments to advance the State's safety, reliability, clean energy and affordability goals that benefit customers and the public. At the same time, future equity capital provided by Minority Investor(s) will reduce the amount of equity capital that PG&E must devote to the generation business. This will strengthen PG&E's financial position, allowing it to devote more equity capital to investments to promote the safety and reliability of transmission and distribution infrastructure.

Second, the Proposed Transaction would benefit customers by accelerating contributions to the CCT.[8] TURN dismisses this benefit as merely a matter of timing and argues that any benefit is minor because the transaction "will not increase the amount of money PG&E ultimately contributes to the CCT" because total contribution amounts are capped.[9] This position directly contradicts the emphasis placed by TURN (and the Commission) on the importance of the

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7 See PG&E Prepared Testimony, Chapter 1, at 1-2–1-3.

8 PG&E Prepared Testimony, Chapter 8, at 8-9; see also PG&E Response to Data Request CalCCA_002-Q015 (describing a present value benefit to the CCT of up to $282 million if the Proposed Transaction yields $3 billion in additional equity proceeds).

9 Dowdell Testimony at 31-33.

timing of contributions in the rate neutral securitization proceeding.[10] The acceleration of contributions directly benefits customers, both by reducing the probability of a deficit in the CCT and by increasing the probability of a surplus that customers would share.[11]

Third, the Proposed Transaction would benefit customers to the extent that Pacific Generation's incremental cost of debt is lower than PG&E's incremental cost of debt. TURN acknowledges this benefit, stating that "PacGen's borrowing cost and overall cost of capital is likely to be lower than the Primary Utility [PG&E] or PG&E Corporation."[12] CalCCA erroneously suggests that PG&E will not "convey any benefits to customers from the lower cost of debt."[13] Although Pacific Generation's authorized cost of capital for ratemaking purposes initially would mirror PG&E's, the Commission would set Pacific Generation's authorized cost of capital in the test year 2026 cost of capital proceeding based on Pacific Generation's embedded cost of debt. As such, a lower incremental cost of debt will be passed on to customers.[14]

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10 See Application (A.) 20-04-023, TURN Opening Brief at 58 (noting that "delays in additional shareholder contributions to the trust represent a key driver of increased shortfall risk"); *id.* at 58–59 (warning of risk from "any downward deviation from PG&E's very ambitious taxable income forecast"); *id.* at 65-66 (requesting the Commission apply "significant scrutiny" to PG&E's projected schedule for additional shareholder contributions through Net Operating Losses (NOL) and arguing that any divergences "would delay additional shareholder contributions to the CCT and increase the risk of a shortfall."); A.20-04-023, TURN Reply Brief at 27-28 (arguing that "delays in shareholder contributions to the CCT represent the *primary risk of a shortfall* that would be assigned to ratepayers"). See also D.21-04-030 at 15 (listing as issues before the Commission timing of NOLs to fund the CCT).

11 See D.21-04-030 at 86 (finding that surplus sharing represents "a significant benefit for customers"); see also PG&E Response to Data Request CalCCA_002-Q015. Dowdell claims that PG&E provided a "range" of net present value benefits of accelerated contributions to the CCT. Dowdell Testimony at 32 n.110. The PG&E data response Dowdell cites estimates the range of benefits for *each* $500 million increment. To the extent the taxable gain exceeds $500 million, the net present value benefits would be greater.

12 Dowdell Testimony at 7.

13 Dickman Testimony at 15-16.

14 CalCCA argues that application of the current authorized cost of capital to Pacific Generation's initial rates would deny customers any benefit. See Dickman Testimony at 15-16. Application of the established cost of capital merely preserves the forecast ratemaking process and Commission methodology for setting cost of capital for large utilities. See PG&E Response to Data Request CalCCA_001-Q037. Benefits would be passed on to customers through subsequent cost of capital proceedings.

Fourth, the Proposed Transaction benefits the Fire Victim Trust (FVT). CalCCA and TURN disagree, claiming the FVT will complete its sales of PG&E Corporation stock by the end of 2023.[15] As TURN acknowledges, however, the FVT has already benefitted from the Proposed Transaction, as the current stock price reflects the expectation that the Proposed Transaction will avoid the need for a potentially dilutive issuance of stock in 2024.[16] Further, the timing of the FVT's future sales of stock is uncertain. TURN and CalCCA cite a publicly available video message from the Trustee of the FVT that describes a "goal" of liquidating the FVT's remaining 127 million shares by the end of 2023. The same video notes the FVT is "pleased" that PG&E Corporation's stock price is "holding up," expresses hope that PG&E Corporation's stock price "stays strong," and describes PG&E Corporation's stock price as the "first and largest" risk to the FVT.[17] The Commission's support of the Application therefore would benefit the FVT.[18]

D. The Commission Should Not Require Sharing of the Proceeds of the Proposed Transaction

TURN argues that ratepayers would be harmed by PG&E's proposal to retain all the proceeds generated by the Proposed Transaction. TURN relies on the Commission's Gain on Sale decision,[19] contending that customers are entitled to 100 percent of the gain on the "Sale of PacGen's Ratepayer-Funded Assets."[20] TURN argues for the same ratemaking for any future sale of PacGen assets.[21] TURN calculates the gain on sale as the difference between net book

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15 See Dickman Testimony at 15; Dowdell Testimony at 19-20.

16 See Dowdell Testimony at 18-19 ("The value of the PacGen sale is reflected in the current stock price . . . . Thus, it appears PG&E's Proposed Transaction has already provided the support of its stock appreciation and stabilization benefits to the FVT.").

17 Video Message from Trustee of FVT – 5/11/23, available at https://www.youtube.com/watch?v=e5aKYukDmqk.

18 Beneficiaries of the FVT are generally PG&E customers, though only a subset. See Dickman Testimony at 14. The Commission has not limited its evaluation of the public interest to customer interests. See D.11-05-048 at 9.

19 D.06-05-041, as modified by D.06-12-043.

20 Dowdell Testimony at 4.

21 *Id.*

value and the proceeds of PG&E's sale of equity in Pacific Generation.[22] Even on its own terms, TURN's calculation of "gain" is incorrect, as it ignores both transaction costs and income tax liability.[23] More fundamentally, TURN's reliance on the Gain on Sale decision, and its recommendation that the Commission direct PG&E to return proceeds of the sale of equity to customers,[24] reflect a flawed understanding of the Proposed Transaction and Commission precedent.

First, TURN's assertion that the Proposed Transaction involves a gain on sale of assets misconstrues the nature of the transaction. Only the first step of the Proposed Transaction involves a disposition of assets (i.e., the contribution of assets from PG&E to Pacific Generation). This step does not, however, involve any gain. Pacific Generation will not pay PG&E any cash consideration for the contribution. Instead, PG&E, as owner of the equity in Pacific Generation, will receive the economic benefit of the asset contribution as an attribute of its equity ownership. For its part, Pacific Generation will record the contributed assets on its balance sheet at the same book value as held by PG&E today. The Commission will establish Pacific Generation's revenue requirement based on rate base, which will not change as a result of the contribution from PG&E. Hence, the contribution of assets from PG&E to Pacific Generation does not result in any gain, and TURN does not appear to suggest otherwise. The second step of the Proposed Transaction is PG&E's sale of equity membership interests in Pacific Generation to Minority Investor(s). That step does not involve the sale of assets. TURN side-steps the difference between an asset sale and a sale of equity, leading to flawed analysis and a misinterpretation and misapplication of the Gain on Sale decision. By its express terms, the Gain on Sale decision applies only to the sale of *assets*,[25] not to the sale of stock or other equity ownership.

Second, even as to asset sales, the Gain on Sale decision applies only when the transaction causes the asset to transition from regulated to

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22 *Id.* at 14 n.47.

23 See D.06-05-041 at 2 (referencing sharing of gains after income tax); Dowdell Testimony at 14 (calculating an estimated gain of 1.0 billion to 1.3 billion before tax).

24 Dowdell Testimony at 3.

25 D.06-05-041 at 2, as modified by D.06-12-043.

unregulated status, which is not the case here. The Gain on Sale decision specifies that the sharing of gain with customers applies to "tangible or intangible [utility] assets *formerly used to serve utility customers*."[26] Those were the facts of the precedents TURN cites, where PG&E sold depreciable utility assets to an acquirer not regulated by the Commission.[27] An asset sale that transitions the asset from regulated to unregulated status implicates "the incidence of risk" such that customers receive the gain on sale of depreciable property as compensation for the risk they bore in connection with the property formerly used to serve them.[28]

By contrast, when the asset remains regulated by the Commission following the transaction, customers remain in the same position post-transaction as they were pre-transaction. Customers' incidence of risk does not change. The Commission has therefore consistently ruled that 100 percent of the gain on sale of assets that remain regulated are retained by shareholders. In *Redding II*, for example, the Commission stated that no sharing would be required when transferred assets remain regulated.[29] In the decision denying the application for rehearing of its decision approving the acquisition of Wild Goose, the Commission stated:

> A gain-on-sale issue[] arises when you have property that is no longer used and useful, and the utility seeks to rid of the utility property. Post transfer, however, Wild Goose will continue to operate as a natural gas storage provider subject to all conditions previously ordered by the Commission. Thus, the net effect of the change of control is that Wild Goose's operations will continue unchanged. *Wild Goose's utility assets are still used and useful as utility property, and thus there is no gain-on-sale issue*, and there is no ground for alleging legal error.[30]

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26 D.06-05-041 at 2 (emphasis added).

27 D.21-08-027 (PG&E's sale of its San Francisco headquarters to Hines Atlas US LP, a private real estate company) and D.22-11-002 (PG&E's sale of the Tule River hydroelectric project to non-utility entity Tule Hydro LLC); D.20-11-024 (PG&E's sale of the Chili Bar hydroelectric project to the Sacramento Municipal Utility District).

28 D.06-05-041 at 26.

29 D.89-07-016, 32 CPUC 2d 233, 1989 WL 1785731 (*Redding II*) at 5.

30 D.07-03-047 at 9 (emphasis added). See also D.93-01-025, 47 CPUC 2d 580, 1993 WL 650845 (allocating 100 percent of the gain on sale of a water system to another regulated water utility).

In D.93-11-011, the Commission held that no gain was involved in the corporate spin-off of Pacific Telesis Group's wireless subsidiaries to its shareholders, because the assets at issue would continue to be regulated and dedicated to public utility service. There, the Commission cited *United States v. American Telephone & Telegraph Co.*, 552 F. Supp. 131, 201-205 (D.D.C. 1982) (*AT&T*)[31] in support of the conclusion that "there was no disposition of assets from which a gain could be realized."[32]

Consistent with these precedents, the Proposed Transaction, even if viewed as an asset sale (which it is not), would not implicate the Gain on Sale decision because the Commission would continue to set rates based on the original cost of the assets contributed to Pacific Generation.

TURN's proposal to allocate to customers the difference between net book value and the proceeds of the equity sale is incompatible with cost-of-service regulation. TURN asks the Commission to set rates (i.e., to provide a rate refund) on the basis of the market value of Pacific Generation's assets, as purportedly reflected in the market value of Pacific Generation's equity. Cost-of-service ratemaking, however, bases rates on original cost and ignores the fluctuations in the market value of the assets used to provide utility service. If, as TURN recommends, the Commission were to recognize the difference between net book value and market value in setting rates, then, to be logically and legally consistent, the Commission also would have to increase rate base to reflect its market value. TURN, however, argues for exactly the opposite approach, recommending that the Commission prohibit Pacific Generation from adjusting its book value to reflect the equity sale.[33] Applicants agree with this aspect of TURN's recommendation, which is consistent with Commission

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31 AT&T involved a corporate reorganization where AT&T's operating companies transferred regulated telecommunications assets to its subsidiaries and then spun them off to AT&T shareholders. The AT&T court distinguished between a scenario where assets were removed from utility operation, realizing a gain that needed to be allocated, and the instant transaction where "no assets [were] being removed from public service: the same assets will continue to be used to provide the same services to the same ratepayers[.]" AT&T at 203. Since the assets would stay in utility service, the court found there was no gain and therefore compensation to customers was not required.

32 D.93-11-011, 51 CPUC 2d 728, 1993 WL 614609 at 93.

33 Dowdell Testimony at 5.

precedent refusing to increase rate base to reflect an acquisition premium.[34] But accepting the premise that rate base will not change as a result of the Proposed Transaction, and that the Commission will continue to set rates based on original cost, means that rates cannot be adjusted to reflect market value. As the Commission explained in *Redding II*:

> In the case of a transfer from one regulated privately-owned utility to another, our policy has been clear: the assets in question continue in the rate base at their previously-determined value without any consideration for a premium above book value that might have been paid in the acquisition. In that way the gain on sale is implicitly awarded to the (transferred) ratepayers, since increase in value above book of the distribution plant is not reflected in rates.[35]

For this reason, no sharing of transaction proceeds can be ordered in that situation.

Since the Commission will continue to establish Pacific Generation's revenue requirement on the basis of original cost, just as it does at present for the assets that PG&E will contribute to Pacific Generation, the owners of Pacific Generation will be compensated in the same way as PG&E's owners are today. TURN's contention that shareholders will be compensated "twice" is therefore misplaced.[36]

Third, proceeds from the sale of equity in a utility are not shared. TURN asserts that the Commission should treat the difference between the net book value of Pacific Generation's assets and the proceeds of PG&E's sale of equity in Pacific Generation as a gain to be credited to customers. When utilities issue equity, however, the proceeds are not credited to customers, regardless of whether the stock sells at a premium to net book value.[37] There is no reason to treat PG&E's sale of equity in Pacific Generation any differently from a utility's normal course sale of equity. Indeed, the alternative to the Proposed Transaction is the sale of equity by PG&E Corporation. A stock issuance could also be expected to generate proceeds that exceed the fractional share of book

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34 See D.06-02-033 at 40 & n.55.

35 D.89-07-016 at 5.

36 Dowdell Testimony at 13.

37 See, e.g., D.15-06-051 (approving application of Southwest Gas to issue common stock for capital expenditures, with no sharing of proceeds with customers); D.92-05-063 (similar).

value, yet TURN does not recommend that that premium be allocated to customers. The outcome should be no different for the premium realized on the sale of equity in Pacific Generation.

The Commission's precedents on change in control transactions reinforce this conclusion. Under Section 854(b)(2), at least 50 percent of the "economic benefits" of a change of control transaction involving a utility with revenue greater than $500 million must be allocated to customers.[38] The Commission has not included an acquisition premium as part of the "economic benefits" allocated to customers. The Commission has clarified that the allocation of economic benefits of a Section 854 change in control transaction "did not involve an allocation of any gain on sale."[39] The Commission's decision not to treat an acquisition premium as an economic benefit to be allocated to customers in a change in control transaction means that the Commission should follow the same approach as to the Proposed Transaction, which does not result in a change in control. TURN's recommendation to allocate to customers the difference between net book value and equity sale proceeds as a "gain on sale" directly contradicts this precedent.

The foregoing applies equally to TURN's assertion that the Proposed Transaction would unduly restrict the gains ratepayers would receive on "future PacGen asset sales" from 100 percent of net book value to 50.1 percent of net book value.[40] If Pacific Generation proposes to sell its assets in the future to a buyer the Commission does not regulate, it would comply with Section 851, and the Commission would allocate gain or loss on sale to customers as appropriate. If PG&E decided to pursue a sale of equity in Pacific Generation, such that PG&E would own less than a majority of Pacific Generation's equity, PG&E

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38 Pub. Util. Code § 854.

39 D.05-05-014 at 11 (authorizing gain on stock sale to flow to shareholders and explaining that "[t]he approach that the Commission has taken in allocating gain-on-sale should not be confused with the allocation of other benefits from a transaction. [Section] 854(b)(2) requires that ratepayers receive an equitable allocation of the transaction's benefits. Even in transactions not explicitly covered by § 854(b)(2) the Commission has sometimes allocated a portion of the transaction benefits to ratepayers. However, those cases did not involve an allocation of any gain on sale. They involved a quantification of economic benefits of a transaction and an allocation of an equitable share of those benefits to ratepayers").

40 Dowdell Testimony at 11.

would comply with Section 854, which requires Commission approval for a change in control transaction. As noted, however, under Section 854, the Commission has not allocated to customers the premium on the sale of equity. Although it is premature to address how the Commission would address a future sale of equity by PG&E, which is not planned, there is no basis for TURN's objection that the current Proposed Transaction, or a hypothetical future transaction, would "deprive" customers of their share of sale proceeds.

E. Arguments Relitigating Past Commission Decisions Are Improper and Irrelevant

Significant portions of the testimony of TURN witnesses Jennifer Dowdell and Michael Gorman (the latter also testifying for EPUC) are improper attempts to relitigate prior Commission decisions, particularly in the proceedings on the bankruptcy Plan of Reorganization (Investigation 19-09-016) and the rate neutral securitization application (A.20-04-023). Those proceedings were resolved through Commission decisions in excess of 100 pages apiece, following cumulatively thousands of pages of briefing and written testimony, and weeks of evidentiary hearings.[41] The Commission should disregard the collateral attacks on these decisions.

Gorman's testimony is devoted almost entirely to a general discussion of PG&E's capital structure. For three reasons, the Commission should reject Gorman's recommendations for alternative accounting treatments in evaluating PG&E's capital structure and additional "transparency" in PG&E's dividend policies and deleveraging plans.[42] First, Gorman's recommendations are not linked to the Proposed Transaction. Gorman does not assert that the Proposed Transaction would worsen PG&E's capital structure or change the way in which PG&E determines its compliance with its regulated capital structure. In fact, Gorman appears to agree that the Proposed Transaction is "designed to increase common equity capital for PG&E Utility which can be used to further increase its equity ratio of total actual ratemaking capital structure while

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41 See D.20-05-053 (Decision Approving Reorganization Plan) (Bankruptcy Decision); D.21-04-030 (Decision Approving the Application of Stress Test Methodology to Pacific Gas & Electric Company) (Securitization Decision).

42 See, e.g., Gorman Testimony at I-3 (¶¶ 3-5), 7-8–7-10.

minimizing shareholder dilution."[43] The Commission should not entertain recommendations that are unrelated to the Proposed Transaction.

Second, the Commission's Bankruptcy Decision already put in place the framework for review of PG&E's capital structure and deleveraging.[44] That Decision requires PG&E to file an annual Tier 1 Advice Letter to inform the Commission of its capital structure and provide a forecast for deleveraging.[45] On December 21, 2022, PG&E filed its most recent advice letter pursuant to that decision.[46] In addition, in the Securitization Decision, the Commission expressly approved PG&E's proposal to compute its regulated capital structure without regard to the non-cash adjustments associated with future contributions to the CCT.[47] The Commission should not revisit that determination, as Gorman recommends.[48]

Third, the non-cash charge reflects future contributions to the CCT that will be funded by shareholder net operating losses. These contributions, and the associated accounting charges, do not affect how rate base is financed, and thus do not affect what customers pay.[49] The authorized return on equity that is included in the regulated revenue requirement represents the return on the equity invested in assets used to provide service. By Gorman's own rationale of focusing on what is actually funding rate base, the amount of equity invested in such assets is properly computed without regard to the non-cash accounting

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43 Gorman Testimony at I-2.

44 D.20-05-053 at 83–84 (rejecting Gorman's recommendation to impose specific financial metrics and standards, and instead stating that the Commission will "closely monitor PG&E's actual financial metrics"), 85 (directing PG&E, if it requires an ongoing capital structure waiver beyond the five years granted, to file an application with a deleveraging plan), Ordering Paragraph 9 (PG&E "shall annually submit to the Commission's Energy Division a Tier 1 Advice Letter, until further direction, informing the Commission of its current capital structure and deviation from its authorized capital structure, and updated annual forecast for de-leveraging, and its current credit ratings for secured and unsecured debt.").

45 *Id.* at 85.

46 Advice Letter 4689G/7690E (12/21/2022).

47 D.21-04-030 at 20 ("PG&E is allowed to exclude from its ratemaking capital structure any non-cash accounting charges related to future revenue credits associated with the Customer Credit Trust.").

48 Gorman Testimony at I-3 (¶ 3).

49 See, e.g., D.20-05-005 at 4 ("the non-cash charges [resulting from accounting for wildfire losses] do not impact how PG&E's existing assets are financed").

charge. Dowdell's assertion that PG&E is receiving earnings on "phantom equity"[50] is incorrect, irrelevant to the Proposed Transaction and thus outside the scope of this proceeding, and an improper collateral attack on Commission decisions, for the same reasons.

Dowdell's Testimony presents a broad frontal assault on the Commission's Bankruptcy Plan Decision and Securitization Decision.[51] This is likewise an improper collateral attack, and full responses to these arguments would divert attention from the issues that are properly within the scope of this proceeding. The Commission's extensively reasoned decisions approving the Plan of Reorganization and the Rate Neutral Securitization rejected the arguments of TURN and other intervenors that those transactions would harm customers.

With respect to the Plan of Reorganization, Dowdell takes issue with a substantial portion of the Fire Victim Trust funding coming in the form of stock. Dowdell's argument does not address the reasons that element of the Plan was necessary, as well as the fact that this was the agreement negotiated *by the fire victims* through their representatives. Indeed, Dowdell's testimony acknowledges that the stock has turned out well for the FVT, which now projects that claims will be fully funded.[52] Moreover, any concerns about the FVT are a further reason to support the Proposed Transaction, which enhances the ability of the Trust to monetize that stock.

Dowdell's attacks on the Securitization Decision are not only improper collateral attacks, but also are directly undermined by the testimony of TURN's other witness, Mr. Gorman, who acknowledges that the securitization "has played a major role in [PG&E's] deleveraging effort, in restoring its financial health."[53]

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50 Dowdell Testimony at 30.

51 *Id.* at 33-36 (Bankruptcy Plan), 36-38 (Securitization Decision).

52 *Id*. at 35.

53 Gorman Testimony at 2-3; see also *id.* at 2-2–2-3 ("A significant portion of [PG&E's] ability to restore its financial health is due to the Commission approval of certain regulatory mechanisms and use of securitization bonds . . . .").

F. The Proposed Transaction Is the Preferred Means of Raising Equity

The Proposed Transaction remains the preferred means of raising equity capital.[54] The Proposed Transaction will generate equity proceeds at a better valuation than an issuance of stock by PG&E Corporation. PG&E Corporation's current stock price reflects an expectation that the Proposed Transaction will avoid a dilutive issuance of stock in 2024. For this reason, equity research analysts reacted positively to PG&E's announcement of the Proposed Transaction, highlighting that the transaction would be accretive relative to the sale of common stock and predicting that investors will respond positively.[55] This positive reaction was in line with Wall Street's response to recent minority sales in the utility sector: equity analysts have noted the significant premiums achieved in these transactions as compared to public stock trading valuations.[56] TURN acknowledges that the Proposed Transaction's announcement has increased PG&E's stock price.[57] Although a quantification of the benefits of the Proposed Transaction relative to a common stock issuance depends on the price at which PG&E sells equity in Pacific Generation, transaction costs, and other future developments,[58] PG&E continues to expect that the Proposed Transaction will be a superior alternative. If it were not, PG&E would not complete the Proposed Transaction. PG&E respectfully submits that the Commission should permit PG&E to exercise its discretion as to the preferred means of raising equity, assuming, as is the case here, that PG&E's choice is not adverse to the public interest.

It is undisputed that PG&E will require additional equity capital in future years to support its capital expenditure program.[59] As PG&E's operational performance and cash flow continues to improve over time, PG&E anticipates that future issuances of common stock by PG&E Corporation will be more attractive than at

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54 See PG&E Prepared Testimony, Chapter 1, at 1-2.

55 PG&E Response to Data Request CalCCA_001-Q010Supp01 (highlighting equity analyst reports on the Proposed Transaction from UBS, Credit Suisse, and Bank of America).

56 See *id.* (quoting an August 2022 equity analyst report from Wolfe Research that noted the "sizable premiums" being commanded by utility asset sales).

57 See Dowdell Testimony at 18-19.

58 See Dickman Testimony at 17.

59 Dickman Testimony at 2; Dowdell Testimony at 29.

present. In the near-term, however, the Proposed Transaction is a better way to raise equity than a common stock issuance by PG&E Corporation, all else equal. Also, just because the Proposed Transaction will not satisfy all of PG&E's capital needs, in no way undermines the clear rationale and benefit of the Proposed Transaction—as compared to the alternatives—for the equity capital that it does raise.

TURN/EPUC witness Gorman comments on PG&E's payment of dividends to PG&E Corporation, implying that PG&E could meet its equity capital needs for future capital expenditures by retaining earnings.[60] In fact, PG&E's future equity capital needs substantially exceed its earnings, which means that PG&E would need to raise equity even if it did not pay a dividend. PG&E does retain earnings, but it must also raise additional equity from external sources. Balancing these considerations is essential to prudent management of the capital structure. In particular, reducing or eliminating dividends from PG&E to PG&E Corporation, as Gorman appears to suggest, would be unwise and contrary to customer interests. Since PG&E Corporation's only source of revenue is PG&E, a reduction in dividends from PG&E to PG&E Corporation would impair PG&E Corporation's ability to issue stock in the future, and also PG&E Corporation's paydown of debt. Deleveraging PG&E Corporation and reinstating PG&E Corporation's dividends are essential to improving its credit ratings and ability to issue stock in the future, both of which in turn will benefit PG&E and its customers.[61] The Proposed Transaction is an important element of PG&E's overall plan to manage equity through a combination of internally generated cash from earnings and external sources.

The proceeds of PG&E's sale of equity in Pacific Generation to Minority Investor(s) will support PG&E's future investments in rate base. Because cash is fungible, it is not practical to trace the dollars received from the equity sale to PG&E's capital investments. A segregation of the proceeds into a separate account, as CalCCA recommends, is infeasible.[62] The Public Utilities Code

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60 Gorman Testimony at 7 6.

61 See PG&E Prepared Testimony, Chapter 7, at 7 3.

62 See Dickman Testimony, Attachment B at 2.

restricts utilities' ability to use the proceeds of equity and debt,[63] yet the Commission does not require segregation of such proceeds into separate accounts. Rather, PG&E tracks its capital structure to confirm that rate base is financed with debt and equity as authorized. PG&E also files annual reports on its forecast capital spending, capital needs, and how it expects or intends to meet those needs.[64] These existing reporting mechanisms ensure that the Commission maintains oversight over PG&E's management of its equity capital. To provide further assurance that the Proposed Transaction would support rate base investments, PG&E would 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[65] and transaction costs) divided by 0.52. In other words, PG&E would invest equity in capital expenditures in an amount that is no less than the net equity sale proceeds.

G. Mechanics and Process

PG&E's Application proposed that the Commission address the Proposed Transaction in multiple stages: The Commission's Decision would address approval of a certificate of public convenience and necessity for Pacific Generation, the contribution of assets to Pacific Generation, and related ratemaking and debt issuance, and then, after signing with the Minority Investor(s), Applicants would submit a Tier 2 Advice Letter with the definitive agreements with the Minority Investor(s).[66] This is analogous to the approaches previously taken with respect to the gas plant sales by California's large investor owned utilities and the sale of PG&E's headquarters building.[67] No party objects to this process. A post-signing advice letter process will provide transparency to parties and the Commission regarding the identity of the

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63 Pub. Util. Code § 817.

64 Affiliate Transaction Rule IX.A, Appendix A-3 to D.06-12-029.

65 Tax liabilities include amounts that will be offset by net operating losses, resulting in contributions to the CCT.

66 PG&E Application at 45; PG&E Prepared Testimony, Chapter 5, at 5-4.

67 PG&E Prepared Testimony, Chapter 5, at 5-5–5-6.

Minority Investor(s) and any additions or changes to the agreements with the Minority Investor(s).

To facilitate the review of these matters, the Applicants propose to file two advice letters at or about the same time, one for the separation agreement and its exhibits and schedules, and a second for the Amended and Restated LLC Agreement and Minority Sale Agreement.

Applicants hope to close the transaction within approximately four months following the filing of the advice letters, after both disposition of the advice letters and approval by the Federal Energy Regulatory Commission of the Minority Investor(s)' acquisition of equity interests in Pacific Generation. Applicants urge the Commission to adopt the proposed advice letter process to enable the Applicants to meet this timeline.

In the Application, PG&E proposed that the Assigned Commissioner issue an Assigned Commissioner's Ruling (ACR) a few weeks after PG&E's rebuttal testimony addressing a narrower set of issues—particularly any potential modifications to the proposed Pacific Generation governance or other regulatory compliance issues.[68] The schedule adopted in the Assigned Commissioner's Scoping Memo and Ruling, issued January 23, 2023 (Scoping Memo), does not provide for an ACR, but the Scoping Memo notes that the assigned Commissioner and Administrative Law Judge "have the authority to issue a ruling at any time requiring additional evidence or argument if additional record development is needed."[69] Applicants would welcome an ACR should such issues exist.

No testimony was submitted that addresses Public Util. Code Sections 854 or 854.2 (change of control issues), the Proposed Transaction's exemption from the California Environmental Quality Act, or the inapplicability of the Tribal Land Transfer Policy.

In sum, PG&E and Pacific Generation request Commission approval of the Application in order to enable them to proceed with the Proposed Transaction, which would be an efficient means of raising equity capital, would preserve cost of service regulation, and satisfies the standards for Commission approval.

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68 PG&E Application at 45, PG&E Prepared Testimony, Chapter 5, at 5-5.

69 Scoping Memo at 7.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 1

ATTACHMENT A

PG&E'S PROPOSED MARKUP OF CALCCA'S RECOMMENDED TRANSACTION CONDITIONS

CalCCA
Attachment B
Recommended Transaction Conditions

1. The Commission will have the authority to review PG&E's performance of its obligations under its agreements with Pacific Generation, including the Intercompany Service Agreements (i.e., Operations and Services Agreement, Billing Services Agreement, Generation Facility Operations, Scheduling and Dispatch Agreement, and Fuel Procurement Agreement), the Legal and Regulatory Matters Agreement, the Benefits Agreement, the Interconnection Agreements, the Forecast Realization Adjustment Agreement, and the Wildfire Indemnification Agreement.

2. PG&E cannot recover from ratepayers the costs arising from the breach by PG&E or the Minority Investor(s) of any covenant or agreement contained in any of the Amended LLC Agreement or Minority Sale Agreement ("Transaction Documents").

3. Any chargebacks to PG&E for disputed excess costs in Pacific Generation's budget will not be recoverable from customers of PG&E or Pacific Generation, provided that the foregoing will not affect PG&E's recovery of previously-authorized rates.

4. Within 18 months following the closing, PG&E will expend capital in an amount no less than the net proceeds from the sale of Minority Equity Interests in Pacific Generation (after deducting tax liabilities and transaction costs) divided by 0.52.

5. PG&E will abide by the Commission's Standard of Conduct 4 in its dispatch and scheduling of output from Pacific Generation's assets, and PG&E and Pacific Generation will demonstrate in the joint annual ERRA Compliance proceedings that the principles guiding scheduling and bidding practices for assets transferred to Pacific Generation are the same before and after the transaction, unless approved in advance by the Commission.

6. Pacific Generation will request, through this proceeding or advice letter, Commission approval of Pacific Generation's adoption of PG&E's most recently approved amended Bundled Procurement Plan and application of that Bundled Procurement Plan to the assets transferred to Pacific Generation. Approval of future amendments to the Bundled Procurement Plan affecting Pacific Generation and PG&E will be requested of the Commission through joint PG&E and Pacific Generation filings in the applicable Integrated Resource Planning or other proceeding.

7. PG&E will apply FERC's hold harmless policy regarding non-recovery of the transaction and transition costs incurred to undertake the Proposed Transaction, including but not limited to:

    a. Third-party transaction costs, including financial advisor fees.

b. Any costs incurred to obtain releases under the mortgage indenture for properties subject to the lien of the mortgage indenture that will be transferred to Pacific Generation.

c. Any transfer taxes arising from the contribution of generation assets to Pacific Generation and the sale of Pacific Generation Interests to Minority Investor(s).

d. Any PG&E labor costs incurred to develop and effectuate the proposed transaction and/or to implement any legal, regulatory, or other internal structural changes resulting from the Transaction.

8. If any Member transfers an equity interest in Pacific Generation of at least 10 percent, Pacific Generation will file a Tier 1 advice letter.

9. Pacific Generation shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber any property necessary or useful in the performance of its duties to the public absent Commission approval.

10. [Deleted.]

11. Before the consummation of the Proposed Transaction, Pacific Generation shall submit for Commission approval substantially all balancing accounts, preliminary statements, electric rules, and electric tariffs applicable or related to the assets to be transferred (or joint tariffs, preliminary statements, electric rules, and electric tariffs, that accomplish the same). Such documents will conform in all material respects to the documents currently in use by PG&E for these assets. Pacific Generation and PG&E may also make subsequent advice letter filings to the extent necessary.

12. The cost of debt used to determine Pacific Generation's initial authorized revenue requirement will be the lesser of 1) PG&E's cost of debt authorized in D.22-04-008 or 2) Pacific Generation's actual cost of debt issued to fund the initial capitalization. Pacific Generation's authorized cost of capital may be updated in the next joint cost of capital application filed by PG&E and Pacific Generation or earlier if and when PG&E's authorized cost of capital is updated.

13. Pacific Generation's authorized return on equity shall initially equal, and not exceed, the return on equity granted by the Commission to PG&E. The authorized return on equity for Pacific Generation will be determined in the next joint cost of capital application or earlier if and when PG&E's authorized cost of capital is updated.

14. PG&E and Pacific Generation are required to jointly file all General Rate Case Phase I and II, ERRA Forecast, ERRA Compliance, Cost of Capital applications, Annual Electric Trueup filings, and all other generation-related ratemaking applications in which assets from both entities are involved, unless the Commission otherwise directs. In each joint filing:

a. The same level of detail must be provided for Pacific Generation aspects of the filing as it is for PG&E.

b. All Master Data Requests applicable to PG&E must also be applicable to Pacific Generation (to the extent relevant) and provided at the outset of each of those proceedings to provide all data necessary and relevant to the review of joint applications.

15. PG&E must clearly identify in its next Phase I general rate case all costs assigned or allocated to Pacific Generation pursuant to its intercompany agreements with Pacific Generation (including the Operations and Services Agreement, Billing Services Agreement, Generation Facility Operations, Scheduling and Dispatch Agreement, Fuel Procurement Agreement, Legal and Regulatory Matters Agreement, Benefits Agreement, Interconnection Agreements, Forecast Realization Adjustment Agreement, and Wildfire Indemnification Agreement), and identify how such costs previously have been assigned or allocated to PG&E's functional lines of business before the proposed Transaction.

16. In the event that the Commission (through the advice letter process) approves the Proposed Transaction before all the final versions of the Transaction Documents have been made available, any modifications to the Transaction Documents prior to the closing and following such Commission approval must be limited to non-material changes, unless the Commission otherwise directs or authorizes.

CalCCA
Attachment B
Recommended Transaction Conditions

~~No set of conditions can address all the risks to ratepayers the Proposed Transaction raises. In the event that the Commission approves the Proposed Transaction, it should attach conditions to its approval to minimize ratepayer harm. These conditions might include the list below. CalCCA reserves the right to amend or supplement the list of conditions based on issues raised in rebuttal testimony, hearings, legal briefing, or any other future events in this proceeding:~~

1. The Commission will have the authority to ~~monitor compliance by~~review PG&E~~ and the Minority Investor(s) with the~~'s performance of its obligations under its agreements with Pacific Generation, including the Intercompany Service Agreements (i.e., Operations and Services Agreement, Billing Services Agreement, Generation Facility Operations, Scheduling and Dispatch Agreement, and Fuel Procurement Agreement), the Legal and Regulatory Matters Agreement, the Benefits Agreement, the Interconnection Agreements, the Forecast Realization Adjustment Agreement, and the Wildfire Indemnification Agreement~~, and to impose reasonable regulatory remedies in the event of non-compliance~~.

2. PG&E cannot recover from ratepayers the costs arising from the breach by PG&E or the Minority Investor(s) of any covenant or agreement contained in any of the Amended LLC Agreement or Minority Sale Agreement ("Transaction Documents").

3. Any chargebacks to PG&E for disputed excess costs in Pacific Generation's budget will not be recoverable from customers of PG&E or Pacific Generation, provided that the foregoing will not affect PG&E's recovery of previously-authorized rates.

4. ~~Gross~~Within 18 months following the closing, PG&E will expend capital in an amount no less than the net proceeds from the sale of Minority Equity Interests in Pacific Generation ~~shall be used only to fund PG&E's utility capital expenditure program. PG&E will record the gross proceeds from the equity sale in a discrete account and will report use of funds to the Commission on a project-specific basis~~(after deducting tax liabilities and transaction costs) divided by 0.52.

5. ~~Pacific Generation~~PG&E will abide by the Commission's Standard of Conduct 4 ~~and~~in its dispatch and scheduling of output from Pacific Generation's assets, and PG&E and Pacific Generation will demonstrate in the joint annual ERRA Compliance proceedings that the principles guiding scheduling and bidding practices for assets transferred to Pacific Generation are the same before and after the transaction, unless approved in advance by the Commission.

6. Pacific Generation will ~~file a Tier 3 Advice Letter requesting~~request, through this proceeding or advice letter, Commission approval of ~~a Bundled Procurement Plan, adopting all aspects~~Pacific Generation's adoption of PG&E's most recently approved amended Bundled Procurement Plan and application of that ~~must be followed with respect~~Bundled Procurement Plan to the assets transferred to Pacific Generation. Approval of future amendments to the Bundled Procurement Plan affecting Pacific Generation and

PG&E will be requested of the Commission through joint PG&E and Pacific Generation filings in the applicable Integrated Resource Planning or other proceeding.

7. PG&E will ~~not recover in customer rates the~~apply FERC's hold harmless policy regarding non-recovery of the transaction and transition costs incurred to undertake the Proposed Transaction~~. Potential costs identified in PG&E's Application include~~, including but ~~are~~ not limited to:

   a. Third-party transaction costs, including financial advisor fees.

   b. Any costs incurred to obtain releases under the mortgage indenture for properties subject to the lien of the mortgage indenture that will be transferred to Pacific Generation.

   c. Any transfer taxes arising from the contribution of generation assets to Pacific Generation and the sale of Pacific Generation Interests to Minority Investor(s).

   d. Any PG&E labor costs incurred to develop and effectuate the proposed transaction and/or to implement any legal, regulatory, or other internal structural changes resulting from the Transaction.

   ~~e. Any costs/fees associated with the re-execution of the Interconnection Agreements for each of the transferred generation facilities.~~

8. ~~PG&E and Pacific Generation must modify the draft Amended and Restated LLC Agreement of Pacific Generation to prohibit the Members from transferring any interests in Pacific Generation or rights under the Agreement absent Commission approval.~~If any Member transfers an equity interest in Pacific Generation of at least 10 percent, Pacific Generation will file a Tier 1 advice letter.

9. ~~PG&E and~~ Pacific Generation ~~must modify the draft Amended and Restated LLC Agreement of Pacific Generation~~shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber any property necessary or useful in the performance of its duties to ~~prohibit~~ the ~~sale or transfer of Pacific Generation assets to any person or entity other than PG&E~~public absent Commission approval.

10. ~~Minority Investor(s) and their Related Parties (as defined in the Amended and Restated LLC Agreement of Pacific Generation) and Affiliates (as defined in the Commission's Affiliate Transaction Rules) cannot be Market Participants as defined in D.06-06-066, except to the extent that Minority Investor(s) constitute Market Participants as a result of their investment in Pacific Generation.~~[Deleted.]

11. Before the consummation of the Proposed Transaction, Pacific Generation shall submit for Commission approval substantially all balancing accounts, preliminary statements, electric rules, and electric tariffs applicable or related to the assets to be transferred (or joint tariffs, preliminary statements, electric rules, and electric tariffs, that accomplish the same). Such documents will ~~be identical~~conform in all material respects to the documents currently in

use by PG&E for these assets. Pacific Generation and PG&E may also make subsequent advice letter filings to the extent necessary.

12. The cost of debt used to determine Pacific Generation's initial authorized revenue requirement will be the ~~lessor~~lesser of 1) PG&E's cost of debt authorized in D.22-04-008 or 2) Pacific Generation's actual cost of debt issued to fund the initial capitalization. Pacific Generation's authorized cost of capital may be updated in the next joint cost of capital application filed by PG&E and Pacific Generation or earlier if and when PG&E's authorized cost of capital is updated.

13. Pacific Generation's authorized return on equity shall initially equal, and not exceed~~, and shall be presumed to be lower than~~, the return on equity granted by the Commission to PG&E. The ~~specific differential between the~~ authorized return on equity for Pacific Generation ~~and PG&E~~ will be determined in the next joint cost of capital application or earlier if and when PG&E's authorized cost of capital is updated.

14. PG&E and Pacific Generation are required to jointly file all General Rate Case Phase I and II, ERRA Forecast, ERRA Compliance, Cost of Capital applications, Annual Electric Trueup filings, and all other generation-related ratemaking applications in which assets from both entities are involved, unless the Commission otherwise directs. In each joint filing:

    a. The same level of detail must be provided for Pacific Generation aspects of the filing as it is for PG&E.

    b. All Master Data Requests applicable to PG&E must also be applicable to Pacific Generation (to the extent relevant) and provided at the outset of each of those proceedings to provide all data necessary and relevant to the review of joint applications.

15. PG&E must clearly identify in its next Phase I general rate case all costs assigned or allocated to Pacific Generation pursuant to ~~the Intercompany Service Agreements (as defined)~~its intercompany agreements with Pacific Generation (including the Operations and Services Agreement, Billing Services Agreement, Generation Facility Operations, Scheduling and Dispatch Agreement, Fuel Procurement Agreement, ~~the~~ Legal and Regulatory Matters Agreement, ~~the~~ Benefits Agreement, ~~the~~ Interconnection Agreements, ~~the~~ Forecast Realization Adjustment Agreement, and ~~the~~ Wildfire Indemnification Agreement), and ~~demonstrate~~identify how such costs ~~would~~previously have been assigned or allocated to PG&~~Es~~E's functional lines of business ~~absent~~before the proposed Transaction.

16. In the event that the Commission (through the advice letter process) approves the Proposed Transaction before all the final versions of the Transaction Documents have been made available, any modifications to the Transaction Documents prior to the closing and following such Commission approval must be limited to non-material changes, unless the Commission otherwise directs or authorizes.

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PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 2

DESCRIPTION OF PROPERTY AND ASSETS TO BE TRANSFERRED AND LIABILITIES TO BE ASSUMED

REBUTTAL TESTIMONY

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DESCRIPTION OF PROPERTY AND ASSETS TO BE TRANSFERRED AND LIABILITIES TO BE ASSUMED
REBUTTAL TESTIMONY

A. Introduction (*M. Schonherr*)

In Chapter 2 of the direct testimony, PG&E and Pacific Generation described the property and assets to be transferred and liabilities to be assumed through the Proposed Transaction and attached the form of Separation Agreement by which the asset transfer and assumption of liabilities will be effectuated. PG&E and Pacific Generation served supplemental Chapter 2 testimony on March 8, 2023, which attached draft schedules to the Separation Agreement describing the assets to be transferred. Specifically, PG&E served draft schedules describing: Owned Generation Real Property, Generation Real Property Leases, Generation Rights-of-Way, Assumed Contracts, Tangible Personal Property, Generation Business Records, Permits, Water Rights, Other Excluded Assets, and Other Retained Liabilities.[1]

The supplemental Chapter 2 testimony highlighted Schedule 2.2(f), which sets forth the categories of third-party contracts that relate exclusively to the operation of the assets to be transferred, and that PG&E proposes to assign to Pacific Generation. The supplemental testimony noted that, pursuant to Assignment and Assumption Agreements between PG&E and Pacific Generation,[2] Pacific Generation will step into PG&E's rights and be bound to perform PG&E's obligations under these third-party agreements, without otherwise changing the rights or obligations of the counterparties. Because these contract assignments will operate in a manner complementary to the proposed Intercompany Agreements, which provide for PG&E to perform all required generation-related services for Pacific Generation as its contracted operator, PG&E personnel will continue to administer these third-party contracts in the same manner as they do today.

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1 See Chapter 2, Supplemental Testimony, 2-AtchA-1–34.

2 A form of these Assignment and Assumption Agreements was included as an exhibit to the Separation Agreement that was attached to the direct Chapter 2 testimony.

For example, with respect to contracts between PG&E and specified water agencies, including Placer County Water Agency (PCWA) and Nevada Irrigation District (NID), the Assignment and Assumption Agreements and Intercompany Agreements between PG&E and Pacific Generation will ensure uninterrupted operation of the hydro projects and associated water rights, and continued performance of all obligations to these agencies, including obligations to deliver water and coordinate operations. Therefore, as the supplemental testimony clarified, the assignment of these contracts will not adversely affect the interests of the water agencies with respect to the continued supply of water, or coordination of operations, consistent with the terms of these agreements.

In general, intervenors did not respond to the direct or supplemental Chapter 2 testimony, the form of Separation Agreement, or the draft schedules to the Separation Agreement. SVP, PCWA, and NID submitted testimony expressing concerns regarding the post-closing relationship of the parties in connection with several FERC hydroelectric projects and their related licenses and contracts. CHRC submitted testimony expressing concerns regarding dam safety in connection with the hydroelectric assets to be transferred. These specific hydroelectric-related issues are addressed in Sections 2.B, C, and D below.

B. The Bucks Creek Project Should Remain Part of the Transaction (*M. Schonherr*)

SVP argues that the FERC license for the Bucks Creek Hydroelectric Project (the Bucks Creek Project) and the contracts between PG&E and Santa Clara relating to the Bucks Creek Project should be excluded from the Proposed Transaction, based on its stated concerns regarding the operation and maintenance of the Bucks Creek Project and its exposure to joint-and-several liability as a co-licensee. As detailed below, PG&E has offered to remain liable under the SVP contract proposed to be assigned to Pacific Generation, and has also offered to retain an operation and maintenance agreement, rendering SVP's concerns moot. The Commission should reject SVP's recommendation to exclude the license and contracts associated with the Bucks Creek Project from among the assets and obligations that are transferred to Pacific Generation in the Proposed Transaction.

1. Background on the Bucks Creek Project and Related Contracts

The Bucks Creek Project is an 84.8-MW hydroelectric facility located in Plumas County, consisting of the 65-MW Bucks Creek Development and the 19.8-MW Grizzly Development. The PG&E-owned Bucks Creek Development includes the Bucks Creek powerhouse and associated dams, reservoirs, and conveyances. The Grizzly Development, owned by the City of Santa Clara (Santa Clara), includes the Grizzly powerhouse and an associated conveyance. The project operates under a FERC hydroelectric license, FERC Project No. 619 (the Bucks Creek Project License), pursuant to which PG&E and Santa Clara are currently co-licensees.

PG&E and Santa Clara (doing business as Silicon Valley Power, or SVP) have entered into two contracts that shape their relationship as co-owners of the Bucks Creek Project and co-licensees under the Bucks Creek Project License. The overarching agreement, known as the Grizzly Development and Mokelumne Settlement Agreement (GDMSA), was reached in 1990 to memorialize a settlement of SVP's claims for compensation due to statutory revisions in priority to obtain a license related to the Mokelumne River Project. It provides for SVP's rights to own and operate the Grizzly powerhouse (built in 1993), sets forth the terms and conditions for power scheduling, interconnection services, and operation and maintenance work between PG&E and SVP, and apportions responsibility between the parties for meeting their joint obligations under the Bucks Creek Project License.[3] A separate Grizzly Operation and Maintenance Agreement (Grizzly OMA), first entered into in 2002 and subsequently renewed, provides for SVP's employment of PG&E as Operation Manager of the Grizzly Development. The Grizzly OMA is the contractual mechanism by which SVP fulfills its obligation under Section 5 of the GDMSA to select and provide an Operation Manager for the Grizzly Development.

The GDMSA contains an assignment provision in Section 19.1, which provides separately for the assignment of PG&E's and SVP's *rights and*

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[3] Because the GDMSA contains the interconnection agreement between PG&E and SVP, it is on file as a rate schedule with FERC.

obligations under the agreement, and the assignment of the agreement, or part of the agreement, itself. With respect to the former, either PG&E or SVP "may assign its rights and obligations pursuant to this Agreement to a third party, but only so long as such assignment does not adversely affect the other Party."[4] With respect to the latter, the GDMSA, in whole or in part, "shall not be assigned except upon prior written consent of the other Party," which "shall not be unreasonably withheld."[5] The Grizzly OMA contains an assignment provision that cross-references Section 19.1 of the GDMSA.[6]

2. Proposed Bucks Creek Transfer and Related Procedural History

The generation assets that Applicants propose to transfer from PG&E to Pacific Generation include the Bucks Creek Project License and the Bucks Creek Development. Because both the GDMSA and Grizzly OMA directly relate to these generation assets, Applicants initially proposed to also transfer both agreements from PG&E to Pacific Generation, as set forth in draft Schedule 2.2(f) to the form of Separation Agreement.[7]

After learning of SVP's concerns regarding the proposed transfer of the Bucks Creek generation assets and related contracts, PG&E initially reached out to SVP by letter on December 5, 2022, to open a dialogue. On February 10, 2023, SVP wrote to PG&E to object to the proposed assignment of the GDMSA and Grizzly OMA to Pacific Generation. The parties then met on February 15 to discuss SVP's objections. On April 19, 2023, PG&E wrote to SVP, clarifying that the proposed assignment of the GDMSA "provides for Santa Clara's current bundle of rights under the GDMSA to continue without degradation after the completion of the transaction," and assuring SVP that the same experienced employees of PG&E currently involved in performing PG&E's obligations under the GDMSA and Grizzly OMA would continue to do so under the Intercompany Agreements between PG&E and Pacific Generation. The April 19 letter further stated that PG&E would not assign to Pacific Generation certain

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4 Exhibit No. SVP-2 at 117.

5 *Id.* at 118.

6 Exhibit No. SVP-3 at 2.

7 See Chapter 2, Supplemental Testimony, 2-AtchA-5–6.

portions of the GDMSA related to power delivery—namely, Sections 7 (Relationship to Interconnection Agreement), 8.5 (Grizzly Supplemental Power), 8.6 (Maintenance Power), and 9 (Delivery of Grizzly Power), which would remain with PG&E. PG&E closed by requesting a meeting with SVP during the week of April 24 "to work together through each section of the GDMSA with the goal of preparing assignment or other documents that address your concerns," and offered to make PG&E personnel with decision-making authority available for that meeting and any further discussion.

SVP did not reach back out to PG&E to schedule such a meeting or on any next steps to allow PG&E an opportunity to address SVP's concerns. Instead, SVP served direct testimony on June 16, 2023, reiterating the same concerns and objections regarding which PG&E had been attempting to substantively engage with SVP for months.

On June 28, 2023, PG&E sent a letter to SVP proposing a different structure for the rights and obligations under the Grizzly OMA and the GDMSA to address SVP's stated concerns, as described below. SVP acknowledged receipt of PG&E's letter, and the parties are set to meet regarding these issues later in July.

3. PG&E Has Offered to Retain Primary Liability for the Bucks Creek Project Contracts In Response to SVP's Concerns

The Commission should not accept SVP's recommendation to exclude the Bucks Creek Project License and associated contracts from the Proposed Transaction.[8]

SVP's "principal concern" is that the Proposed Transaction "will not enable PG&E and Pacific Generation to operate and maintain the hydroelectric assets that comprise the Bucks Creek Project license safely and reliably, and that Santa Clara, as a co-licensee with joint and several

[8] SVP does not explicitly ask the Commission to exclude the Bucks Creek Development itself from the generation assets to be transferred. Rather, it appears to assume that the exclusion of the Bucks Creek Project License from the assets approved for transfer as part of the Proposed Transaction would effectively force the Bucks Creek Development to remain with PG&E. See Kolnowski Testimony at 53-57. PG&E takes no position regarding this assumption and reserves all rights to challenge it in subsequent filings.

liability pursuant to the Federal Power Act, will be faced with unintended consequences."[9] SVP states that it has not consented to Pacific Generation serving as Operation Manager of the Grizzly Development and is not convinced Pacific Generation has the operational and technical qualifications to do so.[10] Also, in the event of a failure to perform a license obligation, a breach of the GDMSA, or a dispute regarding O&M of the Grizzly Development under the Grizzly OMA, "Santa Clara fears that it may find itself with no means to enforce its license rights and/or contractual rights because PG&E's Proposed Transaction does not provide for contractual privity between Santa Clara and Pacific Generation."[11]

SVP's stated concerns are misplaced. The assignment of the Grizzly OMA and the GDMSA *would* provide for contractual privity between SVP and Pacific Generation, allowing SVP to enforce the terms of both contracts against Pacific Generation. Furthermore, their assignment to Pacific Generation would change neither the obligations owed to SVP nor the manner in which such obligations are performed. Following the closing of the Proposed Transaction, Pacific Generation would be a controlled subsidiary of PG&E and would be regulated (as PG&E is today) as a cost-of-service public utility by the Commission, with a dedicated revenue stream from customers sufficient to recover its authorized revenue requirement. Pursuant to the Intercompany Agreements, including the Operations and Services Agreement, the same experienced PG&E personnel that perform services at the Grizzly Development today would continue to perform the services required of the Operation Manager under the Grizzly OMA. Pacific Generation would therefore have the financial, technical, and operational qualifications to operate the generation assets safely and reliably.

Nevertheless, as part of PG&E's continued effort to work with SVP, on June 28, 2023, PG&E sent a letter to SVP offering a different structure for

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9 Kolnowski Testimony at 27.

10 *Id.* at 41, 50.

11 *Id.* at 28. We address other specific concerns stated by SVP elsewhere in this testimony.

the Grizzly OMA and the GDMSA to address the concerns raised by SVP in its testimony.

Grizzly OMA Proposal. Instead of assigning the Grizzly OMA to Pacific Generation as part of the Proposed Transaction, PG&E will continue as SVP's counterparty under that contract. This approach will not be substantively different from Applicants' original proposal, under which PG&E would continue to operate the assets transferred to Pacific Generation. Nevertheless, to address SVP's concerns about the assignment of the Grizzly OMA and the consequent nominal change in Operation Manager of the Grizzly Development from PG&E to Pacific Generation, PG&E will revise the relevant documentation, including the Separation Agreement and related Schedule 2.2(f), to reflect PG&E's retention of the Grizzly OMA.

GDMSA Proposal. PG&E has requested that SVP consent to the assignment to Pacific Generation of the portions of the GDMSA that do not relate to power delivery: namely, all of the GDMSA except Section 7, Section 8.5, Section 8.6, and Section 9, which PG&E will retain. To address SVP's stated concerns about Pacific Generation's performance of the GDMSA, PG&E has drafted a Consent to Assignment that provides for PG&E to remain liable for the portions of the GDMSA that are assigned to Pacific Generation.

Together, these changes fully address the concerns raised in SVP's testimony as to the identity of the Operation Manager of the Grizzly Development, the nature and quality of the services provided to SVP under the Grizzly OMA and GDMSA, and the preservation of its contractual mechanism to enforce the negotiated apportionment of any failure to meet the Bucks Creek Project License conditions or any related contractual rights.[12] In short, PG&E's proposal will ensure that the position SVP occupies as co-licensee and owner of the Grizzly Development following the closing of the Proposed Transaction is no different from the position it occupies today. As such, if SVP were to continue to withhold its consent to the partial assignment of the GDMSA, PG&E would view such act as an unreasonable withholding of consent prohibited under Section 19.1 of the

12 See Kolnowski Testimony at 43, 53.

GDMSA. In that scenario, PG&E is prepared to enforce the terms of the GDMSA against SVP.

In addition to pursuing all remedies against Santa Clara if it continues to withhold consent to the proposed partial assignment of the GDMSA, PG&E would plan to assign the *rights and obligations* of those portions of the GDMSA to Pacific Generation, in order to minimize the impact of the pending resolution of this contractual dispute on the Proposed Transaction. Pursuant to Section 19.1 of the GDMSA, the only condition to such assignment of rights and obligations is that SVP not be adversely affected. This condition would be met, because there would be no change to the contract, no change to SVP's contractual counterparty, and no change to the identity of the Operation Manager of the Grizzly Development. The difference between this scenario and SVP's consent to the proposed partial assignment of the GDMSA is that SVP would not have direct contractual remedies against Pacific Generation in addition to PG&E. This consequence, which is not in SVP's interest, would be the direct result of SVP's decision to unreasonably withhold its consent to the proposed partial assignment of the GDMSA.

4. The Partial Assignment of the Bucks Creek Project License From PG&E to Pacific Generation as Co-Licensee Is Properly Before FERC

SVP's contention that FERC will not approve a partial transfer of the Bucks Creek Project License from PG&E to Pacific Generation without the consent of SVP as co-licensee is likewise misplaced. That is an issue for FERC to decide.

On December 13, 2022, PG&E and Pacific Generation filed a joint application with FERC to transfer the 22 project licenses associated with PG&E's hydroelectric portfolio to Pacific Generation, including a partial transfer of the Bucks Creek Project License (i.e., a substitution of Pacific Generation in for PG&E as Santa Clara's co-licensee). SVP filed a protest of this application, on the basis that it is a co-licensee on the Bucks Creek Project License and does not consent to the partial transfer. FERC issued an Additional Information Request (AIR) regarding PG&E's application on March 10, 2023. PG&E laid out its opposition to SVP's purported absolute veto authority over the partial license transfer in its April 10, 2023 response

to FERC's AIR,[13] to which SVP replied on April 28,[14] reiterating its earlier points. FERC subsequently issued a notice of PG&E's and Pacific Generation's joint application to transfer the hydroelectric project licenses as part of the Proposed Transaction—including the Bucks Creek Project License—which did not mention the Bucks Creek co-licensee issue. Pursuant to this notice, comments, motions to intervene, and protests to the application are due by July 13. FERC will address in due course SVP's argument that FERC not approve the application without its consent. That argument provides no basis for this Commission to delay or reject this Application.[15]

5. The Bucks Creek Project Is Part of a Portfolio of Hydroelectric Assets That Should All Be Transferred

The Bucks Creek Project (including the Bucks Creek Development and Bucks Creek Project License) is part of PG&E's portfolio of hydroelectric assets, and it should be contributed to Pacific Generation to effectuate the transfer of substantially all of PG&E's non-nuclear generation assets by means of the Proposed Transaction. The two "unique" hydroelectric assets to which SVP compares the Bucks Creek Project are being excluded from the transfer by virtue of the fact that they have either already been sold and transferred to a third party (in the case of the Tule River Project in the Kings-Crane Valley Area)[16] or are in the process of being sold (in the case of the Deer Creek Project in the Drum Area, the sale and transfer of which have already received approval from the Commission and FERC). These two generation assets are therefore in a fundamentally different position than the Bucks Creek Project, and their exclusion provides no justification

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13 See FERC Docket No. P-619, Response to Additional Information Request and Limited Request for Treatment as Critical Energy Infrastructure Information, at 3-6 (Apr. 10, 2023).

14 See FERC Docket No. P-619, Response to Pacific Gas & Electric Company and Pacific Generation LLC's Response to Additional Information Request (Apr. 28, 2023).

15 FERC has already explained that SVP's argument also provided no basis for FERC to withhold its authorization of the Proposed Transaction under FPA section 203. See A.22-09-018, Pacific Gas and Electric Company and Pacific Generation LLC's Motion for Official Notice of FERC Order Related to the Proposed Transaction, Attachment A, at 30-31 (June 8, 2023).

16 The sale of the Tule River Project closed on May 26, 2023.

for SVP's attempt to carve out the generation assets and contracts associated with an additional hydroelectric facility from the transfer.[17]

C. The Objections of PCWA and NID Regarding Water Rights Are Misplaced (*M. Schonherr*)

Placer County Water Agency (PCWA) and Nevada Irrigation District (NID) have long-standing contractual relationships with PG&E relating to water from PG&E's Drum-Spaulding Hydroelectric Project. PCWA's and NID's lengthy recitations regarding their history with Drum-Spaulding and their alleged water rights, under contract and/or general water rights law, are irrelevant to the issues currently before the Commission. Whatever water rights PCWA and NID do or do not have currently will remain unchanged by the Proposed Transaction, and PCWA and NID provide no valid reason that their rights should be expanded. Thus, while PG&E disagrees with various of PCWA's and NID's assertions regarding the negotiations of and obligations under their respective contracts, and PG&E's historical performance, PG&E will not detail here its differing views on those subjects.

1. PCWA/NID Positions and Concerns

PCWA proposes that unspecified conditions be imposed to alleviate its concerns (discussed below).[18] NID proposes that Drum-Spaulding be excluded from the Proposed Transaction, or alternatively that conditions relating to the Drum-Spaulding interests be imposed.[19]

PCWA's and NID's specifically identified concerns regarding the Proposed Transaction's effects on performance under their contracts are meritless for the reasons described below.

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17 SVP's assertion that "there are other means of effectuating PG&E's desire to include the Bucks Creek Project License in the proposed transfer to Pacific Generation"—namely, purchasing the Grizzly Development from Santa Clara, Kolnowski Testimony at 57—suggests that SVP's continued refusal to consent to the transfer of the Bucks Creek Project License and associated contracts may be motivated by its desire to sell rather than a desire to protect its existing rights. PG&E has repeatedly made clear to SVP, most recently in its June 28 letter, that its efforts to work with SVP regarding the assignment of the GDMSA and Grizzly OMA should not be viewed as an opportunity for SVP to attempt to cause PG&E to purchase its interest in the Grizzly Development or to remove Santa Clara as co-licensee of the Bucks Creek Project.

18 Fecko Testimony at 5-6.

19 Hanson Testimony at 3.

First, as explained in PG&E's prior testimony, under the Proposed Transaction (a) Pacific Generation will assume all contractual obligations that PG&E owes to either PCWA or NID, and (b) PG&E will perform the operations and maintenance at Drum-Spaulding on Pacific Generation's behalf. And the Proposed Transaction does not affect any non-contractual water rights that PCWA or NID may claim to have.

Second, PCWA/NID's concerns that the Proposed Transaction would result in negative incentives relating to maintenance and operations costs are unfounded. The same PG&E personnel and programs as at present will continue to be provided. PCWA hypothesizes that the Minority Investors might *over*pay, resulting in "pressure to cut costs."[20] PCWA provides no support for this unlikely prediction. The Minority Investors will be sophisticated entities that will perform significant due diligence. And in any event, PCWA's hypothesis is not logical: Pacific Generation will be a cost-of-service regulated utility, with a revenue requirement that includes operations and maintenance costs. To the extent operations and maintenance costs are reduced, Pacific Generation's future revenue requirement will reflect such reductions. Conversely, NID hypothesizes that, while PG&E currently provides operations and maintenance services at Drum-Spaulding with little mark-up, "PG&E, as the service provider to Pacific Generation, will have no incentive to be similarly reasonable regarding costs."[21] This hypothesis is equally illogical: Whatever incentives PG&E currently has to hold costs down in selling its services to NID are at least equally strong when it is providing those services to an entity of which PG&E owns more than 50 percent. In addition, the Commission will review and approve the allocation of costs between PG&E and Pacific Generation.

PG&E further addresses the concerns regarding governance, with respect to budgeting and operations, elsewhere in this rebuttal testimony.[22]

PCWA and NID further hypothesize that the Proposed Transaction may involve Minority Investors whose "interests may incent them to demand

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20 Maisch Testimony at 17.

21 Hanson Testimony at 13.

22 See Rebuttal Chapter 5 at 9-13.

deferral of critical investments to increase shareholder returns."[23] Pacific Generation will be a cost-of-service rate regulated utility. Under such ratemaking, Pacific Generation earns an allowed rate of return on rate base, which in turn is increased only through capital investments. If capital investments are deferred, then rate base will be less than it otherwise would be, and the Minority Investors would benefit less, not more, than they would have had the investments been made.

2. Communications with PCWA/NID

Although PG&E believes that the Proposed Transaction does not constitute the type of transfer that triggers the contractual provisions calling for discussions with PCWA or NID, PG&E has made clear to PCWA and NID repeatedly that it is willing to engage in discussions as if those contractual provisions had been triggered in order to provide assurance that the Proposed Transaction will not negatively affect PCWA's or NID's contractual rights. PG&E has made significant efforts to reach out to PCWA and NID to address their potential concerns.

On September 28, 2022, the date the Application was filed, PG&E notified both PCWA and NID of the Proposed Transaction, provided information regarding the proposal, and offered to meet to discuss and answer any questions. PCWA and NID received the Application and supporting testimony, and the updates thereto, which provided extensive information about the Proposed Transaction. Further communication efforts as to each are outlined below.

NID. On October 4, 2022, PG&E discussed the proposed transaction with NID and provided NID additional information. On November 3, 2022, PG&E met virtually with NID and provided more information about the Proposed Transaction, again expressing its desire to continue to provide information that NID requested. Between November 22, 2022 and December 5, 2022, PG&E and NID exchanged a series of letters and emails regarding the Proposed Transaction in which PG&E provided NID the additional information it requested. On December 5, 2022, PG&E again met

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23 Fecko Testimony at 5; See also Hanson Testimony at 13 (investors may have "perverse incentive of obtaining short term gains by foregoing . . . capital improvements/expenditures").

virtually with NID and provided additional information. On February 22, 2023, PG&E provided NID additional information regarding how Pacific Generation would satisfy each of the requirements set forth in Section 8.2 of its agreement as if such section were applicable (which PG&E maintains is not the case), and provided a proposed consent agreement and a proposed assignment and assumption agreement. NID has never proposed edits to that agreement or otherwise commented as to any way that the proposed agreement is inadequate. On March 8, 2023, PG&E followed up with NID requesting to continue discussions regarding the Proposed Transaction and proposed assignment and assumption. On March 20, 2023, NID delivered a letter to PG&E requesting additional information, and noting that upon PG&E's representations being documented the conditions for NID's consent to assignment of the Coordinated Operating Agreement would likely be satisfied. On June 29, 2023, PG&E delivered a letter to NID stating that the additional information NID requested in its March 20 letter had been provided in the supplement to Chapter 2 of the prepared testimony in support of its application that it served on March 8, 2022. PG&E's letter further explained, consistent with PG&E's prior correspondence, that the proposed transfer to Pacific Generation satisfied the requirements set forth in the agreement between NID and PG&E, and further offered to alleviate any potential concerns by affirming that PG&E is not released from its obligations under the COA through the Proposed Transaction.

PCWA. On October 11, 2022, PG&E followed up after sending the Application to PCWA to schedule a meeting regarding the Proposed Transaction. On October 18, 2022, PG&E met with PCWA and provided additional information. During the meeting, PCWA did not articulate any way in which the assignment of the PCWA-PG&E contract to Pacific Generation would negatively affect PCWA's rights to receive water deliveries. Instead, PCWA expressed its desire to purchase Drum-Spaulding project facilities. On October 19, 2022, PG&E explained that it was not interested in selling the Drum-Spaulding project, and that the Proposed Transaction is not a "transfer" for purposes of their Water Supply Agreement. On November 9, 2022, PG&E again met with PCWA and provided additional information regarding the Proposed Transaction

including offering further assurances that the water delivery obligations under the agreement would not be impaired. Once again, PCWA did not articulate any way in which the Proposed Transaction would impair its water delivery rights. From November 16, 2022 through March, 2023, PG&E followed up with PCWA numerous times seeking another meeting to discuss the Proposed Transaction.[24] As part of these communications, PG&E sent to PCWA a proposed form of assignment and assumption agreement on February 23, 2023, and followed up on March 8, 2023 to inquire about any feedback on that draft; however, PCWA has never requested changes to that draft or otherwise informed PG&E of any purported deficiency in that document. And PG&E has further assured PCWA that PG&E agrees that it

[24] In particular:

- On November 30, 2022, Seth Perez of PG&E texted Andy Fecko (PCWA) about following up on the November meeting.
- On December 5, 2022, Fecko responded that he was busy and that "I'll let you know when we are ready to meet again."
- Not having heard further (other than receipt of a lawsuit by PCWA in January), Perez emailed Fecko on January 26, 2023 "checking in" and requesting a follow-up to the November meeting.
- On January 30, 2023 Fecko replied, expressing skepticism that a meeting would be productive given that PG&E had not changed its position.
- On January 31, 2023, Mike Schonherr of PG&E responded, confirming that Drum-Spaulding is not for sale, but expressing willingness to discuss any concerns about the Proposed Transaction's effect on the agreement with PCWA.
- On February 23, 2023, Schonherr emailed Fecko proposing a path forward and offering to meet.
- On February 24, 2023, Fecko replied that he would respond upon return from travelling.
- On March 8, 2023, with no response from PCWA, Perez of PG&E follows up on the proposed path forward and offers to meet.
- On March 22, 2023, Fecko writes to PG&E stating that PCWA would only meet if PG&E reversed its position and agreed that the Proposed Transaction was a "transfer" within the meaning of their contract, and only if the meeting constituted a settlement discussion (with respect to the lawsuit that PCWA filed in January against PG&E and that remains pending).
- On March 24, 2023, Schonherr responded that PG&E would not agree to accept PCWA's position as a pre-condition for meeting, but reiterating the offer to meet without preconditions.
- The parties have subsequently held settlement discussions, which are ongoing.

will not be released from its direct contractual obligations to PCWA by the Proposed Transaction.[25]

3. Proposed Conditions to Proposed Transaction

To the extent that PCWA hereafter proposes conditions (as-yet-unspecified) to address its alleged concerns about the Proposed Transaction, those conditions are inappropriate for many of the same reasons that PCWA's concerns lack merit, as discussed above.

NID proposes several conditions:

1. Require Pacific Generation not to transfer any water rights regarding water historically provided to NID, to anyone other than NID.[26] This is an inappropriate attempt to expand NID's rights beyond those it has under contract and applicable law, and there is no basis for doing so. In any event, the merits of a potential future transfer should be decided by the Commission and/or the courts in the context of such future proposal, rather than in the abstract now and in the context of this proceeding.
2. Require that Pacific Generation not encumber or mortgage the Drum-Spaulding infrastructure in a manner such that it could be foreclosed upon without assuming all related contractual obligations.[27] If Pacific Generation were to default, and if title to Pacific Generation's assets that are necessary or useful in the performance of Pacific Generation's duties to the public were transferred pursuant to the terms of a secured debt indenture, pledge, or other encumbrance, we expect that the Commission would require those assets to continue to be used to provide utility service to the public until the Commission authorizes otherwise.[28] No more has been required of PG&E, and no more should be required of Pacific Generation.
3. Require that NID now be given a right of first refusal to acquire the Drum-Spaulding Project from Pacific Generation. Again, this is an inappropriate attempt to expand NID's rights. In addition, this demand

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25 Letter from Mike Schonherr (PG&E) to PCWA General Manager, July 5, 2023.

26 Hanson Testimony at 11.

27 *Id.* at 15.

28 See D.23-04-041 at 13.

does not relate to any of the above-described concerns articulated by NID.[29]

For all the foregoing reasons, PCWA's and NID's objections and proposed conditions are not well taken and should be disregarded.

D. The Objections Of CHRC Regarding Dam Safety Are Misplaced (*E. Van Deuren*)

1. CHRC's Dam Safety Attacks Fall Outside the Scope of This Proceeding

CHRC's critiques of PG&E's approach to dam safety fall outside of this proceeding's scope. CHRC raises concerns about PG&E's current dam operations and maintenance, but that is not relevant to whether the Commission should approve the Proposed Transaction. CHRC expresses concern about PG&E's *historical* dam safety practices and "*current* operation and maintenance of numerous hydroelectric power facilities"[30] but CHRC does not identify how the Proposed Transaction would increase dam safety risks. This proceeding—which focuses on PG&E's proposed transfer of assets and sale of PG&E's equity interests in Pacific Generation, not PG&E's public safety practices—is not the appropriate forum for CHRC's criticisms.

Moreover, FERC is the agency with jurisdiction and expertise with respect to dam safety, and this proceeding should not be diverted into second-guessing FERC's determination around issues that fall squarely within its jurisdiction.

2. PG&E's Dam Safety Program Is Robust and Effectively Designed to Advance Safe and Reliable Dam Operations

Contrary to CHRC's concerns, PG&E's Dam Safety Program ("DSP") is robust and effectively designed to promote long-term safe and reliable dam and water conveyance operations. The DSP, developed based on FERC's 2007 Owner's Dam Safety Program Guidance, develops and implements measures to evaluate and mitigate the risk of large uncontrolled water releases. It also manages compliance to satisfy or exceed threshold

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29 *Id*.

30 Steindorf Testimony at 7 (emphasis added).

regulatory requirements. The DSP focuses on optimizing the operation and maintenance of PG&E's dams. PG&E's promotion of dam safety through the DSP is rigorous and involves inspections such as monthly visual inspection walk-downs, annual engineering inspections, annual FERC and California's Division of Safety of Dams ("DSOD") inspections, and 5-year independent consultant inspections; review and approval of dam engineering design documents; construction support; surveillance and monitoring; condition assessments; special engineering studies; emergency action plans; a Dam Safety Advisory Board comprised of dam safety industry experts who critically assess the performance of the DSP; internal safety guidance standards and procedures; quality control and quality assurance systems; performance metrics and tracking; and a Dam Safety Training Program for employees. DSP is led by a Chief Dam Safety Engineer who executes and oversees the program's objectives with access up to the highest level of PG&E's leadership, and a dam safety manager who administers the program. The Safety and Nuclear Oversight Committee of PG&E's Board of Directors oversees the DSP.

Other initiatives enhance PG&E's efforts under the DSP, such as the PG&E's Spillway Assessment and Improvement Program ("SAIP") and ISO 55000 asset management program certification. SAIP established, pursuant to regulatory requirements, mitigation plans as needed for each spillway in PG&E's portfolio to mitigate the risk of large uncontrolled water releases.[31] These plans involve considerable capital improvement work on some of the PG&E spillways and involve a collaborative effort with FERC and DSOD to develop and gain approval for spillway designs. PG&E's dam portfolio is included in its asset management program; ISO 55000 certification demonstrates that the company's dams meet the international standard for asset management regarding value, alignment, leadership, and assurance. The DSP, SAIP, and ISO 55000 certification show that PG&E's dam safety approach is comprehensive and well-managed, appropriately contemplates and mitigates risk, and protects public safety. PG&E's intensive approach to

31 2023 PG&E GRC Rebuttal Testimony at 8-10.

dam safety would not change with Pacific Generation as licensee of the hydroelectric assets.

3. PG&E's Dam Safety Program Is Highly Regulated and Aligned With FERC and DSOD Regulatory Requirements

Overseen by FERC and DSOD, PG&E's DSP is highly regulated. Thus, well-established avenues exist for regulators to receive information necessary for their assurance of a licensee's capacity to manage and finance dam operations. Specifically, the transfer of the hydroelectric licenses requires FERC approval, and FERC has jurisdiction to evaluate whether Pacific Generation has the requisite technical and financial capacity to be the licensee.

FERC and DSOD also heavily regulate the DSP program itself. FERC regulation focuses on dam safety governance, surveillance, potential failures, risk, and technical expertise. As stated above, FERC itself also conducts annual inspections on higher risk dams and 5-year inspections on lower risk dams. For high and significant hazard dams, FERC requires risk assessments, emergency action plans, and independent consultant reviews. DSOD regulation underscores the performance of dams, dam engineering and construction, potential dam design alterations, and testing of dam operations and control systems. These paths of regulation under FERC and DSOD would not change with Pacific Generation as the asset owner and FERC licensee. The oversight of PG&E's dam operations would remain stringent and ensure that Pacific Generation is a responsible licensee. CHRC's concerns that ratepayers would be adversely impacted by a "nuanced structuring of PG&E's responsibility for and authority over [how] infrastructure issues are resolved"[32] are unjustified. Under FERC's and DSOD's careful regulation, PG&E would continue its program for safe dam operations and Pacific Generation would provide due oversight and supervision. Allocation of responsibility is clear: Pacific Generation would be responsible for the consequences of the dam operations—thus, CHRC's concerns about "defer[red] or avoid[ed] responsibility" and the implications

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32 Steindorf Testimony at 12.

for victim compensation, capital investments, and public safety[33] are unfounded. Additionally, Pacific Generation would carry the obligations for FERC and DSOD regulatory compliance. Contrary to CHRC's assertion, the Commission has adequate information to establish that "the part[ies] responsible for long-term operations and maintenance, substantive regulatory compliance, and dam safety [would be] held accountable"[34] for dam operation issues.

Additionally, PG&E has properly relied on the CEII designation in its submission of dam safety materials to FERC. The CEII designation has a clear purpose: to shield from disclosure sensitive materials related to critical energy or electric infrastructure. This protection is part of what incentivizes asset owners to share the information—because they trust the information will remain secure. Release of such information would be counterproductive to not only CEII's purpose but also the goal of risk mitigation. Protecting the sensitive information from disclosure is also essential to deter threats to the dam assets. PG&E has strictly followed FERC's guidance on CEII designation. PG&E's dam safety information is in the hands of regulators who are highly skilled experts and the established representatives for conducting necessary reviews.

The Commission also plays a role in overseeing dam safety through the Risk Assessment and Mitigation Process ("RAMP") and GRC. RAMP demonstrates PG&E's keen attention to assessing and mitigating dam safety risks. Through RAMP, PG&E gives a quantitative probabilistic evaluation of top company safety risks and then articulates corresponding mitigation plans. In its 2020 RAMP report,[35] PG&E identified the risk of a large uncontrolled dam water release (i.e. a dam failure) and developed a risk mitigation plan accordingly. PG&E's risk model provided a quantitative analysis of potential risks for each of its dams categorized by FERC as high or significant hazard. The risk model issues a total risk score (in comparison with other risk events such as wildfire or loss of containment incident) as a

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33 *Id.* at 7.

34 *Id.* at 13.

35 A.20-06-012, *Application of Pacific Gas and Electric Company to Submit its 2020 Risk Assessment and Mitigation Phase Report*, at 13-3 (June 30, 2020).

basis for controls and mitigation strategies to prevent the event of a large uncontrolled water release. The 2020 RAMP report's conclusions regarding risk control and mitigation informed the 2023 GRC. Altogether, the RAMP and GRC demonstrate that PG&E thoroughly assesses dam safety risks and proactively develops plans for mitigation.

4. PG&E's Dam Safety Capital Plan Evidences the Utility's Financial Commitment to Dam Safety

PG&E's capital plan demonstrates the utility's serious financial commitment to dam safety. These capital commitments show that PG&E has no intention to "delay capital improvement investments" or hide information on "how (dam) repairs will be financed."[36] PG&E's approved capital plan, which will be shared with potential investors, includes approximately $100 million annually for dam-related projects. Such dam capital projects include repairs for aging infrastructure, dam retrofits, and spillway projects. Specific dam capital projects include McCloud, Lake Almanor (i.e., Canyon Dam), and Pit 7 among others. The capital plan shows that PG&E has rigorously evaluated the scope and type of maintenance and repairs needed for its dam infrastructure. These financial commitments would continue if Pacific Generation were the licensee of the hydroelectric assets. Therefore, the Proposed Transaction should not raise concerns about Pacific Generation's financial capability to make needed capital investments in the dam portfolio.

5. CHRC's Characterizations of PG&E Dam Safety Issues Are Exaggerated and Inaccurate

CHRC characterizations of PG&E's dam safety risks are exaggerated, speculative, and inaccurate. For example, CHRC erroneously states that the placement and alignment of the McCloud dam and spillway leads to hillside erosion, which could precipitate spillway failure upon a high flow event.[37] However, the hillside erosion is in fact located on the canyon opposing the McCloud spillway structure, thus, erosion would not threaten the spillway's safety or stability.

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36 Steindorf Testimony at 7, 12.

37 *Id.* at 13.

Moreover, CHRC conflates spillway failure with dam failure. For example, CHRC mischaracterizes the consequences of a potential spillway failure at the Lake Almanor dam. The Lake Almanor spillway is in a basalt bedrock excavation at the dam's left abutment, so dam failure would not be a given if the spillway failed. CHRC also incorrectly states the purpose of the Lake Almanor spillway—the spillway's primary purpose is to protect the dam from overtopping. PG&E's analyses establish that Lake Almanor's size and configuration are appropriate to pass the probable maximum flood level while also maintaining over seven feet of freeboard to the dam's crest.

CHRC makes several misstatements regarding PG&E's analysis of a potential Lake Almanor dam failure. First, contrary to CHRC's claim that "PG&E has never evaluated a potential failure of Canyon Dam,"[38] the results of PG&E's hypothetical Lake Almanor dam break studies are included in the inundation maps that are part of Attachment 9 of CHRC's testimony. Furthermore, CHRC incorrectly suggests that PG&E's hypothetical Lake Almanor dam break studies do not satisfy regulatory guidelines, but FERC and DSOD have both accepted PG&E's studies.

Lastly, CHRC mentions certain dam issues PG&E has already taken steps to address. For example, PG&E recognizes the suboptimal design of the McCloud dam spillway, namely that the spillway's rated capacity is less than the probable maximum flood. PG&E received FERC authorization in June 2023 and DSOD authorization in May 2023 for a geotechnical investigation to collect subsurface data to support analysis and design of project alternatives. This investigation is due for completion in late 2023.

38 *Id.* at 23.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 3

DESCRIPTION OF PACIFIC GENERATION

REBUTTAL TESTIMONY

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A. Pacific Generation Leadership Will Effectively Oversee the Safe and Reliable Operation of Pacific Generation Assets

Pacific Generation Officers will bring significant expertise to effectively oversee its generation assets. The contrary assertions of several parties[1] are without merit.

As the President of Pacific Generation, I can affirm my commitment to safety and operational excellence. I bring 18 years of utility experience in various areas including asset and risk management, system protection and automation, engineering, and electric generation interconnection.

I most recently served at Pacific Gas and Electric Company (PG&E) as the Senior Director of Transmission and Substation Maintenance and Construction, where I led the department that maintained and built 20,000 miles of PG&E transmission lines and 1,000 substations. My other previous roles at PG&E are numerous but include my work from September 2019 to June 2021 leading PG&E's Transmission and Substation Project Management department to develop and execute PG&E's portfolio for transmission capital. I also served as an interim Vice President of Transmission Operations from September 2019 to February 2020, where I supervised safe operations of PG&E transmission and substation infrastructure. From February 2017 to September 2019, I was Senior Director of the department that developed and invested in PG&E transmission assets. I led the Electric Generation Interconnections department as director from December 2014 to February 2017, ensuring the safe and reliable interconnection of electric generation infrastructure including rooftop solar and utility scale renewables.

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[1] Kolnowski Testimony at 34 (raising concerns about Pacific Generation's "technical and operational qualifications to operate and maintain [the] assets); Hanson Testimony at 9 (maintaining that it lacks "adequate information . . . to evaluate Pacific Generation, LLC's suitability"); Steindorf Testimony at 7 (expressing concerns about the "operation and maintenance of numerous hydroelectric power facilities" after PG&E transfers such assets to Pacific Generation).

My deep safety and technical expertise enable me to effectively manage the safe operation of Pacific Generation's assets. In my tenure at PG&E, I achieved first quartile safety performance for occupational safety. As Senior Director of PG&E's Transmission and Substation Maintenance and Construction, I was accountable for the safety of 1,400 PG&E coworkers and 1,300 PG&E contractors. In this capacity, I attended safety trainings and meetings and carried out field visits focusing on safety culture, safety risks, and mitigation. Alongside other senior executives, I also led and engaged in team operating reviews on safety performance for PG&E coworkers and contractors including analyzing safety performance indicators and Corrective Action Program submissions and resolutions. I also acted as a voting member on PG&E's Corrective Action Review Board, led safety incident investigations, and root cause evaluations. I led PG&E in the development of the original Risk Assessment Mitigation Phase models the California Public Utilities Commission (Commission) relies on to evaluate the risk and value of PG&E's proposed investments. I previously served as an Incident Commander in PG&E's Emergency Operation Center, where I helped lead PG&E's response to earthquakes, wildfire, floods, and broad interruption of customers' electric service. Altogether, I am equipped to provide robust safety governance to Pacific Generation.

I am committed to leading Pacific Generation with a focus on the safe and reliable operation of its assets for the benefit of California. I will ensure that highly competent and experienced PG&E personnel continue to maintain and operate the generation assets. I will also lead Pacific Generation in accordance with its status as a regulated utility under the Commission's oversight. In alignment with PG&E's broader goals, highly-qualified personnel committed to safety and reliability—along with the Commission's cost-of-service regulation—will promote the benefits customers receive from Pacific Generation's assets.

Moreover, contrary to the suggestions of certain parties, Pacific Generation will be financially qualified to implement the capital investments and infrastructural improvements necessary for safe operations. For example, Pacific Generation is well-positioned to make capital expenditures needed for maintenance. Pacific Generation anticipates Minority Investor(s) will be a source of new equity infusions for future utility capital needs. Such equity

investments will advance Pacific Generation's capitalization in order to maintain and enhance the safety and reliability of its generation facilities. The additional equity would also promote the development of new energy facilities that would advance California's clean energy goals.

B. Pacific Generation Does Not Need to Separately Register With NERC

As stated in its response to Silicon Valley Power's (SVP) data request, PG&E does not intend to register Pacific Generation as a separate entity with the North American Electric Reliability Corporation (NERC).[2] SVP's concerns that Pacific Generation should be separately registered are unwarranted.

NERC's purpose is to promote electric grid reliability and security. Registration under NERC is required for Bulk Power System owners, users, and operators who are then subject to NERC reliability standards. Thus, the function of entity registration is to clearly identify those entities that are responsible for compliance.[3] In other words, entity registration is to ensure there are no gaps for purposes of adhering to the NERC reliability standards for the sake of Bulk Power System reliability. As an entity currently registered with NERC, PG&E takes its responsibility of protecting the electric grid's reliability and security seriously and would not take any action inconsistent with this mission. PG&E's NERC Compliance Registry ID number (NCR) NCR05299 covers all its assets, including the non-nuclear generation assets it proposes to contribute to Pacific Generation. PG&E's obligations for operating and maintaining compliance for those assets are tied to its NCR number. As Pacific Generation's parent company, PG&E intends to operate the non-nuclear generation assets under the existing compliance, ID NCR05299, no differently than it has since registering with NERC in 2007. Therefore, after the assets are transferred to Pacific Generation, there would be no compliance gap for operating and maintaining the assets for the bulk electric system—compliance obligations for Pacific Generation-owned assets would remain linked to PG&E's existing NCR number.

Additionally, SVP's interpretation of NERC's registration requirements is incorrect.

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2 PG&E Response to Data Request CityofSantaClaraDBASVP_002-Q006.

3 NERC Rules of Procedure, Section 501, page 41 (effective Aug. 25, 2022).

Under NERC's Centralized Organization Registration ERO System End User Guide (CORES Guide), a holding company *may* register its subsidiary as a separate entity but it is under no obligation to do so. Notably, the CORES Guide is a user guide for the NERC registration portal system and is completely distinct from NERC Rules of Procedure, although SVP implies that the guide contains rules of procedure. The guide clearly states that "at a minimum, the registered entities provide the 'Upstream' Holding Company – the ultimate parent organization."[4] Thus, a registered entity (i.e., PG&E) *may* register its affiliates and subsidiaries, but it need not. The CORES Guide states that "[i]f your entity is an Upstream Holding Company, then Subsidiaries *may* be entered from the list of registered entities."[5] The language that "Subsidiaries are registered entities" means that a holding company may choose to register its subsidiaries, but it is not required to. There is no language in this CORES Guide that states a holding company is required to register its subsidiaries.

C. Pacific Generation May Pursue Asset Sales When In Customers' Interest

Nevada Irrigation District expresses concern that the Proposed Transaction would allow Pacific Generation to make a "downstream sale of assets" to third parties.[6] Such concerns are unwarranted. In determining whether to conduct an asset sale, Pacific Generation will continue PG&E's process of evaluating an asset's cost-effectiveness, the impact on customers of an asset disposition, the asset's private market valuation, and separation costs.[7] If Pacific Generation concludes that pursuing an asset sale is in customers' interest, it will do so, in compliance with Section 851.[8]

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4 NERC, Centralized Organization Registration ERO System (CORES) End User Guide: Portal Users and Registered Entities, at 10 (Mar. 2021), https://www.nerc.com/pa/comp/RegistrationReferenceDocsDL/Centralized_Organization_Registration_ERO_System_(CORES)_End_User_Guide_March2021Update.pdf.

5 *Id.* at 11 (emphasis added).

6 Hanson Testimony at 14-15.

7 PG&E Response to Data Request DR_TURN_001-Q001.

8 Any sale of assets by Pacific Generation would be subject to the governance rights of the Minority Investor(s), if applicable, under Section 8.1(d) of the Amended and Restated LLC Agreement.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 4

PACIFIC GENERATION'S FUTURE RELATIONSHIP WITH PG&E

REBUTTAL TESTIMONY

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A. Introduction

Pacific Gas and Electric Company (PG&E) served amended and restated Chapter 4 testimony on March 17, 2023 to provide further detail on certain of the various intercompany agreements between PG&E and Pacific Generation that will provide for the ongoing operation of Pacific Generation's assets and business and be entered into at the closing of the asset contribution. The amended and restated testimony attached contemplated forms of those intercompany agreements.[1]

Intervenors provided minimal testimony on the terms and scope of these intercompany agreements. The few substantive objections lodged against the intercompany agreements were mostly directed at the Operations and Services Agreement. As discussed in more detail below, those objections miss the mark. More broadly, PG&E and Pacific Generation recognize the Commission's authority to review PG&E's performance of its obligations under these agreements.[2]

B. Under the OSA, PG&E Will Provide Pacific Generation With the Services Necessary and Appropriate for the Operation of Its Business

As explained in PG&E's direct testimony, at the closing of the asset contribution, PG&E and Pacific Generation will enter into an Operations and Services Agreement (OSA), pursuant to which PG&E will provide Pacific

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[1] See Chapter 4, Amended and Restated Testimony, Attachments A-I. PG&E served draft forms of the Operations and Services Agreement; Generation Facility Operations, Scheduling and Dispatch Agreement; various pro-forma Interconnection Agreement forms; Billing Services Agreement; Legal and Regulatory Matters Agreement; Wildfire Indemnification Agreement; Fuel Procurement Agreement; Benefits Agreement; and Forecast Realization Adjustment Agreement.

[2] While California Community Choice Association's (CalCCA) proposed condition no. 1 references monitoring compliance of the Minority Investor(s) with obligations under the intercompany agreements, the Minority Investor(s) are not a party to any of those agreements, which are exclusively between PG&E and Pacific Generation. See PG&E's proposed markup of CalCCA's Recommended Transaction Conditions, Attachment A to PG&E Rebuttal Testimony Chapter 1.

Generation with services necessary to operate the generation assets on an ongoing basis, in compliance with applicable law and in accordance with applicable utility practices.[3] Several parties raise concerns about various provisions of the OSA and the specific nature of the services provided by PG&E thereunder. These objections are based on erroneous interpretations of the agreement and unfounded concerns regarding the ongoing relationship between PG&E and Pacific Generation that it memorializes.

Silicon Valley Power (SVP) contends[4] that it cannot be assured PG&E's experienced personnel and contractors will continue to operate and maintain the transferred generation facilities, as contemplated in the OSA, due to the agreement's "successors and assigns" clause, which permits assignment or amendment in certain circumstances.[5] This concern is misplaced. PG&E and Pacific Generation do not foresee a scenario in which PG&E ceases to operate Pacific Generation's assets. In this respect, the relationship between PG&E and the assets to be contributed to Pacific Generation would be the same as at present. In theory, PG&E today could hire a third-party service provider to operate the generation assets. The hypothetical possibility of transferring operational responsibility to a third party is therefore not a basis to reject or condition the approval of the Proposed Transaction. As to SVP specifically, PG&E will retain the Grizzly Operation and Maintenance Agreement, ensuring no change in the operations and maintenance services provided to SVP for the Grizzly Development.[6]

SVP also intimates that Pacific Generation would view the potential employment of a different service provider for the generation assets as a way to "cut corners to maximize profits."[7] Pacific Generation would have no such incentive. Under the OSA, PG&E will bill Pacific Generation on the basis of cost as determined by the Commission in PG&E's and Pacific Generation's General

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3 See Chapter 4, Amended and Restated Testimony, at 4-3–4-9.

4 See Kolnowski Testimony at 45-46.

5 See Chapter 4, Amended and Restated Testimony, at 4-AtchA-29 (OSA, Section 12.2).

6 See PG&E Rebuttal Testimony, Chapter 2, Section B.

7 Kolnowski Testimony at 35.

Rate Case proceeding.[8] As a result, the payments Pacific Generation makes to PG&E under the OSA will be part of Pacific Generation's authorized revenue requirement. In addition, the financial motivation of the Minority Investor(s) would be to earn a regulated return on rate base.

Nor does the fact that SVP is not a third-party beneficiary of the OSA affect SVP's rights in connection with the Bucks Creek project license.[9] Following the proposed transfer of the Bucks Creek license and assignment of the relevant portions of SVP's other associated contract from PG&E to Pacific Generation, SVP would have the same rights under those assigned portions of the contract as it had prior to the Proposed Transaction, with the only difference being the substitution of Pacific Generation for PG&E as counterparty. Pacific Generation would be obligated to perform the contract in the same manner as PG&E, and if it fails to do so, SVP would have a remedy against Pacific Generation and PG&E, based on PG&E's commitment to remain liable in exchange for SVP's consent to assign the contract, as discussed in Chapter 2. Furthermore, PG&E will retain its specific operations and management contract with SVP, and remain on as operation manager of the Bucks Creek Project. The OSA contemplates many other aspects of Pacific Generation's functioning in addition to direct operations of the generation facilities, such as human resources and finance and corporate affairs, among others.[10] Granting SVP rights as a third-party beneficiary of the OSA is unnecessary and could impair the smooth functioning of the OSA as between PG&E and Pacific Generation.

There is also no merit to SVP's speculation that the OSA is too vague to ensure Pacific Generation receives the necessary support for its overall business and generation facilities.[11] The OSA documents the continuation of the existing work of PG&E personnel on the assets that would be contributed to Pacific Generation. In this context, the OSA sets out PG&E's responsibility to provide "all services necessary or appropriate for the operations of PacGen," including those performed by PG&E at, for and to the generation assets and

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8 See Chapter 4, Amended and Restated Testimony, 4-AtchA-19–23 (OSA Article VI: Compensation and Payment).

9 See Kolnowski Testimony at 43-44, 47.

10 Chapter 4, Amended and Restated Testimony, at 4-4–4-5.

11 See Kolnowski Testimony At 35-37; Steindorf Testimony at 12.

PG&E's generation business immediately prior to closing, as well as "such other services as are or become necessary or appropriate" to operate Pacific Generation's business and the generation assets going forward.[12] Additionally, the OSA requires PG&E to perform all such services for and to Pacific Generation's generation assets in accordance with Good Utility Practice.[13] These provisions are designed to ensure that the status quo is maintained. A specific listing of services and actions "that PG&E would be contractually obligated to take in support of the reliability and safety of the transferred facilities,"[14] as SVP references, may be appropriate in the context of an agreement with an unaffiliated third-party service provider that has not previously been involved with the assets in question, but is unnecessary and inappropriate in this context. The OSA's comprehensive description of services removes any risk that Pacific Generation would fail to receive the services required. Additionally, PG&E, by virtue of its majority ownership of Pacific Generation, retains the incentive to provide all services Pacific Generation requires.

Criticism of other allegedly ambiguous OSA provisions is off-base, as well. The discretionary "additional services" provision seized on by both SVP and the California Hydropower Reform Coalition (CHRC), OSA Section 2.1(c), grants PG&E only limited discretion to decline to provide *new* services that are outside the scope of those provided or contemplated as of closing, and which are not necessary for PG&E to operate and maintain Pacific Generation's business and assets under the OSA and the other Intercompany Service Agreements at the standard of care required by the OSA. For example, as PG&E made clear in its responses to CHRC data requests,[15] Section 2.1(c) would have no applicability to the inspection of the generation facilities and attendant repairs, which fall squarely within the "Services" provided by PG&E under the OSA. Similarly

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12 Chapter 4, Amended and Restated Testimony, at 4-AtchA-13.

13 *Id.* at 4-AtchA-16.

14 Kolnowski Testimony at 36. The OSA's definition of "Services" provides that the service categories enumerated in Exhibits A and B are examples of certain types of cost-assigned services and cost-allocated services, respectively, and are not exhaustive lists of all services to be provided by PG&E.

15 See PG&E Response to Data Request CHRC_001-Q020.

misguided is SVP's assertion that the OSA's definition of "Reserved Owner Matters" creates a loophole that could be used by PG&E to avoid its service provider obligations. This category applies to obligations reserved by law for Pacific Generation as owner of the generation assets, in addition to Pacific Generation's supervisory authority and certain matters relating to its board of managers, and not "the services necessary or appropriate to operate the business of PacGen and to operate and maintain the PacGen Assets,"[16] for which the OSA makes PG&E responsible.

C. Under the OS&DA, PG&E Will Continue to Dispatch and Schedule Output From Pacific Generation's Facilities in the Same Least-Cost Manner

As explained in PG&E's direct testimony, at the closing of the asset contribution, PG&E and Pacific Generation will enter into a Generation Facility Operations, Scheduling & Dispatch Agreement (OS&DA), which will obligate PG&E to operate, maintain, dispatch and schedule Pacific Generation's facilities in accordance with applicable law and regulation, pursuant to delegated authority from Pacific Generation. As the appointed Scheduling Coordinator for Pacific Generation under the OS&DA, PG&E will schedule and dispatch the full output from Pacific Generation's facilities into the California Independent System Operator (CAISO) market using PG&E's existing least-cost dispatch principles as part of an integrated resource portfolio. The same PG&E team that undertakes these dispatch and scheduling efforts for PG&E today will continue to do so for Pacific Generation facilities following the closing. Thus, the Proposed Transaction will have no functional effect on the manner in which output from the generation facilities is currently scheduled and dispatched. The OS&DA will also address PG&E's responsibility for operating and maintaining the generation facilities, including planning and scheduling maintenance outages and responding to emergencies; PG&E's responsibilities in this regard will again be unchanged from its current role. Finally, the OS&DA will give PG&E authority to procure certain necessary resource inputs (such as electricity for energy storage facilities and fuel for gas-fired power plants) and enter into agreements on behalf of Pacific Generation for the purchase and sale of energy, capacity, ancillary services, and renewable energy credits (or similar products).

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16 Chapter 4, Amended and Restated Testimony, at 4-AtchA-11.

Because of the continuity in operations, scheduling, and dispatch of the generation facilities that will be effectuated by the OS&DA and the other intercompany agreements, PG&E does not object to the substance of CalCCA's proposed condition no. 5, which would require continued compliance with the Commission's minimum standard for least-cost dispatch and no change from PG&E's current practices regarding the scheduling and bidding of output into the CAISO market with respect to the contributed assets. Compliance with Standard of Conduct 4 on least-cost dispatch[17] will continue to be achieved by PG&E in its role as Scheduling Coordinator for the integrated resource portfolio that includes Pacific Generation's assets, and, unless approved in advance by the Commission, Pacific Generation and PG&E will demonstrate in the joint ERRA compliance proceedings that the principles guiding scheduling and bidding practices for the transferred generation assets are the same following the transaction as those guiding PG&E's current practices for those assets.[18]

D. There Is No Risk of "Additional Transfers" That Would Jeopardize the Safe and Reliable Operation of Pacific Generation

SVP's stated concern that the Proposed Transaction exposes it to the risk of "additional transfers" does not stand up to scrutiny.[19] SVP states that the successors and assigns provision in the OSA and other agreements show that a future sale by PG&E of its equity interest in Pacific Generation is "specifically contemplated."[20] As is customary, the agreements address the possibility of an assignment, but no such assignment is contemplated. If PG&E were to sell equity in Pacific Generation such that PG&E no longer owned a majority,

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17 As established by the Commission, Standard of Conduct 4 is a minimum standard of conduct applicable to the procurement responsibilities of PG&E and other utilities, which provides: "The utilities shall prudently administer all contracts and generation resources and dispatch the energy in the least-cost manner." D.02-10-062 at 74 (Conclusion of Law 11); *see also* D.03-06-076 at 22; D.05-01-054 at 12-13; D.11-10-002 at 4-5.

18 PG&E would accept CalCCA's proposed condition no. 5 with the following revisions (noted in bold italics): "***PG&E*** will abide by the Commission's Standard of Conduct 4 ***in its dispatch and scheduling of output from Pacific Generation's assets,*** and ***PG&E and Pacific Generation*** will demonstrate in the joint annual ERRA Compliance proceedings that ***the principles guiding*** scheduling and bidding practices for assets transferred to Pacific Generation are the same before and after the transaction, unless approved in advanced by the Commission."

19 Kolnowski Testimony at 45.

20 *Id.* at 46.

Commission review and approval would be required, ensuring protection of the interests of both SVP (as co-licensee of the Bucks Creek project) and the public. Specifically, as the owner of at least 50.1 percent of Pacific Generation's equity following the Proposed Transaction, PG&E could not sell or otherwise assign its interest in Pacific Generation, a public utility organized and doing business in California, without first obtaining approval from the Commission for a change in control under Public Utilities Code Section 854.[21] Likewise, any attempt by PG&E to assign or transfer its day-to-day managerial authority over Pacific Generation would require Commission review and approval under Section 854 to the extent such assignment or transfer would bring about a change in "actual or working control" over Pacific Generation[22] or would affect "the power to direct or cause the direction of the management and policies" of Pacific Generation.[23] FERC approval would be required, as well.[24] SVP's concern that the Proposed Transaction could lead to further transfers that might potentially jeopardize the safe and reliable operation of the generation assets is therefore without merit.

E. The Commission Retains Jurisdiction to Review Any Amendments and Additions to the Intercompany Agreements

Because they will be exhibits to the Separation Agreement, the intercompany agreements will be included in the post-closing advice letter process.[25] Given the ongoing need to identify and memorialize the functions PG&E will perform for Pacific Generation (consistent with current practice), Applicants anticipate that these agreements may be amended—as the agreements contemplate and permit—and/or additional intercompany agreements will become necessary during the post-signing period. The Commission will have plenary authority to review any such amendments or additions to the intercompany agreements, but Applicants do not believe that

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21 See, e.g., D.03-06-069 at 7 ("[U]nder diverse fact situations where a public utility owner has either transferred or proposed to transfer a 50% interest in the utility, or has acquired a 50% interest in another utility, the Commission has asserted jurisdiction to review the transaction under § 854 and has approved or disapproved the transfer.").

22 D.90363, 1 CPUC 2d 579, 1979 WL 50261 (1979).

23 D.07-10-001 at 17 (quoting D.07-05-061).

24 See PG&E Rebuttal Testimony, Chapter 5, Section C.1.

25 See *id.*, Chapter 1, Section G.

advance Commission approval for any such amendments or additions would be required. Seeking Commission advance approval would impose an unnecessary burden on the Commission and would involve substantial delay in implementing amendments or additions as may be required to adapt the relationship between PG&E and Pacific Generation to changed circumstances. The Commission, however, retains jurisdiction to review any amendments to the current intercompany agreements or any additional agreements at any time, including in future proceedings such as General Rate Case proceedings.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 5

TRANSACTION & SALE PROCESS, MINORITY GOVERNANCE, & DISTRIBUTIONS

REBUTTAL TESTIMONY

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A. Introduction (*S. Rogers*; *J. Plaster*)

In Chapter 5 of their direct testimony, Pacific Gas and Electric Company (PG&E) and Pacific Generation outlined the proposed marketing process for the sale of the Minority Equity Interests to the Minority Investor(s) and the key agreements that will govern the transaction with the Minority Investor(s)—the proposed Amended and Restated Limited Liability Company Agreement of Pacific Generation (LLC Agreement) and the proposed Minority Sale Agreement(s) (MSA) by and among PG&E, Pacific Generation, and each Minority Investor (together with the LLC Agreement, the "Transaction Documents"), forms of which were attached to the chapter. In addition, the testimony outlined the structure and duties of the Board of Managers of Pacific Generation, the proposed governance rights that will accompany the Minority Equity Interests, including the proposed set of consent, review, and consultation rights to be granted to Minority Investor(s), and Pacific Generation's proposed distribution policy.

This rebuttal testimony provides an update on the proposed marketing process for the sale of the Minority Equity Interests, including details on recent precedential transactions, and responds to the testimony of various intervenors regarding the Transaction Documents—in particular, the LLC Agreement and the proposed Minority Investor governance rights that it outlines. Specifically, the testimony addresses intervenor concerns regarding the potential identity of the Minority Investor(s) and the level of control the Minority Investor(s) will possess in connection with Pacific Generation's budget, capital expenditures, and distribution policy, and explains why those concerns are misplaced. In addition, the rebuttal testimony discusses modifications to California Community Choice Association's (CalCCA) proposed transaction conditions concerning the Transaction Documents that the Applicants would accept.

B. Marketing Process Update (*J. Plaster*)

In their direct testimony, PG&E and Pacific Generation proposed a competitive two-phase marketing process for the sale of the Minority Equity Interests, involving initial indicative bids and then final binding bids. As coordinated by PG&E and Barclays Capital Inc., PG&E's financial advisor for the Proposed Transaction, the marketing process has since been updated to a three-phase structure, closely coordinated with the anticipated regulatory timeline, which will include an additional non-binding, but "firm" bid between the initial indicative bid and final binding bid.

This updated three-stage process is designed to maximize investor engagement across the regulatory timeline. In Phase I, potential investors will sign non-disclosure agreements and complete preliminary diligence before submitting indicative bids. In Phase II, select investors will meet with Pacific Generation management, complete more detailed diligence, and submit firm bids. In Phase III, a final investor group will perform confirmatory diligence and submit final binding bids. The marketing process will allow investors to complete diligence following a proposed decision on the application and sign immediately following the California Public Utilities Commission's (Commission) decision.

In their direct testimony, the Applicants identified two recent minority sales in the utility sector—the 2022 sale by FirstEnergy Corp. of a 19.9 percent minority stake in its transmission subsidiary, and the 2021 sale by Duke Energy Corporation of a 19.9 percent minority stake in its regulated electric utility subsidiary in Indiana—that demonstrate the depth of interest among potential investors and the success of such transactions as a source of equity for regulated utilities and utility holding companies to fund significant capital expenditure projects. Since the direct testimony was served, two additional sales following a similar blueprint were announced, further demonstrating the interest in and success of transactions involving minority stakes in regulated utility subsidiaries.

On February 2, 2023, FirstEnergy announced an agreement to sell an additional 30 percent ownership interest in its regulated transmission subsidiary, FirstEnergy Transmission, LLC, to Brookfield Super-Core Infrastructure Partners, increasing Brookfield's minority stake in FirstEnergy Transmission to

49.9 percent.[1] The $3.5 billion sale price brings FirstEnergy's total proceeds from the two transactions to $5.875 billion. This price valued the subsidiary at 39.0 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 16.9 for the parent, based on the value of FirstEnergy's common stock prior to the deal's announcement. FirstEnergy will remain the majority owner of FirstEnergy Transmission (with a 50.1 percent equity interest), and will continue to serve as the sole operator of the transmission subsidiary's business, utilizing its own dedicated workforce. FirstEnergy announced that the funds from the second transaction "will be used to accelerate improvements in the company's credit profile."[2]

On June 20, 2023, NiSource, a utility holding company with regulated subsidiaries operating in six states, announced an agreement to sell a 19.9 percent minority stake in Northern Indiana Public Service Company (NIPSCO), its regulated gas and electric utility subsidiary serving northern Indiana, to an affiliate of Blackstone Infrastructure Partners for $2.15 billion.[3] This sale price valued the subsidiary at 32.5 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 18.4 for the parent, based on the value of NiSource's common stock prior to the deal's announcement. NiSource will continue to operate NIPSCO after the closing, while the Blackstone Infrastructure affiliate will receive minority rights commensurate with its ownership interest. NiSource stated that the transaction represents "a highly attractive and efficient form of equity financing," which it intends to use in part to "de-lever its balance sheet and fund ongoing capital needs associated with the renewable generation transition underway."[4]

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1 Press Release, *FirstEnergy Announces $3.5 Billion Equity Capital Agreement to Further Enhance Financial Position and Support Sustainable, Long-Term Growth* (Feb. 2, 2023), at https://www.firstenergycorp.com/newsroom/news_articles/firstenergy-announces--3-5-billion-equity-capital-agreement-to-f.html.

2 *Id.*

3 See Press Release, *NiSource Announces Agreement to Sell Minority Equity Interest in NIPSCO to Strengthen Financial Foundation and Support Sustainable, Long-Term Growth* (June 20, 2023), at https://www.nisource.com/news/article/nisource-announces-agreement-to-sell-minority-equity-interest-in-nipsco-to-strengthen-financial-foundation-and-support-sustainable-long-term-growth-20230620.

4 *Id.*

As with the Applicants' proposed sale of Minority Equity Interests, the FirstEnergy, Duke Energy, and NiSource transactions involved the sale of a non-controlling minority stake in a regulated utility subsidiary to infrastructure investors seeking long-term value. The success of these precedent transactions confirms the attractiveness and efficiency of this financing method.

C. Neither the Proposed Minority Investor Consent Rights Nor Distribution Policy Will Interfere With the Operation of Pacific Generation (*S. Rogers*)

1. PG&E Will Control Pacific Generation Through Its Control of the Board of Managers

As set forth in Applicants' direct testimony, the Board of Managers of Pacific Generation (the Board) will be responsible for the management of the company under the LLC Agreement and applicable law and regulation. By virtue of its ownership of a majority of the Pacific Generation Interests, PG&E will have the right to designate a majority of the Board Managers and a majority of the members of any committee created by the Board,[5] as well as the right to select the Board chairperson from among the PG&E-designated Managers and the Pacific Generation President, who will be a Manager.[6] Additionally, PG&E's designees on the Board will have the power to elect and remove Pacific Generation officers, including the Pacific Generation President, who will be responsible for Pacific Generation's day-to-day management.[7] PG&E will retain these designation and selection rights and, via its majority position on the Board, officer election and removal powers, in each case for so long as it continues to own a majority of the Pacific Generation Interests.[8]

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5 PG&E Prepared Testimony, Chapter 5, 5-AtchA-22 (LLC Agreement, Section 7.1(b)); 5-AtchA-26 (Section 7.8(a)).

6 *Id.*, 5-AtchA-24 (LLC Agreement, Section 7.5).

7 *Id.*, 5-AtchA-26 (LLC Agreement, Section 7.9(a)).

8 Any change in control of Pacific Generation occasioned by a change in PG&E's percentage ownership interest would require Commission review and approval under Public Utilities Code (Pub. Util. Code) § 854.

Action by Pacific Generation generally will be taken by majority vote of the Board.[9] PG&E will control the Board through the ability of its Managers collectively to vote PG&E's majority percentage of the outstanding Pacific Generation Interests. By virtue of its control of the Board, and consequent power to elect and remove officers, PG&E will have sole authority to direct and oversee the management of the business and affairs of Pacific Generation, including control over the approval of the budget and business plan, subject to the limited consent rights of the Minority Investor(s) and the corporate separateness provisions set forth in the LLC Agreement.

2. The Proposed Minority Investor Consent Rights Will Not Interfere With PG&E's Control of Pacific Generation.

Several intervenors express concern with the Minority Investor consent rights regarding Pacific Generation's budget and capital expenditures set out in the form of LLC Agreement.[10] A limited set of consent rights regarding the budget and capital expenditures is in keeping with the custom and practice of minority sale transactions in the utility sector. PG&E submitted a form of LLC Agreement that includes provisions addressing the consent rights of the Minority Investor(s) in connection with the budget and capital expenditures. Although these provisions remain subject to change based on negotiations with potential Minority Investor(s), those rights will not confer actual or potential managerial or operational control over Pacific Generation on the Minority Investor(s), nor interfere with Pacific Generation's ability to carry on operations as a regulated generation utility.

With respect to Pacific Generation's budget, any consent right granted to the Minority Investor(s) is not expected to apply to the extent the annual budget reflects costs that are authorized (or reasonably expected to be authorized) for rate recovery. The costs authorized for recovery in Pacific Generation's rates will be set by the Commission in General Rate Case (GRC) and other proceedings, based on applications prepared by Pacific

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9 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-25 (LLC Agreement, Section 7.7(d)).

10 See Kolnowski Testimony at 30, 43; Hanson Testimony at 13-14.

Generation management.[11] While Minority Investors will have the right to consult with management regarding Pacific Generation's GRC filings, they are not expected to have a consent right regarding such filings, over which the Board will have final authority.[12] In practice, this means that Pacific Generation's annual budget will reflect decisions of the Commission, in response to submissions of proposed costs prepared by PG&E-controlled management and authorized by the PG&E-controlled Board.

The form of LLC Agreement PG&E submitted provides that the Minority Investor consent right would only apply if the proposed budget is more than 105 percent of the costs authorized, or reasonably expected to be authorized, for rate recovery.[13] Furthermore, even in the event that a proposed budget is greater than 105 percent of such costs, Pacific Generation could nevertheless operate under the increased budget, subject to a dispute resolution procedure whereby the budgeted amount in excess of the 105 percent threshold will be deemed approved if found to be in accordance with "good utility practice."[14] Intervenors also overlook the fact that, regardless of the 105 percent threshold, the form of LLC Agreement allows Pacific Generation to "incur amounts necessary for repairs due to

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11 PG&E and Pacific Generation propose to submit joint applications on behalf of both utilities in GRC proceedings.

12 As set out in the form of LLC Agreement, Minority Investors with at least a 20 percent interest in Pacific Generation will have the right to *consult* with management regarding Pacific Generation's GRC filings, but will have no consent right regarding such filings. See PG&E Prepared Testimony, Chapter 5, 5-AtchA-28 (LLC Agreement Section 7.12).

13 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-31 (LLC Agreement Section 8.1(q)).

14 See *id.* at 5-AtchA-32–33 (LLC Agreement Section 9.3(d)). Any budgeted amount above the 105 percent threshold that is found not to be in accordance with "good utility practice" through the dispute resolution procedure would be charged back to PG&E. As a mandatory condition of approval of the Proposed Transaction, CalCCA requests that PG&E not be allowed to recover from customers of PG&E or Pacific Generation any such excess cost charged back to PG&E pursuant to the operation of Section 9.3(d) of the form of LLC Agreement. See Dickman Testimony, Attachment B, proposed condition no. 3. PG&E agrees to this proposed condition, provided that it will not affect PG&E's recovery of previously-authorized rates. See PG&E's proposed markup of CalCCA's Recommended Transaction Conditions, Attachment A to PG&E Rebuttal Testimony Chapter 1.

breakdowns, casualty, or in response to an Emergency Situation or to comply with applicable Law."[15]

Intervenors' attempt to portray the proposed consent right regarding capital expenditures as granting the Minority Investor(s) potential control over Pacific Generation is also misguided. As set out in the form of LLC Agreement, no consent of a Minority Investor is required for any capital expenditure included in the annual budget,[16] which, as discussed above, will be prepared by Pacific Generation management, authorized by the Board, and ultimately reflect the Commission's decisions. Minority Investor consent is also not contemplated for any capital expenditure that Pacific Generation reasonably expects will be included in rate base.[17] For example, there would be no Minority Investor consent right regarding proposed additions to or extensions of net plant that Pacific Generation management expects to be found "used and useful" by the Commission in providing public utility services.[18] Finally, to the extent that the consent or consultation rights regarding either the budget or capital expenditures ultimately differ from those currently set out in the form of LLC Agreement, those changes will be outlined as part of the post-signing advice letter process,[19] and will thus be open to stakeholder review and comment and subject to the disposition of the advice letter by Commission staff.

More broadly, intervenors who suggest that the Minority Investor(s) would have an incentive to reduce expenditures related to operations and maintenance or capital projects in an effort to cut costs and maximize profits[20] fail to appreciate one of the key motivations of the type of

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15 PG&E Prepared Testimony, Chapter 5, 5-AtchA-33 (LLC Agreement Section 9.3(d)). Together, these provisions directly refute Silicon Valley Power's (SVP) assertion that the Minority Investor(s) "could prevent the allocation of sufficient revenue to operate and maintain the generation assets consistent with Good Utility Practice, including maintaining sufficient reserve funds to protect the entity and its assets in the event of unexpected, catastrophic issues." Kolnowski Testimony at 30.

16 PG&E Prepared Testimony, Chapter 5, 5-AtchA-30 (LLC Agreement Section 8.1(k)).

17 *Id.*

18 See*, e.g.*, Pub. Util. Code § 454.8.

19 See PG&E Rebuttal Testimony, Chapter 1, Section G.

20 See Kolnowski Testimony at 35; Hanson Testimony at 13-14; Maisch Testimony at 17.

infrastructure investor that seeks out minority investment positions in utilities, which is the opportunity to earn a regulated return on rate base, as determined by the Commission. Nevada Irrigation District's (NID) suggestion that the Commission mandate that Pacific Generation "set aside adequate capital to maintain generation assets and related appurtenance,"[21] and SVP's suggestion that a "good utility practice" standard be imposed to "guide the operation and maintenance of these assets,"[22] reflect a misunderstanding of Pacific Generation's business. The Commission will set a revenue requirement in GRC proceedings for those very purposes, leaving it to management to decide how to allocate resources based on emergent needs. In short, the cost-of-service principles under which Pacific Generation will operate are designed to ensure that the utility recovers the expenses that are necessarily incurred in dedicating its output to effective and efficient public service.

For these reasons, intervenors are incorrect to assert that the proposed consent and consultation rights would create the potential for the Minority Investor(s) to "exercise significant control over the operation of the assets being transferred to Pacific Generation."[23] None of the proposed consent and consultation rights—regarding the budget, capital expenditures, regulatory filings, or otherwise—will prevent PG&E from exercising operational control of Pacific Generation by virtue of its ability to control the Board, or from expending the capital necessary to ensure the safe and reliable operation of Pacific Generation's generation facilities.

3. Pacific Generation's Distribution Policy Will Not Negatively Impact the Generation Business

NID's concern that distributions declared by Pacific Generation could negatively impact required investment in the generation assets is similarly misguided.[24] Pacific Generation's proposed distribution policy is reasonable and customary. The policy commits the decision to declare a

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21 Hanson Testimony at 14.

22 Kolnowski Testimony at 30.

23 *Id.*

24 See Hanson Testimony at 14.

quarterly distribution and the target range of earnings for any such distribution to the discretion of the Board, which is controlled by PG&E. Under the form of LLC Agreement, Minority Investors with at least a 20 percent interest in Pacific Generation will have the right to consent to a change in the policy or the making of a distribution other than in accordance with the policy,[25] but no Minority Investor will be able to require a distribution or block a distribution duly declared by the Board in accordance with the policy. The Board's discretion whether to pay a distribution, and what percentage of earnings to distribute, will therefore not be substantively different than the discretion currently afforded to PG&E's board in making those decisions.

Furthermore, the Board will evaluate Pacific Generation's capital needs prior to declaring any distributions. The relevant considerations for the Board in determining the frequency and amount of distributions will include Pacific Generation's profitability, adequacy of projected cash flows, adequacy of reserves and working capital, projected capital and other expenditure requirements, projected expenses, and ability to access necessary equity capital, in addition to regulatory and legal requirements.[26] The distribution policy will therefore not create "downward pressure on Pacific Generation's incentive to heavily invest in operations, maintenance, and capital improvements in generation assets," as NID asserts.[27] To the contrary, the policy expressly imbues the PG&E-controlled Board with the latitude to act "in the reasonable best interests" of Pacific Generation.[28]

D. Sufficient Protections Are In Place Regarding the Ability to Transfer Pacific Generation's Minority Equity Interests and Assets (*S. Rogers*)

CalCCA argues that the LLC Agreement should be modified to prohibit the ability of Minority Investors to transfer their interests in Pacific Generation absent Commission approval, and to impose additional restrictions on potential sales of

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25 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-31 (LLC Agreement, Section 8.1(n)).

26 *Id.*

27 Hanson Testimony at 14.

28 PG&E Prepared Testimony, Chapter 5, 5-AtchA-79 (LLC Agreement, Exhibit B).

Pacific Generation assets. The Commission should decline these invitations. There are sufficient protections in place—those present in existing law and regulation, those built into the LLC Agreement, and those flowing from PG&E's incentives as controlling majority owner—for any minority transfers or asset sales.

1. The Ability to Transfer Minority Equity Interests Does Not Impair Market Integrity or Otherwise Harm the Public Interest

Contrary to CalCCA's contention,[29] there are sufficient protections in place regarding which entities can participate as Minority Investor(s).

As a threshold matter, Applicants propose to file a Tier 2 Advice Letter with the Commission to identify the Minority Investor(s) and submit related documentation after executing a MSA with each of the winning bidder(s). Through the advice letter process, the identity of the Minority Investor(s) will be open to stakeholder review and comment and subject to the disposition of the advice letter by Commission staff.[30] PG&E's interest in the Proposed Transaction is to seek out infrastructure investors who have deep financial capabilities, but no interest in controlling the management or day-to-day operations of Pacific Generation—i.e., investors seeking a regulated revenue stream, not market power.

With respect to potential transfers of Minority Equity Interests, CalCCA also incorrectly asserts that there are "no limitations on the types of entities that could become Minority Investor(s)" in Pacific Generation.[31] To the contrary, multiple safeguards exist to ensure that any such transfers will not negatively impact the integrity of wholesale markets. CalCCA expresses particular concern regarding potential conflicts of interest it alleges could arise if Minority Equity Interests are transferred to Minority Investor(s) who are (or are affiliated with) market participants, and proposes a transaction condition that would categorically prohibit any market participant[32] from

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29 See Dickman Testimony at 30-32.

30 Or by the Commission itself, should the Commission instead require a Tier 3 Advice Letter.

31 Dickman Testimony at 4.

32 As the Commission defines that term. See D.06-12-030 at 50-52 (Ordering Paragraph 1).

being a Minority Investor except to the extent that such market participation arises from the investment in Pacific Generation.[33] CalCCA's concern is misplaced and its proposed condition goes too far. Under Section 203 of the Federal Power Act, the Federal Energy Regulatory Commission (FERC) has jurisdiction to review whether a proposed transaction will adversely affect horizontal competition, including the effects of such transaction on concentration in the wholesale generation markets and whether it creates an incentive or ability to engage in harmful behavior, such as withholding of generation.[34] FERC also evaluates whether a transaction enhances the ability or incentives for the transacting parties to exercise vertical market power.[35] This will ensure that the potential transfer of Minority Equity Interests by the Minority Investor(s) to a third party will not raise market power concerns.[36]

In addition to evaluating the competitive effects of a proposed transaction, FERC also evaluates whether the transaction affects rates or the effectiveness of state or federal regulation, and whether the transaction creates enhanced opportunities for cross subsidization by captive customers through affiliate contracts.[37]

To further mitigate any concerns regarding market participation with respect to the Minority Investor(s), the form of LLC Agreement provides that

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33 Dickman Testimony, Attachment B, proposed condition no. 10: "Minority Investor(s) and their Related Parties (as defined in the Amended and Restated LLC Agreement of Pacific Generation) and Affiliates (as defined in the Commission's Affiliate Transaction Rules) cannot be Market Participants as defined in D.06-06-066, except to the extent that Minority Investor(s) constitute Market Participants as a result of their investment in Pacific Generation."

34 See*, e.g.*, A.22-09-018, Pacific Gas and Electric Company and Pacific Generation LLC's Motion for Official Notice of FERC Order Related to the Proposed Transaction, Attachment A at 6 (June 8, 2023).

35 See*, e.g.*, *id.* at 6-7.

36 FERC's authority to review purchases of minority interest will attach to any transaction that gives a new investor a 10 percent or greater direct or indirect voting interest in Pacific Generation.

37 See*, e.g.*, A.22-09-018, Pacific Gas and Electric Company and Pacific Generation LLC's Motion for Official Notice of FERC Order Related to the Proposed Transaction, at Attachment A, at 7-15, 19-25 (June 8, 2023). Following the completion of a transaction, FERC continues to review and police market competitiveness through requirements for market participants to file notices of changes in generation ownership, its market surveillance tools, and its market enforcement activities and enforcement hotline.

Pacific Generation shall establish and maintain a code of conduct, which will include provisions preventing the Minority Investor(s) from disclosing confidential information to related parties who are market participants.[38]

CalCCA's stated concern regarding the potential sale or transfer of Minority Equity Interests to other parties "that do not share California's values and ideals," including sovereign wealth funds,[39] is also misplaced. Here, too, sufficient safeguards are in place. For example, any transaction that results in a foreign investor holding Minority Equity Interests, including subsequent transfers, would be subject to review by the Committee on Foreign Investment in the United States (CFIUS) to the extent it qualifies as a "covered transaction" under the CFIUS statute.[40] Additionally, the form of LLC Agreement includes a provision that prohibits any Minority Investor from transferring any of its interest in Pacific Generation to any person included on a schedule to be provided by PG&E.[41] As proposed, PG&E will be able to update this "prohibited person" list each year, or more frequently if circumstances lead PG&E to reasonably conclude that a specific prohibited person should be added.[42] The form of LLC Agreement also provides PG&E with a right of first offer in the event that any Minority Investor seeks to transfer its interest in Pacific Generation to an unrelated third party.[43] More broadly, as the controlling majority owner of Pacific Generation, PG&E has both an operational and a financial incentive to ensure that any minority investors in its public utility subsidiary are infrastructure investors with strong credit quality, financial understanding, and a desire to own a non-operating

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38 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-33 (LLC Agreement, Section 9.4). PG&E will provide this Code of Conduct for stakeholder review through the advice letter process.

39 Dickman Testimony at 31.

40 See 50 U.S.C. § 4565.

41 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-47 (LLC Agreement, Section 12.8(b)).

42 PG&E plans to provide the initial version of this list for stakeholder review through the advice letter process.

43 See PG&E Prepared Testimony, Chapter 5, 5-AtchA-42 (LLC Agreement, Section 12.4).

interest in regulated utility assets, and not the sort of undesirable investors referenced by CalCCA.

Requiring Commission approval for the subsequent sale or transfer of Minority Equity Interests, as CalCCA proposes,[44] would be unreasonable, unprecedented, and beyond the scope of Cal. Pub. Util. Code Section 854, which provides for review and authorization by the Commission only in the event a transaction leads to a change in control. Since the Proposed Transaction will result in the Minority Investor(s) holding a minority, non-controlling interest in Pacific Generation, the subsequent transfer of any portion of that interest would not lead to a change in control.

Besides being unnecessary, CalCCA's suggestion to impose a requirement of Commission approval for transfers by minority investors would negatively affect the Proposed Transaction. A requirement to obtain Commission approval for any subsequent transfer of a minority interest in Pacific Generation would impair potential investors' ability to exit the investment. Such an impairment of liquidity can be expected to deter potential investors from pursuing the Proposed Transaction or depress the amount they would be willing to pay. This will harm PG&E's ability to carry out the various objectives it seeks to achieve through the transaction, which, in turn, will harm customers. Nevertheless, the Applicants are willing to agree to a condition requiring Pacific Generation to file a Tier 1 Advice Letter in the event any Minority Investor sells or transfers an equity interest in Pacific Generation of at least 10 percent.[45] PG&E and Pacific Generation believe that this proposal appropriately balances the need to preserve the value of the Minority Equity Interests by not eliminating customary transfer rights with the desire to provide transparency regarding Pacific Generation's ownership.

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44 See Dickman Testimony, Appendix B, proposed condition no. 8.

45 PG&E's proposed revision to CalCCA condition no. 8 provides: "If any Member transfers an equity interest in Pacific Generation of at least 10 percent, Pacific Generation will file a Tier 1 advice letter." See PG&E's proposed markup of CalCCA's Recommended Transaction Conditions, Attachment A to PG&E Rebuttal Testimony Chapter 1.

2. Section 851 Governs Pacific Generation's Ability to Transfer Assets

CalCCA also proposes imposing as a condition of the transaction a requirement to modify the form of LLC Agreement "to prohibit the sale or transfer of Pacific Generation assets to any person or entity other than PG&E absent Commission approval."[46] The requirement to obtain Commission approval for any asset disposition is governed by Cal. Pub. Util. Code Section 851, not the parties' agreement; moreover, Section 851 requires approval for dispositions only of necessary and useful property, not all property. Although the Applicants cannot accept the condition as proposed by CalCCA, Pacific Generation acknowledges that it will comply with Section 851, and the Applicants do not object to a condition that would so state.[47]

E. PG&E Does Not Object to CalCCA's Proposed Conditions Regarding the Transaction Documents (Condition Nos. 2 and 16) (*S. Rogers*)

1. No Ratepayer Harm From Any Breach of Transaction Documents

CalCCA proposes imposing, as a condition of the transaction's approval, a "no ratepayer harm" standard with respect to any breaches of the Transaction Documents. This condition would provide: "PG&E cannot recover from ratepayers the costs arising from the breach by PG&E or the Minority Investor(s) of any covenant or agreement contained in any of the Transaction Documents."[48] In keeping with PG&E's request to approve the Proposed Transaction under a "no harm" standard,[49] we do not object to a condition prohibiting rate recovery of any costs arising from a breach by either PG&E or the Minority Investor(s) of any covenant or agreement contained in any of the Transaction Documents.[50]

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46 Dickman Testimony, Attachment B, proposed condition no. 9.

47 E.g., "Pacific Generation shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber any property necessary or useful in the performance of its duties to the public absent Commission approval." See PG&E's proposed markup of CalCCA's Recommended Transaction Conditions, Attachment A to PG&E Rebuttal Testimony Chapter 1.

48 Dickman Testimony, Attachment B, proposed condition no. 2.

49 PG&E Rebuttal Testimony, Chapter 1, at 1-2.

50 The "Transaction Documents" are the LLC Agreement and the MSA(s).

2. Non-Material Changes to Transaction Documents Following Advice Letter Approval

CalCCA asserts that "final approval" of the Proposed Transaction should be "contingent on review of the final transaction documents in their entirety."[51] To that end, CalCCA proposes imposing a condition that would provide: "In the event that the Commission approves the Proposed Transaction before all the final versions of the Transaction Documents have been made available, any modifications to the Transaction Documents following Commission approval must be limited to non-material changes."[52]

Subject to several adjustments to account for Applicants' proposed two-stage regulatory approval process,[53] PG&E does not object to this condition. Following the Commission's decision on this application, Applicants would execute one or more MSAs with the Minority Investor(s) and proceed to file an advice letter that would identify the Minority Investor(s) and submit the final agreements. As such, PG&E would revise CalCCA's condition as follows (noted in bold italics):

- In the event that the Commission ***(through the advice letter process)*** approves the Proposed Transaction before all the final versions of the Transaction Documents have been made available, any modifications to the Transaction Documents ***prior to the closing and*** following ***such*** Commission approval must be limited to non-material changes***, unless the Commission otherwise directs or authorizes***.

These revisions clarify that Applicants will submit the Transaction Documents (i.e., the LLC Agreement and the MSA(s)) to the Commission after signing and before closing via advice letter. They further clarify that the Commission retains discretion to direct or authorize a change to the Transaction Documents following action on the advice letter.[54] Finally, the "prior to closing" language reflects the potential that the parties may seek to

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51 Dickman Testimony at 35.

52 *Id.*, Attachment B, proposed condition no. 16.

53 See PG&E Application at 18.

54 For the sake of clarity, this condition would not cover the intercompany agreements between PG&E and Pacific Generation. See PG&E Rebuttal Testimony, Chapter 4, Section A.

make material amendments to the Transaction Documents at some future point (i.e., post-closing).

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 6

PACIFIC GENERATION'S FINANCIAL CONDITION

REBUTTAL TESTIMONY

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A. Introduction *(J. Plaster; M. Becker)*

In light of its status as a cost-of-service regulated generation-only public utility, Pacific Generation will have a strong financial profile and will be able to issue investment-grade secured debt. It also will have the financial capacity and insurance coverage to address emergent needs.

Pacific Gas and Electric Company (PG&E) and Pacific Generation have proposed that Pacific Generation would inherit the cost of capital, including the return on equity, set by the California Public Utilities Commission (CPUC or Commission) for PG&E in Decision (D.) 22-12-031, as corrected by D.23-01-002. The Commission would examine Pacific Generation's cost of capital in the next joint PG&E-Pacific Generation cost of capital application. The Commission should disregard the invitation by some parties to prejudge the outcome of that application in this proceeding.

Pacific Generation's requested financing authorizations were largely uncontested and should be approved.

B. Pacific Generation Will Have a Strong Financial Profile as a Cost-of-Service Regulated Utility *(J. Plaster)*

If the Commission approves the Application, Pacific Generation would be a certificated public utility that owns a suite of generation assets and is subject to cost-of-service regulation by the Commission. It also would have a revenue requirement based on a regulated capital structure of 52 percent equity and 48 percent debt and a consolidated rate of return. These features will give Pacific Generation a strong financial profile in the eyes of rating agencies given my expectation of how the rating agencies will evaluate Pacific Generation's business risk and financial leverage. Indeed, based on the financial model

developed for Pacific Generation,[1] I believe the business risk and financial leverage profile for Pacific Generation should fall within the investment grade category for the broad regulated utility sector. As a result, I expect Pacific Generation to achieve an investment-grade rating on its secured debt.[2]

As explained in my opening testimony, I believe that Pacific Generation will have ample access to investment-grade debt markets as well as access to additional equity capital.[3] This includes access to debt and equity capital to fund its future capital expenditures, such as in connection with safety-related projects and more broadly for generation-related investments.

C. Pacific Generation Should Inherit PG&E's Return on Equity *(M. Becker)*

PG&E and Pacific Generation have proposed that Pacific Generation would inherit the Commission's decision in PG&E's Test Year (TY) 2023 COC application (D.22-12-031, as corrected by D.23-01-002).[4] If PG&E's authorized returns are changed prior to the Commission's decision on the next cost of capital application, Pacific Generation's authorized returns would also be updated to match PG&E's. This could occur, for example, as a result of the operation of the cost of capital adjustment mechanism or a Commission decision in the second phase of Application (A.) 22-04-008 on PG&E's yield spread adjustment proposal. The Commission would then more fully examine Pacific Generation's cost of capital in the next joint PG&E-Pacific Generation cost of capital application.

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1 On June 2, 2023, PG&E updated a data request response and provided a confidential, preliminary financial forecast through 2027 for Pacific Generation as a separate legal entity. This response was provided to California Community Choice Association (CalCCA), Energy Producers and Users Coalition, and The Utility Reform Network (TURN).

2 J. Dowdell's testimony mistakenly asserts that "it is anticipated that PacGen will receive initial investment grade ratings from Moody's and S&P credit rating agencies." Dowdell Testimony at 6. PG&E wishes to clarify that while the business risk and financial leverage profile for Pacific Generation should fall within the investment grade category for the broad regulated utility sector, my specific opinion is limited to Pacific Generation receiving an investment grade rating on its secured debt. See PG&E Prepared Testimony, Chapter 6, at 6-4–6-6.

3 *Id.* at 6-6–6-10.

4 *Id.*, Chapter 9, at 9-6–9-7.

A number of parties assert that Pacific Generation's return on equity should be lower than PG&E's.[5] These arguments are wrong and misunderstand the basis on which the Commission set PG&E's return on equity as well as the impact of the Proposed Transaction. For instance, CalCCA asserts that Pacific Generation faces reduced business risk because of the proposed contractual arrangements between Pacific Generation and PG&E.[6] TURN argues that Pacific Generation's return on equity should reflect lower operating risk, including the lower wildfire risk that Pacific Generation faces in comparison to PG&E.[7] These arguments might make sense if the Commission had considered these points in setting PG&E's return on equity in the first place. But it did not. In fact, TURN argued that "[b]etween the adoption of AB 1054 and the utility wildfire mitigation budgets, wildfire risks have been adequately addressed and further compensation for the risk is not necessary."[8] And in D.22-12-031, the Commission reaffirmed its conclusion in D.19-12-056 "that the passage of AB 1054 and other investor supportive policies in California have mitigated wildfire exposure faced by California's utilities" such that "the Commission will not authorize a specific wildfire risk premium in the adopted ROE."[9] If TURN and others now assert that the absence of such risk justifies a lower return on equity for Pacific Generation, then they must also agree that the presence of such risks justifies a higher return on equity for remaining PG&E.

The argument by CalCCA as to why the Proposed Transaction results in lower business risk for Pacific Generation also appears to rest on a misunderstanding of how the Forecast Realization Adjustment Agreement (FRAA) works in practice. Mr. Dickman asserts that the FRAA is one of "several of PG&E's proposals in its testimony [that] shift business risk away from PacGen and back to PG&E. As a result, the Minority Investor(s) will have access to this guaranteed return on rate base without the typical business risk that

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5 Dowdell Testimony at 6-7; Dickman Testimony at 23-26.

6 Dickman Testimony at 25-26.

7 Dowdell Testimony at 6-7.

8 A.22-04-008, *Opening Brief of The Utility Reform Network* (Sept. 23, 2022) at 15.

9 D.22-12-031 at 27 (quoting D.19-12-056 at 36).

accompanies owning generation assets."[10] As PG&E's testimony makes clear, however, the FRAA benefits *both* Pacific Generation and PG&E. It benefits Pacific Generation by eliminating the forecast-to-actual-market-revenue variance that would otherwise result from the Proposed Transaction and it preserves the status quo in terms of PG&E's California Independent System Operator revenue exposure while not altering in any way the ultimate recoverability of the addressed costs. In other words, the FRAA is intended to replicate what PG&E experiences today. It does not eliminate operating risk considered by the Commission in setting PG&E's return on equity.[11]

Intervenors' arguments for a downward adjustment to Pacific Generation's return on equity are also premature and out of scope. The Commission has already determined the appropriate cost of capital, including return on equity, for the assets currently owned by PG&E, which includes the assets to be contributed to Pacific Generation. To the extent parties assert that Pacific Generation's return on equity should be lower than PG&E's, the Commission should defer consideration of such arguments to the next cost of capital proceeding.[12] It is not necessary or appropriate to reconsider D.22-12-031, as corrected by D.23-01-002, here and doing so would needlessly complicate this proceeding and prejudge an issue without a fully developed record.[13]

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10 See Dickman Testimony at 24-25.

11 See PG&E Rebuttal Testimony, Chapter 9 for a more detailed discussion of the FRAA.

12 CalCCA appears to agree with this. See Dickman Testimony at 26 ("The specific differential between the authorized ROE for PacGen and PG&E should be determined in the next joint cost of capital application.").

13 The Commission should disregard CalCCA's invitation to prejudge the issue and establish a presumption that Pacific Generation's return on equity will be lower than PG&E's. See Dickman Testimony at 26 ("Based on that reduced risk, PacGen's ROE should be presumed to be lower than that of PG&E."); Attachment B (condition no. 13). Although PG&E disagrees with condition no. 13 as drafted, PG&E would accept that condition as modified: "Pacific Generation's authorized return on equity shall initially equal, and not exceed, the return on equity granted by the Commission to PG&E. The authorized return on equity for Pacific Generation will be determined in the next joint cost of capital application or earlier if and when PG&E's authorized cost of capital is updated."

D. Pacific Generation's Request for Authority to Issue Debt Was Largely Uncontested and Should Be Approved *(M. Becker)*

Pacific Generation requested a number of financing authorizations, including: (i) to issue up to $2.1 billion in long-term debt to capitalize Pacific Generation; (ii) up to $1.2 billion in short-term debt authority for Pacific Generation's working capital and other short-term liquidity needs; and (iii) to issue up to $350 million in long-term debt to fund Pacific Generation's anticipated capital expenditures over the 2024-2026 period.[14] These financing requests are largely uncontested. Nevada Irrigation District (NID) expressed concern that Pacific Generation requests authority to issue secured debt, which would expose NID to risk in the event of a foreclosure.[15] This is the same type of risk that exists today with respect to PG&E's secured debt issuances. If Pacific Generation were to default, and if title to Pacific Generation's assets that are necessary or useful in the performance of Pacific Generation's duties to the public were transferred pursuant to the terms of a secured debt indenture, pledge, or other encumbrance, we expect that the Commission would require those assets to continue to be used to provide utility service to the public until the Commission authorizes otherwise.[16] No more has been required of PG&E, and no more should be required of Pacific Generation.

E. Pacific Generation Will Be in a Strong Financial Position to Meet Emergent Needs *(M. Becker)*

Pacific Generation's strong financial position as a cost-of-service-regulated utility, together with the requested authorizations to issue short-term and long-term debt and the Minority Investor(s) and PG&E serving as future sources

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14 PG&E Prepared Testimony, Chapter 6, at 6-10–6-29.

15 Hanson Testimony at 14. Note, Hanson states: "Pacific Generation intends to issue nearly $3.5 billion in debt upon CPUC approval of the proposed transfer." *Id.* For its initial capitalization, Pacific Generation intends to issue an amount of long-term debt consistent with its capital structure and for that reason has requested authorization for *up to* $2.1 billion. And although Pacific Generation has requested authorization for up to $1.2 billion in short-term debt authority, it is very unlikely Pacific Generation would use a significant amount of such authorization immediately at the close of the Proposed Transaction.

16 See D.23-04-041 at 13.

of equity capital,[17] mean that Pacific Generation will be able to meet emergent needs as they arise. This addresses concerns raised by some parties.[18] Pacific Generation also will be covered by PG&E's insurance policies, as is the case today for the generation assets, including insurance against third party claims. This means that Pacific Generation will have commercially reasonable insurance coverage in the event of an incident involving one of Pacific Generation's generation facilities and leading to third party liability claims. Thus, Pacific Generation will have the financial capacity to address emergent needs and conditions.

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17 See PG&E Prepared Testimony, Chapter 1, at 1-2–1-3, Chapter 6, at 6-9–6-10; PG&E Rebuttal Testimony at 1-3.

18 See Kolnowski Testimony at 41-42; Steindorf Testimony at 27; Hanson Testimony at 9; Maisch Testimony at 4.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 7

IMPACT OF THE TRANSACTION ON PG&E AND RATES

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A. Introduction *(J. Plaster; M. Becker)*

The record clearly shows that there will be no negative impact on Pacific Gas and Electric Company's (PG&E) credit ratings from the Proposed Transaction. PG&E previously explained the basis for this conclusion, and no party offered contrary testimony or evidence. Moreover, PG&E would elect not to pursue the Proposed Transaction if in the future PG&E determined that it would cause a downgrade to PG&E's credit ratings.

B. There Will Be no Negative Impact on PG&E's Credit Rating *(J. Plaster)*

PG&E's opening testimony made clear that the Proposed Transaction will not negatively affect PG&E's credit rating. TURN mistakenly asserts that PG&E "provided no proof" that this is the case.[1] My opinion that the Proposed Transaction would have either a neutral or slight positive effect on PG&E's overall credit ratings and financial condition is supported by the following considerations:[2]

- The non-nuclear generation assets proposed to be contributed to Pacific Generation represent only a small portion (about 7 percent) of PG&E's overall rate base, and PG&E will continue to own a majority interest in Pacific Generation (and indirectly, Pacific Generation's assets).
- I do not anticipate that the Proposed Transaction will have a material impact on the credit metrics the rating agencies will use to evaluate PG&E and so I expect no negative change to PG&E's credit ratings as a result.

Thus, there will be no material impact on PG&E's credit metrics or ratings as a result of the Proposed Transaction, and no party has offered testimony

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1 Dowdell Testimony at 20. In support of this assertion, TURN ignores PG&E's testimony explaining *why* the transaction will not have a material impact on PG&E's credit metrics or ratings (PG&E Prepared Testimony, Chapter 7, at 7-1 – 7-2) and instead cites a different portion of PG&E's testimony that discusses why there is no difference in overall debt costs for the enterprise between the transaction and no-transaction scenarios. Dowdell Testimony at 20, n.69.

2 See PG&E Prepared Testimony, Chapter 7, at 7-1 – 7-2.

rebutting that point. There is a strong rationale for pursuing the Proposed Transaction in light of its distinct advantages over the other potential options for raising capital. Accordingly, there is no basis to conclude that the Proposed Transaction, if approved and consummated, would negatively impact PG&E's credit ratings.

C. PG&E Would Not Move Forward if the Proposed Transaction Would Cause a Downgrade for PG&E *(M. Becker)*

As discussed, there is strong evidence that the Proposed Transaction will not negatively impact PG&E's credit ratings. Yet even if that is not the case, there would be no negative impact on PG&E for an additional reason: PG&E would elect not to pursue the Proposed Transaction if in the future PG&E determined that it would cause a downgrade to PG&E's credit ratings.

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CHAPTER 9

RATEMAKING

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A. Introduction *(S. Maggard; M. Cruz; E. Brown)*

Chapter 9 of the direct testimony explained Pacific Gas and Electric Company's (PG&E) and Pacific Generation's joint filing of applications (including General Rate Case (GRC), Energy Resource Recovery Account (ERRA), and Cost of Capital (COC) applications), Pacific Generation's proposed initial Revenue Requirement, Pacific Generation's ratemaking approach and ratemaking treatment of its Revenue Requirement, and the Proposed Transaction's consistency with the Power Charge Indifference Adjustment and the absence of any negative impacts or cost shifts to PG&E's departed load customers.

The amended and restated Chapter 9 testimony, served on April 10, 2023, provided additional detail regarding the proposed approach for Pacific Generation's ongoing revenue requirement related to variable costs and further explained the proposed Forecast Revenue Adjustment Agreement (FRAA).

Intervenors raise a number of concerns regarding the ratemaking proposals. First, intervenors ask that PG&E and Pacific Generation align applications in various ratemaking proceedings. These requests largely mirror PG&E and Pacific Generation's proposal. Second, intervenors raise concerns regarding potential increases in customer rates as a result of the transaction.[1] In particular, intervenors argue that incremental administrative costs will be passed on to customers and result in a rate increase. Any increase in administrative costs will be small, and Pacific Generation will inherit a portion of PG&E's currently approved GRC and ERRA Revenue Requirements in the near term. Lastly, intervenors criticize the FRAA as shifting "business risk" from Pacific Generation back to PG&E.[2] The FRAA instead operates to preserve PG&E's

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1 See, e.g., Dickman Testimony at 21-23.

2 *Id.* at 24.

current market position while not altering in any way the ultimate recoverability of the addressed costs.

B. PG&E's and Pacific Generation's Joint Applications *(S. Maggard)*

Intervenors' requested conditions regarding joint applications mirror PG&E and Pacific Generation's proposal: the conditions ask to align Pacific Generation's and PG&E's applications in key proceedings. Energy Producers and Users Coalition and The Utility Reform Network's (TURN) jointly sponsored witness asks that PG&E and Pacific Generation align in GRC, COC, and Integrated Resource Plan Proceedings.[3] California Community Choice Association (CalCCA) similarly requests that PG&E and Pacific Generation be required to jointly file all GRC, ERRA Forecast, ERRA Compliance, COC, and Annual Electric True-Up filings, as well as "all other generation-related ratemaking applications in which assets from both entities are involved."[4] PG&E and Pacific Generation find these conditions generally agreeable, as they largely describe PG&E and Pacific Generation's proposal. PG&E and Pacific Generation are willing to align the described proceedings unless the California Public Utilities Commission (CPUC or Commission) otherwise directs.

CalCCA also requests that Pacific Generation seek Commission approval for an independent Bundled Procurement Plan (BPP) "adopting all aspects" of PG&E's most recent BPP.[5] As further explained in Chapter 11, PG&E and Pacific Generation propose a joint compliance approach to load serving entity obligations. As the BPP process entails procurement on behalf of bundled customers,[6] PG&E and Pacific Generation propose that Pacific Generation instead request Commission approval to adopt PG&E's most recently approved BPP and apply said BPP to assets transferred to Pacific Generation. PG&E and Pacific Generation would then seek approval of any amendments to the BPP affecting both companies through joint filings.

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3 See Gorman Testimony at 7-11–7-12.

4 Dickman Testimony, Attachment B at 4.

5 *Id.* at 2.

6 See, e.g., D.12-01-033 at 2-3.

C. Pacific Generation's Revenue Requirement *(M. Cruz)*

Intervenors raise concerns that customer rates will increase as a result of the Proposed Transaction and incremental administrative costs incurred in the operation of Pacific Generation.[7]

First, it is undisputed that overall customer rates will not change upon implementation of the Proposed Transaction because Pacific Generation will inherit the relevant portion of PG&E's current GRC, PG&E's ERRA, and PG&E's COC. CalCCA requests that the cost of debt used to determine Pacific Generation's initial revenue requirement be the lesser of PG&E's currently authorized cost of debt[8] or Pacific Generation's actual cost of debt issued to fund initial capitalization.[9] PG&E and Pacific Generation would accept this condition until the next COC case, with the understanding that, under this condition, Pacific Generation's COC will continue to mirror PG&E's if and when PG&E's authorized COC is updated until the next COC case.

Second, CalCCA asks that PG&E not recover in customer rates costs incurred to undertake the Proposed Transaction, including various enumerated categories such as third-party transaction costs, transfer taxes, and labor costs incurred to develop and effectuate the Proposed Transaction.[10] PG&E is already tracking transaction and transition costs consistent with the Federal Energy Regulatory Commission's (FERC) "hold harmless" policy, and PG&E and Pacific Generation agree to extend FERC's policy regarding exclusion from rates of such transaction and transition costs, including those enumerated by CalCCA that fall within this category, from its CPUC-jurisdictional revenue requirement.[11]

Lastly, CalCCA raises concerns about an increase in "ongoing administrative costs" as a result of the Proposed Transaction.[12] CalCCA argues that the Intercompany Agreements contemplate incremental increases in work

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7 Dickman Testimony at 19, 24.

8 See generally A.22-04-008.

9 Dickman Testimony, Attachment B at 3.

10 *Id.*

11 Applicants would remove CalCCA's reference to the costs of re-executing interconnection agreements, and they are de minimis. That said, Applicants will track and exclude from rate recovery all transaction and transition costs consistent with FERC's hold harmless policy.

12 Dickman Testimony at 19.

performed by existing employees, new employees, and contractors.[13] PG&E projects minor incremental ongoing administrative costs as a result of the transaction, although in fewer categories than put forth by CalCCA. CalCCA estimates the incremental cost at $3 million per year,[14] and PG&E expects the total to be less. The Commission can address this issue in the 2027 GRC.

D. Pacific Generation's Ratemaking Approach *(E. Brown)*

Intervenors criticize the FRAA as "shift[ing] business risk" and offering Minority Investor(s) "guaranteed return on rate base without the typical business risk" associated with these assets.[15] Intervenors also argue that the FRAA adds "[a] further layer of complexity" to ERRA proceedings.[16] These objections misunderstand both the operation and effect of the FRAA.

The FRAA would not meaningfully increase the complexity of ERRA proceedings. The FRAA would entail simple payments on a monthly basis, calculated from the comparison of already-tracked actual revenues and costs to previously calculated forecasts. These payments would be tracked in each of PG&E and Pacific Generation's Portfolio Allocation Balancing Account accounts. Given the scope of ERRA proceedings and current work conducted to forecast and track the values used by the FRAA, implementation of the FRAA is essentially the same as creating subaccounts for PG&E and Pacific Generation, which does not add any significant complexity to proceedings.

The FRAA does not shift "business risk" from Pacific Generation to PG&E. In fact, the FRAA preserves the status quo in terms of PG&E's California Independent System Operator (CAISO) revenue exposure, which could result in revenues that are lower *or higher* than forecasted. Currently, PG&E receives market revenues from CAISO for the resources that would be transferred to Pacific Generation and bears the intra-year price and volume risk for those resources. In other words, market revenues for resources transferred to Pacific Generation would remain unchanged since the dispatch of generation resources responds to CAISO's market. Notably, PG&E would also continue to

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13 *Id.* at 20.

14 *Id.*

15 *Id.* at 24.

16 *Id.* at 33.

be exposed to the CAISO market price variance for all of the load that it schedules into the CAISO market.

The FRAA operates by adjusting the timing of recovery by Pacific Generation and PG&E, rather than the ultimate recoverability of variance. Absent the FRAA, Pacific Generation and PG&E would both ultimately recover any shortfalls, or refund to customers any overcollections, associated with variance between forecast and actual market revenues and fuel costs through a true-up process. This recovery or reimbursement process, however, would involve inherent lag. While the FRAA changes the timing of recovery between Pacific Generation and PG&E, it does not impact the timing of recovery or reimbursement to customers through the existing true-up process.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 10

PACIFIC GENERATION'S RATES, TARIFFS, AND MEMORANDUM AND BALANCING ACCOUNTS

REBUTTAL TESTIMONY

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PACIFIC GENERATION'S RATES, TARIFFS, AND MEMORANDUM AND BALANCING ACCOUNTS REBUTTAL TESTIMONY

A. Introduction *(B. Kolnowski; S. Maggard)*

As described in Chapter 10 of the direct testimony, Pacific Generation's proposed rates, tariffs, and memorandum and balancing accounts are designed to adapt Pacific Generation's customer rate design into Pacific Gas and Electric Company's (PG&E) existing customer rate design so that the Proposed Transaction results in no changes to the overall rates that appear on customer bills.

In response to Pacific Generation's proposed rates and tariffs, Intervenors lodge two primary objections, neither of which has merit.

First, California Community Choice Association (CalCCA) asserts that Pacific Generation would "not provide power supply service to retail customers" as is the case for other load serving utilities.[1] Pacific Generation's activities and ratemaking, however, would replicate the status quo for PG&E's utility-owned generation (UOG). Just as is the case at present for PG&E's UOG, Pacific Generation would sell output into the wholesale market and would recover (or credit) the balance of its revenue requirement in retail rates based on consumption.

Second, CalCCA argues that establishing relevant balancing and memorandum accounts for Pacific Generation will increase the complexity of proceedings "at least twofold."[2] This concern is misplaced. Segregating existing accounting to distinguish Pacific Generation and PG&E's portion of relevant balancing and memorandum accounts involves no significant changes to existing practice.

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1 Dickman Testimony at 26.

2 *Id.* at 33.

B. Pacific Generation's Retail Rates as Regulated by the CPUC (*B. Kolnowski*)

CalCCA argues that "none of PacGen's retail rates will be for the sale of electricity to the retail customer" and describes Pacific Generation as "more like an independent power producer than a public utility."[3] CalCCA expresses generic concern that the Commission should consider "whether any jurisdictional or other regulatory issues could arise" but identifies no such issues.

CalCCA asserts that Pacific Generation's objective, "[l]ike an independent power producer," will be to optimize the performance of its generation assets through scheduling and dispatch. That assertion is incorrect. Whereas an independent power producer is entirely dependent on wholesale markets as a source of revenues, Pacific Generation, like PG&E today, will recover only its authorized cost of service, as determined by the Commission, through a combination of wholesale revenues and retail rates. PG&E personnel will continue to dispatch Pacific Generation's assets according to least-cost dispatch, as they do today for PG&E's UOG. But this least-cost dispatch approach is conducted for the benefit of retail customers. Pacific Generation is not at risk for cost recovery based on the performance of its assets in wholesale markets, because it will recover (or credit) the balance of its revenue requirements in retail rates.[4] PG&E's UOG uses this same ratemaking structure today.

CalCCA also overlooks that Pacific Generation will have retail rates that are based on the retail consumer's consumption. These rates include the NSGC, ERRA Generation Rate, and PCIA.[5] These retail charges distinguish Pacific Generation from an independent power producer.

The Proposed Transaction would result in no change in the way that the assets to be contributed to Pacific Generation are operated nor in their relationship to retail customers. CalCCA's vague concern about the novelty of Pacific Generation's structure ignores this key fact and should not justify rejection of the Application and its identified benefits.

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3 *Id.* at 26-27.

4 *Id.* at 27.

5 See PG&E Prepared Testimony, Chapter 9 (as amended and restated) at 9-17–9-19.

C. Pacific Generation's Tariffs and Balancing Accounts Will Not Significantly Increase Administrative Complexity (*S. Maggard*)

CalCCA argues that establishing Pacific Generation's tariffs and memorandum and balancing accounts will, at a minimum, double the complexity of related proceedings.[6] This concern is significantly overstated. The relevant accounting procedures for these accounts are already established and the relevant costs are already tracked. The Proposed Transaction would change neither. Distinguishing already-tracked costs as either related to PG&E or Pacific Generation would be similar to the establishment of new subaccounts, which would not involve any material increase in administrative complexity. To address concerns about these accounts, CalCCA asks the Commission to impose a condition requiring Pacific Generation to submit for Commission approval all balancing accounts, preliminary statements, electric rules, and electric tariffs related to the transferred assets and that all such documents conform in material respects to those currently in use by PG&E for said assets.[7] With minor modification, PG&E and Pacific Generation agree to this proposal. Subject to the Commission's direction, PG&E and Pacific Generation commit both (a) to submitting for Commission approval prior to closing substantially all of the balancing accounts, preliminary statements, electric rules, and electric tariffs applicable or related to the assets to be transferred (subject to subsequent submissions if necessary); and (b) that such documents will conform in all material respects to those currently in use by PG&E with respect to the assets to be transferred. This opportunity for the Commission to review and approve important asset-related documents pre-closing should provide additional comfort to parties regarding the continuity of the generation business being assumed by Pacific Generation.

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6 Dickman Testimony at 30.

7 See *id.*, Attachment B at 3.

PACIFIC GAS AND ELECTRIC COMPANY

CHAPTER 11

COMPLIANCE OBLIGATIONS OF PACIFIC GENERATION

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A. Introduction

In Chapter 11 of the direct testimony, Pacific Gas and Electric Company (PG&E) and Pacific Generation explained PG&E and Pacific Generation's approach to achieve compliance. Intervenors raise concerns regarding increased complexity in assessing load serving entity obligations and about ultimate responsibility for noncompliance under PG&E and Pacific Generation's proposed joint compliance approach. Such concerns are misguided. The Commission will retain discretion to determine which entity would be penalized in the event of noncompliance and would make such a determination only if and when such an event took place. Intervenors raise a number of other concerns about specific processes, including the Energy Resource Recovery Account (ERRA) trigger, the Voluntary Allocation and Market Offer (VAMO) process, and the Bundled Procurement Plan (BPP). As previously explained in this proceeding, PG&E and Pacific Generation's proposal for a combined portfolio replicates the status quo.

Intervenors also suggest that Pacific Generation should be exempt from the First Priority Condition.[1] Intervenors misunderstand the First Priority Condition. As further explained below, it does not apply to the board of the utility, but instead only to the board of the holding company (PG&E Corporation). Following the modifications proposed by the Applicants, the First Priority Condition would require PG&E Corporation's board to give first priority to the capital needs of both PG&E and Pacific Generation.

B. Joint Compliance Obligations

Intervenors voice concerns about the complexity of compliance determinations following the Proposed Transaction. Such concerns are misguided. PG&E and Pacific Generation propose to achieve compliance in the

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[1] Dowdell Testimony at 8.

same manner as today, through the actions of PG&E personnel as operator of these assets.[2]

With respect to load serving entity (LSE) obligations such as Resource Adequacy (RA), Renewable Portfolio Standard (RPS), and Integrated Resource Planning (IRP), PG&E and Pacific Generation propose to jointly achieve compliance with relevant requirements through management of the joint portfolio of resources serving the customers of PG&E and Pacific Generation, including the assets to be transferred.[3] PG&E and Pacific Generation will jointly report regarding compliance as appropriate.[4]

California Community Choice Association (CalCCA) objects that there is "no framework" to determine which entity is responsible in the event of non-compliance and that such an approach could "require enormous Commission resources."[5] This concern is significantly overstated and conflates compliance determinations with penalty design. PG&E and Pacific Generation's proposal preserves the Commission's current discretion to determine penalties in the event of noncompliance. Any decisions about what penalties to levy against each party do not materially increase the complexity of tracking compliance for the overall joint portfolio.

CalCCA also raises concerns about a number of other specific processes. First, CalCCA expresses concern about potential changes to the VAMO process, which allocates certain RPS attributes in PG&E's PCIA portfolio among LSEs.[6] As explained by PG&E's response to CalCCA's data request on this topic, PG&E and Pacific Generation intend to maintain the same processes for allocating and selling RPS attributes from the joint portfolio through VAMO as are used today with PG&E's current portfolio.[7] As PG&E's response makes clear, no changes to VAMO are anticipated as a result of the Proposed Transaction.[8]

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2 See PG&E Prepared Testimony, Chapter 11, at 11-2.

3 *Id.* at 11-2-11-3

4 *Id.* at 11-3.

5 See Dickman Testimony at 28-29.

6 See *id.* at 29.

7 PG&E Response to Data Request CalCCA_001-Q045.

8 *Id.*

Second, CalCCA argues that implementation of the trigger mechanism that applies to the ERRA/PABA balancing accounts (ERRA Trigger) would entail additional administrative burden following the Proposed Transaction. As stated in PG&E's response to CalCCA's data requests, PG&E and Pacific Generation propose consideration of both PG&E and Pacific Generation's PABA accounts in calculation of the ERRA Trigger.[9] This approach would preserve the current method of considering net balances associated with PG&E and Pacific Generation bundled customers' balancing account balances.[10] Calculation based on the aggregate amount would essentially replicate the status quo.

Lastly, CalCCA raises concerns that, through the Proposed Transaction, PG&E and/or Pacific Generation will remove assets from the Commission-approved BPP and attendant requirements regarding offerings of RA capacity through market solicitations.[11] As explained in PG&E's data responses, any resources contributed to Pacific Generation would continue to be managed and operated in the same manner as they are today and consistent with existing Commission oversight.[12] PG&E does not anticipate any changes to offerings of Resource Adequacy as required under the current BPP as a result of the Proposed Transaction.

Silicon Valley Power (SVP) also argues that Pacific Generation will not qualify for participation in the California Wildfire Fund because "each fund participant has a service territory."[13] Pacific Generation will not have an "electric distribution service area" but *will* have a generation service territory.[14] Per guidance provided by the Wildfire Fund, Pacific Generation is eligible as an additional named insured to obtain payments from PG&E which are drawn from the Fund. This makes the proportional allocation of the accounting charge, discussed in the direct testimony and noted in SVP's testimony, unnecessary.[15]

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9 PG&E Response to Data Request CalCCA_004-Q014.

10 *Id.*

11 Dickman Testimony at 29-30.

12 PG&E Response to CalCCA_002-Q039.

13 Kolnowski Testimony at 31-32.

14 PG&E Prepared Testimony, Chapter 11, at 11-13.

15 *Id.* at 11-4; Kolnowski Testimony at 32.

C. The Utility Reform Network's (TURN) Recommendation to Exempt Pacific Generation From the First Priority Condition Should Be Rejected

TURN's recommendation to exempt Pacific Generation from the First Priority Condition should be rejected.[16] The First Priority Condition applies only to the board of directors of PG&E Corporation (the holding company), and not to the board of PG&E (the utility), as TURN's testimony incorrectly assumes.[17] In a holding company structure, the utility does not have direct access to public equity markets. The First Priority Condition ensures that the Holding Company, which can raise such equity capital, prioritizes the capital needs of the utility over other uses. Under the modification proposed by the Applicants, PG&E Corporation's board would be required to give first priority to the capital needs of both PG&E and Pacific Generation, rather than only to those of PG&E. This gives effect to the First Priority Condition by ensuring that the capital needs of both PG&E and Pacific Generation are prioritized. Although the Minority Investor(s) are expected to be a source of equity capital for Pacific Generation's future capital needs, Pacific Generation's remaining equity capital needs will be met by PG&E (based on its majority ownership position) and, ultimately, by PG&E Corporation (including through the First Priority Condition). TURN's proposal to exempt Pacific Generation from the protection of the First Priority Condition would expose Pacific Generation to the risk of lacking sufficient equity capital to meet its public service obligations.

TURN's contention that the Applicants' proposed modification of the First Priority Condition would reduce the resources available to PG&E is also unfounded.[18] On the contrary, a benefit of the Proposed Transaction is that the resources available to PG&E will increase because a portion of Pacific Generation's equity capital needs can be met by the Minority Investor(s).

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16 See Dowdell Testimony at 8.

17 See D.99-04-068, 86 CPUC 2d 76, 1999 WL 589171 (1999), Ordering Paragraph 8 ("The capital requirements of PG&E . . . shall be given first priority by PG&E Corporation's Board of Directors.").

18 Dowdell Testimony at 8.

PACIFIC GAS AND ELECTRIC COMPANY

APPENDIX A

STATEMENTS OF QUALIFICATIONS

PACIFIC GAS AND ELECTRIC COMPANY
STATEMENT OF QUALIFICATIONS OF DAVID GABBARD

Q 1 Please state your name and business address.

A 1 My name is David Gabbard, and my business address is Pacific Gas and Electric Company (PG&E), 300 Lakeside Drive, Oakland, California.

Q 2 Briefly describe your responsibilities at PG&E.

A 2 I am PG&E's President of Pacific Generation and I have been in my current position since April 2023. I have worked at PG&E since 2005, holding a variety of leadership positions across the Engineering, Generation Interconnection, Project Management, Risk Management, Asset Strategy, Transmission Planning, and Transmission & Substation System Protection, Maintenance, and Construction.

Q 3 Please summarize your educational and professional background.

A 3 I received a Bachelor of Science degree in Mechanical Engineering from California Polytechnic State University, in 2006, and a Master's degree in Business Administration from the University of Pennsylvania Wharton School, in 2017.

Q 4 What is the purpose of your testimony?

A 4 I am sponsoring the following testimony in PG&E's Pacific Generation Application:

- Chapter 3, "Description of Pacific Generation."

Q 5 Does this conclude your statement of qualifications?

A 5 Yes, it does.

PACIFIC GAS AND ELECTRIC COMPANY
STATEMENT OF QUALIFICATIONS OF ERIC A. VAN DEUREN

Q 1 Please state your name and business address.

A 1 My name is Eric A. Van Deuren, and my business address is Pacific Gas and Electric Company (PG&E or the Company), 12840 Bill Clark Way, Auburn, California.

Q 2 Briefly describe your responsibilities at PG&E.

A 2 I am the Senior Director of Hydro Operations and Maintenance (O&M) in PG&E's Power Generation department responsible for O&M of PG&E's hydro generation facilities. In this position, my responsibilities include leading the operating and maintenance of the Company's hydroelectric facilities.

Q 3 Please summarize your educational and professional background.

A 3 I received a Bachelor of Science in Civil and Environmental Engineering from the University of Wisconsin, Madison, in 1990. I am a Licensed Professional Engineer in California. Prior to joining PG&E in 2013, I spent 23 years at Mead & Hunt, Inc., starting out as an entry-level Engineer in 1990, progressing to the position of Vice President and Group Leader of Water Resources, and serving on the Board of Directors for eight years. During my tenure at Mead & Hunt, I specialized in dam safety work; participated in, or acted as, the Federal Energy Regulatory Commission (FERC)-approved Independent Consultant for over 120 FERC Part 12 inspections; and performed engineering evaluations, and design, and on many dam and hydropower-related projects. I joined PG&E Power Generation in 2013, as Senior Manager of Project Engineering (including both project engineering and project management); moving into the role of Safety, Quality and Standards Director for Power Generation in 2015, moving into role of Director of Engineering for Power Generation in 2018, and moving to my current position as Senior Director of Hydro Operations and Maintenance in 2020.

Q 4 What is the purpose of your testimony?

A 4 I am sponsoring the following testimony in PG&E's Pacific Generation Application:

- Chapter 2, "Description of Property and Assets to Be Transferred and Liabilities to Be Assumed":
  - Section D.

Q 5 Does this conclude your statement of qualifications?

A 5 Yes, it does.