

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

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

Application 22-09-018  
(Filed September 28, 2022)

**OPENING BRIEF OF  
THE CALIFORNIA HYDROPOWER REFORM COALITION ET AL.**

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*CHRC Opening Brief*  
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## SUMMARY OF RECOMMENDATIONS

The California Hydropower Reform Coalition (CHRC) is concerned that there is no set of conditions that can adequately address the risks the Proposed Transaction poses to Pacific Gas & Electric's (PG&E) customers and the greater public. If the California Public Utility Commission acts to approve the Application, the CHRC recommends its decision include the following conditions to mitigate the potential harm to PG&E's customers and the public.

1. Transaction Conditions 1-16 recommended by Brian Dickman on behalf of California Community Choice Association's (CalCCA), *see* CalCCA-01 (Direct Testimony of Brian Dickman), Att. B. However, with respect to Mr. Dickman's recommended Transaction Condition 13, CHRC does not take a position on whether Pacific Generation's return on equity should be presumed lower than PG&E's pending the next joint cost of capital application.
2. Transaction Conditions A ("PG&E should be required to compensate ratepayers for sale of PacGen's Ratepayer Funded Assets") and B ("PG&E Should be Required to Agree to Ratepayer Compensation for Any Future Sales of PacGen Assets") recommended by Jennifer Dowdell on behalf of The Utility Reform Network (TURN), *see* TURN-01 (Direct Testimony of Jennifer Dowdell), pp. 4:17 – 6:2.
3. PG&E and Pacific Generation will revise their Operations and Service Agreement to include a post-transaction Owner's Dam Safety Program (ODSP) that delineates Pacific Generation's and PG&E's respective responsibilities and accountabilities for implementing the program .
4. The obligation under the Commission's Decision 20-12-005 to obtain and thereafter maintain ISO 55000 certification for the hydropower assets to be transferred from PG&E to Pacific Generation shall run jointly to PG&E and Pacific Generation, pending further Commission review in the next General Rate Case. *Application of Pac. Gas & Elec. For Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2020.* (U39M), No. 18-12-009 (Dec. 3, 2020).
5. PG&E and Pacific Generation will revise the form of Separation Agreement, including the form of Assignment and Assumption of Assumed Contracts, to require PG&E and Pacific Generation to be jointly responsible for compliance

with all “Assumed Contracts” for the hydropower generation assets, including but not limited to all federal licensing and relicensing settlement agreements.

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**OPENING BRIEF OF  
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**I. INTRODUCTION**

Pursuant to Rule 13.12 of the California Public Utility Commission’s (CPUC) Rules of Practice and Procedures and the schedule established in the Scoping Memo for this proceeding issued on January 20, 2023 and amended on March 30, 2023, the California Hydropower Reform Coalition (CHRC) files this Opening Brief regarding the “Application of Pacific Gas and Electric Company (U39E) and Pacific Generation LLC for Approval to Transfer Certain Generation Assets, for a Certificate of Public Convenience and Necessity, for Authorization to File Tariffs and to Issue Debt, and for Related Determinations” (Application).<sup>1</sup>

On November 22, 2022, Pacific Gas and Electric Company (PG&E) filed the Application seeking Commission authorization to transfer to Pacific Generation, a newly created subsidiary, “all of its right, title, and interest in and to substantially all of its non-nuclear generation assets,” including PG&E’s hydroelectric, natural gas, and solar generation assets, and the Elkhorn battery

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<sup>1</sup> Although not required because this brief is less than 50 pages, the CHRC has endeavored to follow the order of issues presented in the Common Brief Outline developed by PG&E. There are organizational differences because the CHRC has not briefed all issues presented in the outline.

energy storage system.<sup>2</sup> The combined generation capacity of these assets is approximately 5.6 GW, of which 3,848 MW is contributed by the hydropower assets. *Id.* The rate base of the assets to be transferred represents “approximately \$3.5 billion, equal to about 7 percent of PG&E’s total rate base.”<sup>3</sup>

Although the hydropower assets represent a fraction of PG&E’s total rate base, they are critical generation assets that are operated for multiple beneficial uses, including water supply, environmental mitigation, recreation, and flood control. The appropriate and timely maintenance of these hydropower assets is critical to ensuring the safety of communities located downstream of dams or adjacent to impoundments. All Californians, not just PG&E customers, have an interest in ensuring those assets will be operated safely and reliably in the future to meet generation and other beneficial uses.

The Application represents that the hydropower assets and other non-nuclear generation assets will be more attractive to potential investors because they are low risk as compared to PG&E’s other utility assets. That representation is not consistent with the CHRC and its individual member’s knowledge and experience working on matters related to PG&E’s hydropower assets,<sup>4</sup> and the evidence the CHRC has submitted in this proceeding. Rather, the

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<sup>2</sup> Application, p. 5.

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

<sup>4</sup> As described in their Motion to Intervene in this proceeding, the CHRC and its individual members collectively have considerable knowledge of the hydropower assets that would be affected by the Proposed Transaction, and direct experience working with PG&E personnel in the operation and management of those assets.



hydropower assets also have significant capital needs and carry high risk of causing catastrophic flooding, especially if the identified capital needs are not timely met.

In deciding the Application, the Commission should fully consider the Proposed Transaction's potential adverse impacts on the safe and reliable operation of the transferred hydropower assets into the future, and ensure such impacts are avoided, minimized, or mitigated to protect the public interest.

## **II. BACKGROUND**

We incorporate by reference the Procedural Background stated in the Scoping Memo for the period through January 2023. Since that time, the parties have presented testimony and conducted discovery. The Commission held an evidentiary hearing in late August 2023.

## **III. LEGAL STANDARD**

Under Public Utilities Code (PUC) section 851, the Commission may grant the Application only if it determines the proposed transaction would not be adverse to the public interest. *Application of San Diego Gas & Elec. Co. (U902e) for Approval Pursuant to Pub. Utilities Code Section 851 to Lease Transfer Capability Rts. to Citizens Energy Corp.*, No. 09-10-010, 2011 WL 2246056 (May 26, 2011). In reaching that determination, the Commission shall demonstrate that it has proceeded in the manner required by law and that the findings on which its determination is based are supported by substantial evidence in light of the whole record. Pub. Util. Code § 1757(a); *The Util. Reform Network v. Pub. Utilities Com.*, 223 Cal. App. 4th 945, 958, 167 Cal. Rptr. 3d 747, 758 (2014).

**IV. PG&E HAS NOT DEMONSTRATED THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST [SCOPING MEMO #2].**

**A. PG&E Has Not Demonstrated the Proposed Transaction Will Benefit Customers.**

**1. There are alternative sources of funding available to PG&E to address its capital needs that would have less impact on customers [Scoping Memo #3].**

PG&E has stated the proposed transaction is necessary to raise capital to invest in the assets *remaining with PG&E*: “the sole purpose of this transaction is to raise equity to invest in [PG&E] and the safety and reliability of the remaining assets there.”<sup>5</sup> PG&E has further stated the proceeds from the proposed transaction will be used to partially meet PG&E’s 2024 capital needs.<sup>6</sup> PG&E has not provided a firm estimate of how much it expects to raise from the proposed transaction; only that it has received positive signals from the market.<sup>7</sup> PG&E has not yet consulted with any credit rating agencies to verify its expectations regarding market response.<sup>8</sup>

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<sup>5</sup> Hearing Transcript Vol. 2, (Rogers (PG&E) Cross Testimony), p. 249:10-17.

<sup>6</sup> California Community Choice Association (CalCCA) witness, Brian Dickman, estimated that PG&E could “expect to raise between \$1.1 and \$2.5 billion by selling a minority interest in the newly formed PacGen entity.” CalCCA-01 (Dickman Direct Testimony), 7:6-7. This amount would not be adequate to fully cover PG&E’s estimated annual capital needs in 2024: “PG&E reiterated in its 2022 fourth quarter earnings report that it projects capital expenditures between \$8 billion and \$14 billion annually from 2023 through 2027, totaling upwards of \$63 billion.” *Id.* at 8:3-5.

<sup>7</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 76:17-18.

<sup>8</sup> Hearing Transcript, Vol. 2 (Rogers (PG&E) Cross Testimony), pp. 315:10-25, 316: 1-14. PG&E’s Chief Financial Officer testified that the “proposed transaction has had a positive impact on the share price of our common stock, and so we believe if the proposed transaction were not to move forward, it could have an adverse impact on the current price of our ... stock ....” Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 100:19-23. This statement amounts to speculation absent evidence establishing a connection between news of the Proposed Transaction and any subsequent change

PG&E “believe[s] the proposed transaction is the best path forward in regards to funding the needed equity.”<sup>9</sup> However, PG&E concedes that the Proposed Transaction is not the only path, acknowledging that, if the Commission rejects the Application, PG&E will pursue other avenues.<sup>10</sup> PG&E also concedes that it has not yet made a final determination as to whether it will implement the Proposed Transaction, even if the Commission approves the Application. Instead, PG&E plans to further evaluate the merits of the Proposed Transaction compared to alternatives prior to closing the transaction.<sup>11</sup>

It is undisputed there are alternatives available to PG&E to fund its capital needs, namely “the sale of equity by PG&E Corporation.”<sup>12</sup> In contrast to the Proposed Transaction, which is unprecedented<sup>13</sup> and would have transaction costs that cannot yet be quantified, “issuing

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in share price, which is subject to numerous variables including actions of the Federal Reserve, returns on other investment, and overall market performance.

<sup>9</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 62:6-10.

<sup>10</sup> *Id.* at 61: 4-7.

<sup>11</sup> *Id.* at 79:7-11

<sup>12</sup> *Id.* at 16:13-20, 59:17-23.

<sup>13</sup> CalCCA provided testimony that the Proposed Transaction is the “first-of-its-kind”:

... PG&E’s proposal is novel. If approved, a brand-new type of utility 2 would be created – a generation-only IOU with the same service territory as an existing vertically integrated retail utility. The result would require the Commission to regulate two IOUs providing simultaneous service to the same retail customers in the same service territory.... [T]his complex framework creates more risk for the Commission and ratepayers, including more complexity in ensuring compliance with reliability obligations and in reviewing ratemaking. None of the three transactions cited by PG&E provide a template for the Commission to follow to address those risks. Indeed, given the novelty of this Proposed Transaction, many risks it poses may be unknowable at this time.

CalCCA-01 (Dickman Direct Testimony), p. 12:1-10.

common stock would not be a first of its kind event for PG&E” and would have readily quantifiable transaction costs.<sup>14</sup> Although the Proposed Transaction is PG&E’s preferred means of raising funds for 2024, the record shows PG&E could raise equity capital through traditional stock issuances.<sup>15</sup>

The Utility Reform Network (TURN) provided testimony that “the only stakeholders for which PG&E’s proposed PacGen sale would be a ‘less costly’ and ‘advantageous’ alternative are PG&E’s shareholders.”<sup>16</sup> The California Community Choice Association (CalCCA) provided testimony that reached a similar conclusion: “[t]he Proposed Transaction is clearly designed to benefit shareholders on the backs of customers.”<sup>17</sup> In sum, it appears the issuance of common stock would be a more efficient and less risky means of raising capital from a customer and public interest perspective, despite PG&E claims to the contrary.<sup>18</sup>

One of PG&E’s arguments for seeking approval of the Proposed Transaction (as opposed to issuing additional stock) is that selling more common stock will impact the Fire Victims Trust Fund.<sup>19</sup> However, that assertion is not supported by the record. Only 14% of the originally held

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<sup>14</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), pp. 18:18-21, 19:18:10-22.

<sup>15</sup> TURN-01 (Dowdell Direct Testimony), pp. 16:1 – 18:8; CalCCA-01 (Dickman Direct Testimony), p. 16:5 – 18:16.

<sup>16</sup> TURN-01 (Dowdell Direct Testimony), p. 9:12-14.

<sup>17</sup> CalCCA-01 (Dickman Direct Testimony), p. 12:15-16.

<sup>18</sup> *See, e.g.*, Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), pp. 57 – 60.

<sup>19</sup> PGE- 01 (Direct Testimony, Ch. 1 (S. Williams)), pp. 1-4:25 – 1-5:2.

477 million shares remain in the Fund due to prior stock sales.<sup>20</sup> The Fund has the ability to sell the remaining 67.7 million shares at a time of its choosing. In fact, between the time PG&E issued rebuttal testimony on July 7, 2023 and the evidentiary hearing on August 21, 2023, the Fire Victims Trust Fund sold 60 million shares.<sup>21</sup> According to PG&E's Chief Financial Officer, the current PG&E share price has positively benefitted from the proposed transaction.<sup>22</sup> Thus, if the shares held by the Fire Victims Trust Fund are sold and those proceeds from the sale disbursed before this proceeding concludes the Fund would not be negatively impacted by any future stock issuances.<sup>23</sup>

**2. PG&E has not demonstrated the Proposed Transaction will improve the future financial condition of PG&E.**

As described above, the Proposed Transaction is unprecedented. The uncertainties surrounding the transaction contribute to make it very high-risk. However, PG&E has not shown that the Proposed Transaction would provide the benefit of restoring PG&E to good financial condition. Instead, the record shows the Proposed Transaction poses high risks for customers and the public while offering only incremental financial benefit for PG&E.<sup>24</sup> As Brian Dickman testified on behalf of CalCCA:

... the Proposed Transaction permanently complicates PG&E's corporate structure and regulatory oversight in an effort to raise \$1.1 to \$2.5 billion of equity capital, which is a

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<sup>20</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), pp. 10:9-13.

<sup>21</sup> *Id.* at 10:5-8.

<sup>22</sup> *Id.* at 11:8-13.

<sup>23</sup> *See id.* at 15:3-11.

<sup>24</sup> *See* CalCCA-01 (Dickman Direct Testimony); TURN-01 (Dowdell Direct Testimony).

relatively small amount in the face of PG&E's current market capitalization over \$40 billion and capital budget exceeding \$60 billion over the next five years.<sup>25</sup>

Further, and as discussed below, PG&E has not shown the Proposed Transaction, as compared to common stock issuance, would provide PG&E better access to additional equity in the long-term, after the initial sales of equity in Pacific Generation.

**B. PGE& Has Not Demonstrated the Proposed Transaction Would Avoid Adverse Impacts on Customers.**

**1. Customers would be harmed if PG&E passed on transaction costs and fees [Scoping Memo #8].**

PG&E has stated that it would not pass on the costs of the Proposed Transaction to customers.<sup>26</sup> The CHRC agrees that, if the Application is approved, PG&E should not be allowed to pass on the transaction costs to customers given that a) there are alternative sources of funding available to PG&E to address its capital needs that would not result in similar transaction costs, b) PG&E has argued it should not be required to share any of the proceeds of the equity sale in Pacific Generation with customers, and c) PG&E has not established that the Proposed Transaction will provide other quantifiable benefits for its customers.

**2. PG&E has not demonstrated the Proposed Transaction would protect the future financial condition of PG&E and Pacific Generation [Scoping Memo #10].**

According to PG&E, the essential purpose of the Proposed Transaction is to raise capital to partially meet PG&E's capital needs for 2024.<sup>27</sup> Beyond access to capital to meet immediate

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<sup>25</sup> CalCCA-01 (Dickman Direct Testimony), p. 16:7-11.

<sup>26</sup> See Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 20:1-3.

<sup>27</sup> *Id.* at 67:19-22.

needs, PG&E also claims the Proposed Transaction could improve the future financial condition of PG&E and Pacific Generation, in part by “reduc[ing] the amount of equity capital that PG&E must devote to the generation business” through additional capital provided by Minority Investors following the initial sale and by lowering the incremental cost of debt passed on to customers.<sup>28</sup> The record evidence does not support this claim.

While PG&E has stated its “expectation” that Minority Investors would be motivated and able to respond to future capital calls, it has not demonstrated the reasonableness of that expectation such that it could be relied upon by the Commission to make a finding of benefit.<sup>29</sup> Indeed, PG&E’s Chief Financial Officer declined to “speculate in terms of what the market circumstances will be – in the future” for purposes of affirming the potential benefit of future equity capital from Minority Investors.<sup>30</sup>

PG&E also has not demonstrated that Pacific Generation is likely to have access to a lower incremental cost of debt than PG&E. PG&E’s claim appears based, in part, on the assumption that Pacific Generation will readily receive a higher credit rating than PG&E because its asset portfolio will be viewed as lower risk. However, PG&E has not actually tested that claim or related claims as to the Proposed Transaction’s effect on PG&E’s credit rating with any credit rating agency.<sup>31</sup>

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<sup>28</sup> PG&E-13 (PG&E Rebuttal Testimony, Ch. 1 (S. Williams)), p. 1-3 – 1-4; Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 68:6-12.

<sup>29</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 68:12-16.

<sup>30</sup> *Id.* at 69:15-21.

<sup>31</sup> *Id.* at 77 – 80.

Further, and as described below, PG&E has not demonstrated that the hydropower assets to be transferred are or will be viewed by credit rating agencies as low risk. Instead, it appears that factors contributing to PG&E's lower credit rating could also affect Pacific Generation's rating. For example, S&P Global Ratings cited the fact that PG&E carries an increased risk of causing a catastrophic wildfire due to the location of its service territory and climate change.<sup>32</sup> As described below, Pacific Generation similarly would carry an increased risk of its hydropower assets causing catastrophic flooding due to the location of its service territory and climate change.

The S&P also cited PG&E's inadequate track record of safety and reliability. Because PG&E proposes to continue operating the hydropower assets for Pacific Generation in the same manner as it does today, Pacific Generation would assume the legacy of PG&E's poor track record of safety and reliability.<sup>33</sup> Similarly, given PG&E's ongoing control over hydropower operations and the fact that Pacific Generation will have a single employee, Pacific Generation's credit worthiness is also likely to be affected by the negative views on PG&E's governance:

The company is the only North American regulated utility to file for bankruptcy protection twice over the past two decades and has a history of confrontational relationships with regulatory authorities, which, in our view, are beyond isolated episodes and outside industry norms. This has adversely affected the company's reputation, representing a significant risk to the company.<sup>34</sup>

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<sup>32</sup> TURN-04 (PG&E Response to Data Request TURN-02 Question 8), Enc. 1, unnumbered p. 3.

<sup>33</sup> *Id.* at unnumbered p. 4.

<sup>34</sup> *Id.* at unnumbered p. 5.



Accordingly, PG&E has not provided substantial evidence that Pacific Generation will have a lower incremental cost of debt that will benefit customers.

**3. PG&E has not demonstrated the Proposed Transaction will enable PG&E and Pacific Generation to operate and maintain utility assets safely and reliably [Scoping Memo #14].**

PG&E has stated its *intention* to spend the proceeds of the Proposed Transaction to fund capital investments in the assets remaining with PG&E.<sup>35</sup> PG&E describes these capital needs as substantial.<sup>36</sup> As described below, the capital needs to ensure the safe and reliable operation of the hydropower assets proposed to be transferred to Pacific Generation are also substantial. PG&E has not shown that the Proposed Transaction will enable PG&E and Pacific Generation to operate and maintain those assets safely and reliably. Further, PG&E has not shown that the Proposed Transaction will provide Pacific Generation with adequate financial capacity to effectively respond to emergent needs arising from failure(s) related to the hydropower assets. In sum, PG&E has not presented adequate evidence in this proceeding to demonstrate the Proposed Transaction would result in a hydropower management scheme that is protective of the public interest in terms of safety, reliability, and cost.

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<sup>35</sup> Application, p. 16. Brian Dickman testified that this intention represents “a promise that is not guaranteed.” CalCCA-01 (Dickman Prepared Testimony), p. 8: 9-10. He further testified that PG&E’s plan to resume payments of dividends by mid-2023 conflicts with its promise to reinvest the proceeds into capital projects. *Id.* at pp. 8:10 – 9:3.

<sup>36</sup> *Id.* at 1.

**a) The hydroelectric assets proposed to be transferred also have significant capital needs.**

The Commission has previously acknowledged the immensity of PG&E’s hydroelectric portfolio: “According to PG&E, its hydroelectric system is one of the largest investor-owned hydroelectric systems in the country. PG&E’s hydro system stretches for nearly 500 miles and its portfolio includes 66 powerhouses of varying sizes with 106 generating units.”<sup>37</sup>

A hydroelectric portfolio of this size has significant Operations and Maintenance (O&M) and capital costs. For example, in the Test Year 2020 General Rate Case, the Commission adopted the settlement parties’, which included PG&E, proposal for an adjusted O&M forecast of \$144.619 million. Decision 20-12-005, p. 84. The Commission also adopted the settlement parties’ proposed capital costs in the amounts of \$238.415 for 2018, \$230.66 million for 2019, and \$214.842 million for 2020. *Id.* Although the Commission adopted these amounts, several of the hydropower projects in PG&E’s portfolio are in disrepair and/or require remediation to address dam safety issues, as described in testimony presented by CHRC and other parties.<sup>38</sup> In some cases, these assets are being operated below generation capacity pending repair and/or dam safety remediation, such as the McCloud Dam.<sup>39</sup> In other cases, like the Potter Valley Project, the assets are not generating at all.<sup>40</sup>

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<sup>37</sup> *Application of Pac. Gas & Elec. Co. for Auth., Among Other Things, to Increase Rates & Charges for Elec. & Gas Serv.* Effective on Jan. 1, 2020. (U39m), No. 18-12-009, 2020 WL 7408339 (Dec. 3, 2020), p. 82.

<sup>38</sup> CHRC-01 (Steindorf Direct Testimony), CHRC-02 (Shutes Direct Testimony); PCWA-01-E (Errata to Fecko Direct Testimony); PCWA-02-E (Errata to Maisch Direct Testimony).

<sup>39</sup> CHRC-01 (Steindorf Direct Testimony), p. 15: 7-12.

<sup>40</sup> CHRC-02 (Shutes Direct Testimony), p. 24:24 – 25:6 (citing CHRC-23).

The capital needs for safe and reliable operation and maintenance of the hydroelectric projects are likely to increase significantly into the future due to several factors, including the age of the hydropower assets, PG&E’s history of deferred maintenance for the assets, new industry standards for dam safety, and climate change.

PG&E’s inability to effectively anticipate and manage increased risks related to safe operation of its electric and gas assets caused the loss of life, damage to infrastructure, and financial jeopardy for PG&E that persists today.<sup>41</sup> In 2022, S&P Global Credit Ratings cited the need to “improve[] its track record of safety and reliability” as one of the factors for PG&E’s lower credit rating.<sup>42</sup> The same principles apply to PG&E’s track record of hydropower asset management and operation.

PG&E’s hydropower portfolio includes many dams and other project works that are 50 years or older. For example, PG&E’s Canyon Dam, which holds back the eighth largest reservoir in California, Lake Almanor, was originally constructed in 1914 (109 years ago) and raised to its current elevation in 1962 (61 years ago).<sup>43</sup> The Lower Centerville Canal, part of PG&E’s DeSabra-Centerville Hydropower Project, “dates to the early 1900s, and parts of it are older.”<sup>44</sup>

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<sup>41</sup> TURN-04 (PG&E Response to Data Request TURN-02 Question 8).

<sup>42</sup> *Id.*

<sup>43</sup> CHRC-01 (Steindorf Direct Testimony), p. 19:18-19. Canyon Dam is part of the Upper North Fork Feather River Project (P-2105). *Id.* at 19:17-18. It impounds Lake Almanor, which holds 1,308,000 acre-feet of water. *Id.* at 19:19. One acre-foot is equal to the amount of water that would cover a football field in one foot of water.

<sup>44</sup> CHRC-02 (Shutes Direct Testimony), p. 19:11.

The American Society of Civil Engineers states that most dams have a 50-year lifespan.<sup>45</sup> It has further stated that aging dams require more attention and remediation: “As dams age, more thorough inspections and evaluations are needed with corresponding timely remediation ...”<sup>46</sup>

The CHRC and other parties have provided evidence of deferred maintenance and overdue capital improvements at several PG&E hydropower projects that impact operations, safety, and costs. For example, PG&E has been considering capital improvements at the Centerville Powerhouse, part of the DeSabra-Centerville Hydropower Project, for 40 years:

Thirty years ago, FERC described Centerville Powerhouse as follows: ‘The original powerhouse was built in 1899 and the units were replaced in 1904 and 1907; the powerhouse has exceeded its expected life and would require a large investment to remain useful for the remaining term of the license ...’ [internal citation omitted]. Centerville Powerhouse has been completely off line for 12 years.”

In filings with the Federal Energy Regulatory Commission (FERC), PG&E has indicated the powerhouse will remain offline for at least the next decade.<sup>47</sup> Additional project works, including the Centerville Canal, DeSabra Forebay, and Philbrook Reservoir Spillway, are also overdue for repair, upgrade, or, in the alternative, decommissioning and removal.<sup>48</sup>

Placer County Water Agency (PCWA) separately provided testimony regarding the impacts of deferred maintenance at hydropower facilities that are beyond their designed lifespan:

An example of PG&E’s run-to-failure approach is the Alta powerhouse and its attendant facilities. The Alta Forebay, which is the point of delivery to PCWA for the Alta treated water system, is heavily silted in to the point where there are only a few hours of storage

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<sup>45</sup> CHRC-01 (Steindorf Direct Testimony), p. 24:2-7 (quoting American Society of Civil Engineers, Report Card for California’s Infrastructure 2019, pp. 26 - 27 (May 2019)).

<sup>46</sup> *Id.* at 24:4-5.

<sup>47</sup> CHRC-02 (Shutes Direct Testimony), pp. 17:23-18:4.

<sup>48</sup> *Id.* at 22-23.

capacity left. This negatively impacts PG&E’s ability to perform routine maintenance on the upstream canal without causing the entire community of Alta to run dry. The penstock has a hole in it, which causes PG&E to limit the amount of water that can be allowed to enter, to prevent flooding the neighboring property, which then reduces the maximum generation capacity. And the powerhouse has a history of frequent trips out of service. The Alta Powerhouse is over 100 years old, and is the oldest powerhouse in the Drum Spaulding Project. It is near failure, but is an essential element for water supply .... PG&E gives no indication that it intends to invest in any of the attendant facilities.<sup>49</sup>

Regulatory and industry standards for dam safety have increased in rigor over the last decade. For example, PG&E has referenced its Owner’s Dam Safety Program and its Spillway Assessment and Improvement Programs.<sup>50</sup> Both programs are relatively new requirements for dam owners. FERC did not require owners of high and significant hazard potential dams<sup>51</sup> to develop Dam Safety Programs prior to 2012.<sup>52</sup> The California Division of Safety of Dams did not adopt the Spillway Assessment and Improvement Program until 2017, which was the same year that the Department of Water Resources’ (DWR) Oroville Project spillway failed when used for the first time. As stated in the latest iteration of PG&E’s Dam Safety Program, PG&E is responsible to “develop and maintain the standards and procedures required for dam safety to reflect industry standards and best practices.”<sup>53</sup> Implementation of both programs across PG&E’s

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<sup>49</sup> PCWA-02-E (Errata to Maisch Direct Testimony), pp. 12:14-13:3.

<sup>50</sup> PGE-14 (PG&E Rebuttal Testimony, Ch. 2), pp. 2-16 – 2-17.

<sup>51</sup> High Hazard Potential is a classification standard for any dam whose failure or mis-operation will cause loss of human life and significant property destruction. FEMA Fact Sheet, available at [https://www.fema.gov/sites/default/files/documents/fema\\_nsdp-overview-fact-sheet.pdf](https://www.fema.gov/sites/default/files/documents/fema_nsdp-overview-fact-sheet.pdf) (last accessed Sept. 18, 2023).

<sup>52</sup> See CHRC-42 (CHRC Data Request No. 2, PG&E Answer 002), Enc. 1, p. 16 (citing FERC letter to PG&E dated May 3, 2012, requiring licensees to document their Owners Dam Safety Program).

<sup>53</sup> CHRC-42 (CHRC Data Request No. 2, PG&E Answer 002), Enc. 1 (PG&E’s Dam Safety Program), p. 6.

portfolio of hydropower projects will require significantly greater capital investments in the near future, and maintaining compliance with new standards will likely demand additional capital. In 2022, PG&E estimated that it would need to spend nearly \$2 billion within the next 30 years on spillway assessment and capital improvements alone.<sup>54</sup>

Furthermore, PG&E's hydropower assets face increasing threats due to climate change, which has intensified storms and high flow events as compared to the hydrologic conditions that existed in the early to mid-twentieth century when most of these projects were designed and built.<sup>55</sup> Hardening the hydropower assets to adapt to changing climatic conditions will increase O&M and capital costs.

**b) PG&E has not shown the proposed transaction will enable PG&E and Pacific Generation to meet those capital needs to ensure safe and reliable operations.**

Regardless of the significant issues impacting safe and reliable operation of PG&E's hydropower asset portfolio, PG&E insists the Proposed Transaction will not change, for better or worse, the manner those generation assets are managed today:

PG&E will provide all services necessary or appropriate for the operation of Pacific Generation's business, including services to construct, operate, maintain, repair, and support Pacific Generation's generation assets in substantially the same manner as today and by providing procurement, corporate and other support services, all using PG&E's experienced personnel and contractors.<sup>56</sup>

PG&E's proposal for post-transaction operations – to maintain the status quo – squarely places PG&E's track record of safety and reliability of the hydropower assets at issue in this

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<sup>54</sup> See, e.g., CHRC-40 (CHRC Data Request No. 1, Question10).

<sup>55</sup> CHRC-01 (Steindorf Direct Testimony), p. 15:1-2.

<sup>56</sup> CHRC-41 (CHRC Data Request No. 2, PG&E Answer 001).

proceeding. As described below, the evidence shows that PG&E's plan to simply continue existing operations and management, but under a much more complex corporate structure, is inadequate to support a finding that the Proposed Transaction will ensure the safe and reliable operation of the hydropower assets into the future.

**(1) Effective response to emergent needs at the hydroelectric projects will depend on PG&E's and Minority Investors' ability and willingness to respond to additional capital calls.**

As stated above, there is significant risk associated with the hydropower assets, including the risk that one or more of the assets will cause catastrophic flooding, resulting in loss of life and property damage. According to PG&E, it evaluates the risk associated with a potential dam breach, or "large uncontrolled release of water," and lists that risk in the Risk Assessment and Mitigation Process (RAMP) filings with the Commission in general rate case proceedings.<sup>57</sup> However, PG&E does not model and report the risks related to the hydropower assets in the same level of detail as it does for its natural gas and transmission assets. The lack of detailed analysis should not be interpreted as a lack of risk. Rather, changes to PG&E's findings in RAMP reports published over the past decade suggest that PG&E has not fully appreciated the risk represented by certain assets until the risk emerges.

As noted above, PG&E models and reports the risk associated with a potential dam breach. A dam breach is considered a single catastrophic event with severe consequences. However, the potential risk of dam breach historically has been ranked low compared to other

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<sup>57</sup> See CHRC-54 (CHRC Data Request No. 2, PG&E Answer 014) ("The flood risk model referenced by the CPUC on page 99 of their report is the model that PG&E used to estimate life loss consequences from a potential dam breach.").

risks based on the assumption that dam failure is a 150-year event. Climate change and the age of many dams in the hydropower portfolio make that an outdated assumption.<sup>58</sup>

PG&E does not model or report the risk associated with use of a dam spillway for large water releases, which it considers to be a “controlled” water release.<sup>59</sup> Regardless of whether use of spillways to pass floodwaters over or around a dam is defined as a “controlled” release, it represents a significant risk.

For example, PG&E’s use of the spillway at the McCloud Dam has resulted in damage to infrastructure and the environment.<sup>60</sup> “[I]n 1997, erosion caused by high flows triggered partial collapse of the opposing hillside as well as failure of Hawkins Creek Road” located below the dam.<sup>61</sup> In 2017, PG&E’s use of the same spillway “caused additional erosion and widespread damage to Hawkins Creek Road, resulting in a road closure that lasted six years, eliminating recreational river access to the Pit River and impeding access for wildland firefighters ....”<sup>62</sup>

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<sup>58</sup> CHRC-01 (Steindorf Direct Testimony), p. 15:1-2.

<sup>59</sup> CHRC-44 (CHRC Data Request No. 2, PG&E Answer 004).

<sup>60</sup> PG&E has confirmed that, “[r]eleases from the McCloud dam spillway *are directed towards the hillside across the river* and below the structure.” CHRC-47 (CHRC Data Request No. 2, PG&E Answer 007). It states this configuration does “not erode or destabilize *the dam itself*.” *Id.* (emphasis added). However, it does not rebut CHRC’s evidence that this configuration has adversely impacted the hillside across the river and failure to adjacent infrastructure.

<sup>61</sup> CHRC-01 (Steindorf Direct Testimony), p. 13:25-27.

<sup>62</sup> *Id.* at 13:27 – 14:3.



For the indefinite future, PG&E is operating McCloud Reservoir at reduced reservoir levels to avoid use of the spillway.<sup>63</sup> Continued erosion, and potential failure, of the opposing hill slope could effectively impound water in the McCloud River, ponding water against the base of the dam which could lead to degradation of the dam infrastructure. Further, FERC has determined that the capacity of the spillway on McCloud Dam is inadequate to pass the Probable Maximum Flood.<sup>64</sup>

In a more severe example, FERC has identified several issues related to spillway design and condition at Canyon Dam.<sup>65</sup> PG&E has never tested this spillway. Inundation mapping for PG&E's Canyon Dam shows that "spillway failure would be catastrophic for the Feather River Canyon and adjacent towns."<sup>66</sup>

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<sup>63</sup> CHRC-01, (Steindorf Direct Testimony), p. 15: 7-12 *see also* CHRC-46 (CHRC Data Request No. 2, PG&E Answer 006) ("PG&E does not have finalized schedules or cost estimates for [McCloud, Lake Almanor, and Pit 7] dam capital projects.").

<sup>64</sup> *Id.*, p. 17:7-13.

<sup>65</sup> CHRC-01 (Steindorf Direct Testimony), p. 21:11-27. Implementation of FERC's recommendations for redressing those issues will require significant effort. Such recommendations include: "(1) performing a hydraulic analysis of the spillway for flows up to the Probably Maximum Flood, (2) performing a geologic reconnaissance of the slope opposite the spillway to evaluate erosion and slope instability associated with spillway operation, and (3) performing structural analyses for the spillway walls including for seismic loading." *Id.* at 23-27.

<sup>66</sup> CHRC-01 (Steindorf Direct Testimony), p. 22:15-16; *see also id.* at 22:22-26 ("a spillway failure would be associated with a peak flow of over 800,000 [cubic feet per second (cfs)] and would set off a 50- to 90-foot flood wave in the Feather River Canyon.... Oroville, Gridley, Biggs and other areas would be flooded."). Spillway failure at Canyon Dan could also cause significant impacts to DWR's Oroville Dam located downstream. If the Canyon Dam spillway were to fail, the resulting flood wave could overwhelm downstream infrastructure, creating a domino-like effect across the Feather River canyon infrastructure. *Id.* at 23:20-21, fn. 8. In such an event, Oroville Dam, which is below Canyon Dam and lacks adequate capacity to safely accommodate the volume of Lake Almanor (impounded by Canyon Dam), would likely overtop, causing significant damage downstream. *Id.* at 27:3-21.

The risk and potential consequences of spillway failure at Canyon Dam are not a mere abstraction.

The history of dam failures due to dam design flaws and deferred maintenance of the type present at Canyon Dam is well documented. History has shown that the first use of flood control structures can reveal significant design flaws. For example, the first use of spill tunnels at Glen Canyon Dam, the second largest reservoir in the U.S., in 1983, resulted in near catastrophic failure. And, during the first use of Oroville Dam’s auxiliary spillway in 2017, the spillway nearly failed while only releasing 3% of its design capacity.<sup>67</sup>

While these events have highlighted the importance of spillway testing, PG&E likely cannot test the Canyon Dam spillway, let alone use it an actual emergency without flooding portions of Chester, California – a town on the northern shore Lake Almanor.<sup>68</sup> This is because Chester is at the same elevation as the spillway crest.<sup>69</sup> That means by the time Lake Almanor fills to the point of passing over the spillway crest, parts of Chester will have already been flooded by rising water levels in Lake Almanor. Due to this design defect, “[r]unoff events smaller than the spillway design flood quickly begin to flood parts of Chester because dam releases are limited until the flows begin to go over the spillway crest.”<sup>70</sup>

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<sup>67</sup> CHRC-01 (Steindorf Direct Testimony), p. 22:3-7. PG&E has not modeled the risk associated with elevated water levels in Lake Almanor flooding Chester before the spillway at Canyon Dam could be used to release high inflows to Lake Almanor downstream. CHRC-44 (CHRC Data Request No. 2, PG&E Answer 004). PG&E’s response that Chester would not be flooded by the failure of Canyon Dam is non-responsive to the safety issue raised by CHRC. *See id.*

<sup>68</sup> *Id.* at 20:19-21.

<sup>69</sup> *Id.* at 20:17-19. FERC requires that PG&E maintain water levels several feet below the crest of Canyon Dam spillway under normal conditions. This restriction mitigates the risk of flooding Chester outside of flood events. *Id.* at 19:4-13, 20:17-23.

<sup>69</sup> *Id.* at 20: 19-23.

<sup>70</sup> *Id.* at 20:25 – 21:2; CHRC-01 (Steindorf Direct Testimony).

These known risks associated with catastrophic failure, and potentially other risks that are known but not disclosed to the public,<sup>71</sup> are likely to increase if Pacific Generation does not or cannot make timely capital investments. The economic consequences of a PG&E dam or spillway failure that caused catastrophic flooding could run to the billions. PCWA and CHRC provided separate testimony that PG&E and others have incurred millions of dollars in costs to address even more limited failures related to the hydropower infrastructure in the past.<sup>72</sup>

PG&E has not shown that Pacific Generation would have the financial capacity to cover emergent needs related to catastrophic failure at one or more of the hydropower assets. PG&E's history of bankruptcies, which the S&P described as outside the norm (*see* IV.B.2, *supra*), are cause for the Commission to closely scrutinize PG&E's assurances regarding financial capacity to meet emergent needs.

As stated above (*see* IV.B.2, *supra*), PG&E's claim that Pacific Generation will have a strong financial position is based on several assumptions that have yet to be substantiated. For example, PG&E has stated Pacific Generation will be able to meet emergent needs by accessing equity capital through both PG&E and the Minority Investor(s). However, as PG&E's Chief Financial Officer acknowledged, the extent to which Pacific Generation would be able to access additional equity through the Minority Investors cannot be reliably forecasted at this time. This uncertainty undercuts PG&E's justification for this first-of-its-kind transaction, which depends on Pacific Generation raising significant, additional Minority Investor capital after the initial

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<sup>71</sup> PG&E has designated much of this dam safety information as Critical Energy Infrastructure Information, which means it is non-public data. CHRC-01 (Steindorf Direct Testimony), pp. 8-9.

<sup>72</sup> PCWA-13, Att. 2.

sale. PG&E would be reliant on additional capital calls to Minority Investors because the Proposed Transaction is only predicted to yield \$2.5 billion and PG&E’s capital needs for just the retained assets are estimated at \$63 billion.<sup>73</sup>

Further, PG&E witness, Margaret K. Becker, testified that PG&E “models risks broadly at the enterprise level,” but could not confirm whether PG&E had specifically “modeled Pacific Generation’s financial ability to meet any emergent need in connection with the risk of a catastrophic failure of an aged hydro asset to support this statement that Pacific Generation will be able to meet any emergent need[.]”<sup>74</sup>

**(2) The Proposed Transaction is likely to incentivize investments in O&M and capital improvements at some but not all of the hydroelectric Assets.**

PG&E claims that it “will continue to operate and maintain the Generation Assets in substantially the same manner as today, using the same employees, practices, and policies.”<sup>75</sup> However, contrary to PG&E’s broad assurance of status quo, the Proposed Transaction would potentially worsen O&M issues across the hydropower portfolio as a whole by further limiting spending on hydropower assets that are uneconomic, which, in turn, could impact public safety and system reliability.

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<sup>73</sup> “Stated another way, if PG&E needs \$63 billion before the close of the transaction, it will still need \$60.5 billion after the close of the transaction. [¶] And that is only if the utility keeps its promise to use the proceeds for capital expenditures—a promise that is not guaranteed.” CalCCA-01 (Dickman Direct Testimony), p. 8:7-10.

<sup>74</sup> Hearing Transcript, Vol. 2 (Becker (PG&E) Cross Testimony), pp. 308:22 – 309:5.

<sup>75</sup> PGE-04-A (PG&E Amended and Restated Direct Testimony, Ch. 4 (A. Williams)), p. 4-1:14-16.

PG&E's rationale for the Proposed Transaction depends, in large part, on its expectation that the Minority Investors will be interested in providing additional capital in the future. In other words, Pacific Generation's access to additional equity depends on the Minority Investors' willingness to supply more capital. It is rational to expect the investors would seek to maximize their return (consistent with regulation) on that investment, and that their motivation to invest more would depend on the return received on prior investment in Pacific Generation. This would incentivize Pacific Generation to prioritize spending on capital improvements rather than O&M because capital improvements add to the rate base, on which there is a specified level of return. By contrast, O&M expenses are eligible for recovery at cost, but do not provide a return or add to the rate base.<sup>76</sup> Further, O&M overages that are ineligible for recovery may need to be covered by a reduction in the investors' authorized return.<sup>77</sup>

The Proposed Transaction would also incentivize O&M and capital spending on those projects that generate more power and are economical to operate. Unfortunately, there is not always direct correlation between a hydropower asset's O&M and capital needs and its power generation. Even an uneconomic hydropower asset requires continued investment to maintain a safe baseline pending decommissioning or other disposition of the asset.

The CHRC submitted evidence that PG&E historically has not dedicated adequate spending to O&M and capital needs at hydropower assets that are uneconomic or marginally economic. For example, PG&E has indefinitely deferred remediation of uneconomic facilities

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<sup>77</sup> See CHRC-50 (CHRC Data Request No. 2, PG&E Answer 010).

such as the DeSabra-Centerville, Potter Valley, and Battle Creek projects.<sup>78</sup> PCWA witness, Einar Maisch, characterized PG&E’s approach to O&M of uneconomic assets as “run-to-failure.”<sup>79</sup>

PG&E witnesses confirmed that the company exercises discretion in how it “reduces expenses” in some areas and “reallocate[es] those savings to other investments and other operating expenses,”<sup>80</sup> and also exercises considerable discretion in how it allocates authorized O&M funding across the portfolio.<sup>81</sup> The Proposed Transaction is structured to increase pressure on Pacific Generation (and PG&E as the majority owner also responsible for all operations and management) to spend more on the economically robust assets in the hydropower portfolio and on growing the rate base so as to sustain conditions that motivate Minority Investors to provide additional capital. The management goal for uneconomic assets, by contrast, will likely be limited to minimizing losses to reduce their drag on the value and attractiveness of investment in the hydropower portfolio.

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<sup>78</sup> CHRC-02 (Shutes Direct Testimony), pp. 19:3-21:23; 24:22-27:7; 30:10-31:13.

<sup>79</sup> PCWA-02-E (Errata to Maisch Direct Testimony), p. 12:14-15.

<sup>80</sup> PG&E witness Ms. Sienna Rogers specifically noted on cross examination that PG&E moves authorized funding around within its hydropower portfolio, stating: “Now, what I’m aware of in recent history at PG&E is while we have been reducing expenses in some areas, we have been also reallocating those savings to other investments and other operating expenses.” Hearing Transcript, Vol. 2 (Rogers Cross Testimony), p. 234:7-10.

<sup>81</sup> PG&E witness, Margaret Becker, confirmed on cross examination PG&E’s discretion to spend authorized operations and maintenance funding: “Q · And so essentially the utility has discretion over its spending of operation and maintenance dollars; right? A· To the extent -- setting aside mandates compliance, et cetera, yes, in other areas, the company does have discretion.” Hearing Transcript, Vol. 2 (Becker (PG&E) Cross Testimony), p. 311:20-25.

However, decisions to avoid spending on uneconomic assets, absent a regulatory mandate or emergent need, are not financially prudent in the long-term because, until PG&E or Pacific Generation ultimately decommissions or otherwise disposes of those uneconomic assets, they remain liabilities for the company and its customers. Further, as those uneconomic assets fall into disrepair, the risks they pose to public safety and the environment increase. Many of the uneconomic hydropower assets directly affect high-value natural resources, such as the spring-run Chinook salmon in Butte Creek, and the salmon and steelhead in the Eel River and Battle Creek.<sup>82</sup> Almost all of PG&E's hydropower assets affect water supply to at least some degree.<sup>83</sup>

Despite the increased risks, to date, PG&E has appeared unwilling to press decommissioning of uneconomic assets.<sup>84</sup> Given uncertainty as to whether it could fully recover decommissioning costs, Pacific Generation, which will need to consider the interests of Minority Investors, may be even less motivated to press decommissioning of uneconomic assets, particularly if there is uncertainty regarding their ability to fully recover decommissioning costs.<sup>85</sup>

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<sup>82</sup> CHRC-02 (Shutes Direct Testimony), pp. 16:19-21; 23:11-13; 29:11-17.

<sup>83</sup> See, e.g., PCWA-01-E (Errata to Fecko Direct Testimony); PCWA-02-E (Errata to Maisch Direct Testimony); NID-01 (Hanson Direct Testimony).

<sup>84</sup> See, e.g., CHRC-02 (Shutes Direct Testimony) regarding PG&E's general risk aversion (*id.* at 33:6-8), which is magnified in this context by both the potential costs of decommissioning (*see, e.g.*, CHRC-31), and PG&E's past difficulty in controlling costs (*id.* at 14-15).

<sup>85</sup> CHRC-40 (CHRC Data Request No. 1, PG&E Answer 005) ("decommissioning costs are not currently known and cannot be known until a final order is issued by the Federal Energy Regulatory Commission articulating the requirements for such decommissioning.").

In sum, the asset transfer to Pacific Generation is likely to make PG&E's poor hydropower assets poorer. It will reduce funding for O&M of such assets while at the same time potentially deferring decisions on decommissioning or other long-term disposition. This would be contrary to the substantial public interest in both the adequate maintenance of *all* the hydropower assets dedicated to public use and in the ultimate decommissioning or other disposition of assets that no longer serve a public purpose.

**c) PG&E has not demonstrated the Proposed governance structure would ensure safe and reliable operation of the transferred Hydropower Assets.**

As described above (*see* IV.B.2, *supra*), PG&E proposes to continue to operate the transferred hydropower assets in the same manner and with the same personnel that it operates those assets today, but as a service provider to Pacific Generation.<sup>86</sup> This extends to PG&E's implementation of PG&E's Dam Safety Program for Pacific Generation following the transaction.<sup>87</sup> That Program addresses governance as a key part of ensuring dam safety. For example, it establishes specific procedures and standards for "Communications and Reporting," including:

5.1 Report incidents involving Company dams ... to internal and external parties in accordance with the EAP for each dam and PG-1220S....

5.2 The [Chief Dam Safety Engineer (CDSE)] will schedule and conduct a periodic hydro facility safety briefing for the Vice President of Power Generation.

1. As part of the briefing, the CDSE will identify and describe the key areas of facility safety risk and the actions being taken to mitigate that risk.

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<sup>86</sup> CHRC-41 (CHRC Data Request No. 2, PG&E Answer 001).

<sup>87</sup> CHRC-42 (CHRC Data Request No.2, PG&E Answer 002).



5.3 The CDSE has authority to directly communicate upward to the Company president for matters concerning dam safety.

The Program also addresses the importance of “maintaining a well-trained and resourced organization with a primary focus on public and employee safety as well as compliance with FERC and State of California Department of Water Resources, Division of Safety of Dams (DSOD) requirements for dam safety.”<sup>88</sup>

PG&E has provided testimony as to how this program is implemented according to PG&E’s current governance structure, but not how it would be modified and implemented under Pacific Generation’s ownership and leadership post-transaction.<sup>89</sup> In particular, it does not describe Pacific Generation’s responsibilities and accountabilities under the program even though Pacific Generation would be responsible for the consequences of dam failure.

If the Proposed Transaction is approved, it will be critical that the President of Pacific Generation be fully informed on dam safety matters. It is important the President have a clear understanding of emerging dam safety issues as they arise and of the latent or retained risks, and also an understanding of how these risks may change over time. The purposes of this are twofold: the President of Pacific Generation must be in a position to evaluate dam safety needs against any competing needs within Pacific Generation or the needs of PG&E, and have the requisite knowledge and understanding of dam safety issues to report to the Pacific Generation Board of Managers.

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<sup>88</sup> *Id.* at Enc. 1 (PG&E’s Dam Safety Program), p. 3.

<sup>89</sup> PGE-14 (PG&E Rebuttal Testimony, Ch. 2 (Van Deuren)), p. 2-17:13-16 (“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* ...” (emphasis added)).

Given the importance of trained personnel to dam safety, it would also be appropriate for the President of Pacific Generation to have oversight authority to ensure the qualifications of dam safety personnel assigned by PG&E. However, under the proposed draft Operations and Services Agreement, the President will not have any influence over personnel decisions related to dam safety or otherwise:

PG&E shall select and assign its personnel in connection with the provision of the Services in its sole discretion, and PacGen shall have no right to require that PG&E perform the Services with specifically identified employees. PG&E shall be solely responsible for the recruitment, hiring and termination of any such employees. PG&E employees assigned by PG&E to perform PG&E's obligations under this Agreement and the other Intercompany Service Agreements ... will be under the exclusive direction, control and supervision of PG&E ....<sup>90</sup>

The Application and proposed draft Intercompany Agreements do not include an amended Dam Safety Program that clarifies the organizational structure of the program under Pacific Generation's governance structure. This omission must be addressed if the Proposed Transaction moves forward. Given the significant risks associated with the hydropower assets, it is critical that there be clarity regarding responsibilities and accountabilities of company officers, Board Managers, and personnel for ensuring dam safety.

**4. The Proposed Transaction could impact system reliability [Scoping Memo #15].**

PG&E claims the Proposed Transaction will have no impact on system reliability because PG&E would continue to operate the transferred assets just as it does today, but as a service provider rather than an exclusive owner.

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<sup>90</sup> PG&E-04-A (Amended and Restated Direct Testimony, Ch. 4 (Schonherr, A. Williams), Attachment A, p. 4-AtchA-14.

Under Public Utilities Code section 362(a), the Commission must determine that the Proposed Transaction would “ensure that facilities needed to maintain the reliability of the electric supply remain available and operational....” Under Section 362(b), the Commission must also determine that Pacific Generation would be able to operate the hydropower assets (in a manner that ensures their availability to maintain the reliability of the electric supply system.”

For reasons stated above, PG&E has not demonstrated that the Proposed Transaction will preserve status quo operations, or that continuation of the status quo is the same as ensuring the hydropower assets will be operated and managed in a manner that ensures their availability to maintain system reliability into the future. Further, PG&E has not demonstrated that Pacific Generation will have the financial capacity to meet the capital needs, or respond to emergent needs, for the hydropower assets sufficient to ensure their availability to maintain system reliability into the future.

**C. The Proposed Transaction Could Limit the Benefits Customers Receive from the Sale of Utility Assets.**

PG&E argues that it should not be required to share the proceeds of the proposed equity sale with customers under because the Proposed Transaction there would be no gain on the transfer of assets from PG&E to Pacific Generation.<sup>91</sup>

On cross-examination, PG&E’s Chief Financial Officer could not comment on whether PG&E had intentionally structured the Proposed Transaction – transferring the assets to a holding company, shares of which are then sold, as opposed to selling the asset outright – to

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<sup>91</sup> Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 88:20-23.

avoid having to share the proceeds of the sale of the equity in Pacific Generation with customers.<sup>92</sup>

To the extent the Commission agrees that the Proposed Transaction is not subject to proceed sharing with customers, it must otherwise ensure that PG&E's customers are fairly compensated for the transfer of utility assets committed to public use generate proceeds from the sale of equity in Pacific Generation, and for any future sale by Pacific Generation of utility assets committed to public use. Further, the Commission should condition any decision approving the Application to prevent PG&E from imposing the costs related to the Proposed Transaction on its customers.

**D. The Proposed Transaction Could Impact the Commission's Jurisdiction and Existing Regulatory Proceedings, Processes, and Requirements.**

**1. The Proposed Transaction may circumscribe or avoid Commission oversight of future utility asset transfers.**

PG&E claims that the Proposed Transaction will not affect the Commission's jurisdiction. However, that claim is not borne out by the evidence it has submitted.

Under the Proposed Transaction, equity holdings in Pacific Generation would be subject to potentially constant change as Minority Investors sell some or all their shares to other initial Minority Investors or new investors. Changes in percentage ownership could also occur based on PG&E's and the Minority Investors' relative interest and/or ability to respond to future capital calls. The Commission would have less oversight over these changes in equity ownership than it would otherwise have over the outright sale of utility assets. It is not even clear whether the Commission and public would be kept fully or timely informed of these changes in percentage

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<sup>92</sup> *Id.* at 31:3-6.

ownership because PG&E does not propose to seek Commission approval for any transfer of an equity interest in Pacific Generation less than 10 percent, and only proposes to file a Tier 1 advice letter for any transfer greater than 10 percent.<sup>93</sup>

This potential for lack of oversight and transparency is concerning because the sale of equity may implicate questions of management and control of utility assets dedicated to public use in the same manner as the sale of assets. PG&E has described what rights the Minority Investors' might have but cautioned those described rights are subject to change pending execution of Minority Sales Agreement with those investors.<sup>94</sup> Further, PG&E has acknowledged that those rights are subject to change following the initial sale.<sup>95</sup>

Although PG&E has stated its intent to maintain a majority interest in and primary control of Pacific Generation for the foreseeable future, changes in the Minority Interests' percentage equity in Pacific Generation could still affect governance.

PG&E proposes that Pacific Generation will be governed by a Board of Managers: "Subject to certain consent rights of the members of Pacific Generation ... the affirmative vote of a majority of the total number of votes entitled to be voted by the Managers will be required

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<sup>93</sup> PGE-13 (PG&E Rebuttal Testimony, Ch. 1 (S. Williams)), p. 1-AtchA-5.

<sup>94</sup> *See, e.g.*, Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 116:8-14.

<sup>95</sup> Hearing Transcript, Vol. 2 (Rogers (PG&E) Cross Testimony), p. 253:15-25.

for decisions of Pacific Generation.”<sup>96</sup> PG&E proposes that the makeup of Pacific Generation’s Board of Managers will depend on the equity holdings of the Minority Investors.<sup>97</sup>

The Application provides illustrative examples for the initial composition of the Board of Managers depending on the number and percentage equity of the initial Minority Investor(s):

If two Minority Investor(s) each acquire 24.9% of the Pacific Generation Interests, the Board will initially consist of 7 managers: four [4] appointed by PG&E, the Pacific Generation President, and one [1] appointed by each of the two Minority Investor(s). If four [4] minority Investor(s) each acquire 12.475% of the Pacific Generation Interests, the Board will initially consist of 11 managers: six [6] appointed by PG&E, the Pacific Generation President, and one [1] appointed by each of the four [4] Minority Investor(s).<sup>98</sup>

However, following the initial formation, the composition of Board of Managers would be subject to change at any time because of a change in equity following a capital call or other transfer of equity. This potential for frequent turnover could interfere with continuity of leadership on the Board of Managers and the ability of the Board to provide effective governance of Pacific Generation.

## **2. The Proposed Transaction could set a precedent to avoid sharing the proceeds of a sale of utility assets with customers.**

Under the Proposed Transaction, PG&E will transfer the non-nuclear generation assets to a holding company, Pacific Generation, and then sell equity interests in that company rather than sell the assets outright.<sup>99</sup> PG&E argues that the subsequent sale of equity in Pacific Generation,

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<sup>96</sup> Application, p. 14; *see also* CHRC-40 (CHRC Data Request No. 1, PG&E Answer 001) (“The Board will adopt and approve the business plan and the annual budget for Pacific Generation ....”).

<sup>97</sup> Application, p. 13.

<sup>98</sup> *Id.* at 13-14, n. 7.

<sup>99</sup> Application, pp. 3, 25.

while subject to Public Utilities Code section 851, does not trigger proceed sharing with customers because there is not “gain” from the initial transfer of PG&E assets to Pacific Generation.<sup>100</sup> The Commission’s approval of this type of transaction could establish a precedent that would allow regulated utilities to avoid the requirement for utilities to share the proceeds of asset sales with customers. Thus, the Proposed Transaction could adversely affect utility customers across California, not just PG&E’s.

**3. The Proposed Transaction could negatively impact regulation of dam safety.**

PG&E rejected the CHRC’s concern that the Proposed Transaction could interfere with regulators’ enforcement of PG&E and/or Pacific Generation’s accountability for safe operation and condition of the hydropower assets, stating “[a]llocation of responsibility is clear: Pacific Generation would be responsible for the consequences of the dam operations . . . .”<sup>101</sup> However, PG&E has also stated: “the responsibility for ensuring that Pacific Generation’s assets are operated safely rests primarily with PG&E personnel.”<sup>102</sup> That Pacific Generation would be exclusively responsible for the consequences of dam operations controlled by PG&E is yet another example of how the Proposed Transaction seemingly departs from norms.

As stated above, PG&E and Pacific Generation’s respective obligations for implementing the dam safety program post-transaction have not been adequately described. Any ambiguity

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<sup>100</sup> *Id.* at 24-27.

<sup>101</sup> PGE-14 (PG&E Rebuttal Testimony Ch. 2), p. 2-18:29-30.

<sup>102</sup> PGE-3 (PG&E Direct Testimony, Ch. 3 (Gabbard)), p. 11-11:23-25.

regarding their respective responsibilities and accountabilities for ensuring dam safety would negatively impact public safety.

**V. PG&E HAS NOT DEMONSTRATED THAT ITS PROPOSAL FOR TRANSFERRING ASSETS, CONTRACT, PERMITS, AND OTHER RIGHTS IS REASONABLE.**

**A. PG&E Has Not Demonstrated the Draft Form of Separation Agreement Will Protect Counterparties' Interests.**

The Application proposes that, “[t]he transfer of assets to Pacific Generation, and the assumption by Pacific Generation of liabilities and certain contracts, will be accomplished primarily through a Separation Agreement and the conveyance and other documents and agreements contemplated therein.<sup>103</sup> PG&E provided a draft form of Separation Agreement as part of its testimony.<sup>104</sup> PG&E has stated that it does not intend to provide the final form of Separation Agreement until “Phase 2” of this proceeding, which would not occur until after a Commission decision approving the Application.<sup>105</sup>

The draft form of Separation Agreement requires Pacific Generation to assume all PG&E’s obligations and liabilities arising from the transferred assets: “Subject to the terms and conditions set forth herein, PG&E hereby agrees to transfer and assign to the Company on the Closing Date, and the Company hereby agrees to assume from PG&E on the Closing Date, all the Generation Liabilities.”<sup>106</sup> Under the draft agreement, “Generation Liabilities” are defined

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<sup>103</sup> Application, p. 6.

<sup>104</sup> See PG&E-02-S (PG&E Supplemental Testimony, Ch. 2), Attachment A.

<sup>105</sup> Application, p. 18.

<sup>106</sup> See PG&E-02-S (PG&E Supplemental Testimony, Ch), Attachment A, p. 2-AtchA-19.



broadly as “all obligations and liabilities (other than the Retained Liabilities) related to the Generation Business or the Generation Assets occurring arising or related to the period following the Closing, whether primary or secondary, direct or indirect, absolute or contingent, liquidated or unliquidated, known or unknown, and whether or not accrued ....”<sup>107</sup> “Retained Liabilities” are not defined.

The proposed complete and total assignment of PG&E’s “Generation Liabilities”, and Pacific Generation’s assumption of such liabilities and release of PG&E, is inherently in tension with the governance scheme to be effectuated through the other Intercompany Agreements. Those agreements anticipate that PG&E will be responsible to perform, and Pacific Generation will be entirely dependent on PG&E to perform, all operations and maintenance and other services required for the hydropower and other transferred generation assets.<sup>108</sup> The draft Intercompany Agreements also provide that Pacific Generation will be dependent on PG&E for legal services and advice:

PG&E will provide certain legal services to Pacific Generation, including matters involving the prosecution or defense of, or other participation in, legal and regulatory

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<sup>107</sup> *Id.*

<sup>108</sup> The Application anticipates PG&E’s control of Pacific Generation:

With respect to the third and fourth factors, PG&E will at all times retain the authority to direct Pacific Generation’s management and policies. PG&E will select Pacific Generation’s initial slate of officers, and its ownership of a majority of the Pacific Generation Interests also gives PG&E the authority through its designated Board Members to select and replace Pacific Generation’s officers on a going-forward basis, subject to any applicable minority investor consultation rights, ensuring that there will be no transfer of control over day-to-day business operations or the ability to direct utility management. Moreover, the Intercompany Agreements will provide that PG&E personnel will continue to perform the day-to-day operational functions for Pacific Generation’s generation assets and their scheduling and dispatch.

Application, p. 26.

proceedings; the prosecution of Pacific Generation’s GRCs before the Commission; the pursuit of corporate and commercial transactions; internal organizational governance; correspondence with federal, state, and local government authorities; ongoing legal and regulatory compliance; and the engagement of outside 32 legal counsel and regulatory consultants.<sup>109</sup>

It is in the public interest to ensure PG&E’s accountability for performance of its obligations under the Intercompany Agreements to provide *all services* required to run Pacific Generation.<sup>110</sup> For that reason, PG&E should remain jointly and severally liable for the Generation Liabilities.

**B. PG&E’s Documentation for the Proposed Transfer of Assets Remains Incomplete and Subject to Change.**

PG&E has testified, “to effectuate the Proposed Transaction, PG&E plans to contribute to [Pacific Generation] all of PG&E’s right, title, and interest in substantially all of its non-nuclear generation assets.”<sup>111</sup> It has further testified that its specific plans for “effectuat[ing] the Proposed Transaction” are still a work in progress: “as the transfer process moves forward, PG&E would continue to collect and refine additional information and data relating to the relevant generation assets proposed to be transferred.”<sup>112</sup> It has provided drafts of the following schedules “which describe the assets to be transferred to Pacific Generation,” as listed below.

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<sup>109</sup> PGE-04-A (PG&E Amended and Restated Direct Testimony, Ch. 4) (Schonherr, A. Williams), p. 4-11:25-32.

<sup>110</sup> *Id.* at 4-3:29-32 (emphasis added).

<sup>111</sup> PGE-02-S (PG&E Supplemental Testimony, Ch. 2), p. 2-1.

<sup>112</sup> *Id.*

<b>Proposed Asset Transfer Schedules</b>	
Owned Generation Real Property (2.2(a))	Generation Business Records (2.2(i))
Generation Real Property Leases (2.2(b))	Permits (2.2(k))
Generation Rights-of-Way (2.2(c))	Water Rights (Schedule 2.2(l))
Assumed Contracts (2.2(f))	Other Excluded Assets (2.3(j))
Tangible Personal Property (2.2(g))	Other Retained Liabilities (2.6(k))

However, the schedules describe the assets to be transferred in summary fashion, such as “All Owned Generation Real Property underlying or associated with the facilities below,”<sup>113</sup> and “All Generation Rights-of-Way underlying or associated with the facilities listed below.” For example, the draft schedule for “Assumed Contracts” lists ten types of contracts that would be transferred, but there is no information about the actual number of contracts required to be transferred, the terms of specific contracts, or whether any of those contracts have any limitations regarding assignment.<sup>114</sup> Such limitations are common, as evidenced by the proposed Separation Agreement for the Proposed Transaction, which prohibits assignment without the prior written consent of the other party.<sup>115</sup> PG&E’s summary descriptions in the draft schedules belie the scale and complexity of the proposed transfer of all the rights and assets required to operate and manage the 23 hydropower assets.<sup>116</sup> Testimony provided by Nevada Irrigation District, Placer

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<sup>113</sup> *Id.* at 2-AtchA-1, 2-AtchA-3.

<sup>114</sup> *Id.* at 2-AtchA-5.

<sup>115</sup> PGE-02-S (PG&E Supplemental Testimony, Ch. 2 (Schonherr)), p. 2-AtchA-45.

<sup>116</sup> *See id.* at 2-AtchA-1 (Schedule 2.2(c)) (listing 23 hydropower assets to be transferred).

County Water Agency, Silicon Valley Power, and East Bay Municipal Utility District shows the number of disputes that could arise under the individual contracts related to the more than 20 hydropower assets proposed to be transferred.<sup>117</sup>

Of particular concern to the CHRC is PG&E’s assignment of its rights and responsibilities under the “Agreements set forth in the FERC Hydro Project Licenses” and the “Settlement agreements associated with FERC Hydro Project Licenses.”<sup>118</sup> Individual CHRC members are party to many of the FERC licensing and relicensing settlement agreements for PG&E’s hydropower assets. They seek assurance that their rights under those agreements, including the right to enforce PG&E’s or its designee’s performance under those agreements, will not be adversely affected if the Proposed Transaction is approved. The draft schedule of Assumed Contracts does not provide that assurance because it does not identify all the relevant contracts. PG&E has not committed to provide substantially final Intercompany Agreements or schedules of the assets to be transferred prior to the Commission’s decision on the Application, so it is not clear that the CHRC members, or any other party in contract with PG&E, would have an opportunity to timely review the accuracy of the Schedule of Assumed Contracts before finalization by PG&E and Pacific Generation.<sup>119</sup> To date, PG&E has not contacted the CHRC or

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<sup>117</sup> See, e.g., PCWA-02-E (Errata to Maisch Direct Testimony), NID-01 (Hanson Direct Testimony); SVP-01 (Kolnowski Direct Testimony); EBMUD-01 (Briggs Direct Testimony), p. 2: 3-12 (describing specific agreement regarding assignment of contracts affecting EBMUD).

<sup>118</sup> *Id.*

<sup>119</sup> See CHRC-40 (CHRC Data Request No. 1, PG&E Answer 013) (“PG&E is continuing to develop the list of agreements proposed to be assigned or otherwise transferred to Pacific Generation. PG&E reserves the right, but does not undertake the obligation, to update this response.”).

its members to date to provide any assurances regarding that the Proposed Transaction will not affect their rights under the agreements.

Further, and as discussed above, PG&E has not demonstrated that the draft form of Assignment and Assumption of Assumed Contracts included in the proposed Separation Agreement is reasonable. That form proposes PG&E’s complete and irrevocable assignment of its rights and obligations under the Assumed Contracts: “Assignor hereby irrevocably assigns and transfers to Assignee all of its right, title, and interest in and to, *and all of its duties, liabilities, and obligations* under or pursuant to, the Assumed Contracts, if any, first arising and accruing on and after the Effective Date.”<sup>120</sup> PG&E’s proposed assignment of “all of its duties, liabilities, and obligations” under the assumed contracts related to the hydropower assets is inappropriate here given that PG&E will continue to be responsible for operations and management of the hydropower assets even after any asset transfer is effectuated,<sup>121</sup> and intends to maintain majority control over Pacific Generation for the foreseeable future.<sup>122</sup> Given this proposed governance structure, PG&E and Pacific Generation should be made jointly and severally responsible for compliance with “all of [PG&E’s] duties, liabilities, and obligations” under the assumed contracts. This would further ease the burden on other contract parties to establish which company would be primarily obligated or liable for any alleged breach under the

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<sup>120</sup> PGE-02-S (PG&E Supplemental Testimony, Ch. 2), p. 2-AtchA-58.

<sup>121</sup> “The OSA will encompass *all services* required to run Pacific Generation—including those generation facility support services related to 31 Operations and Maintenance (O&M) and those related to corporate functions.” Application, p. 21; *see also* PGE-04-A (PG&E Amended and Restated Direct Testimony, Ch. 4) (Schonherr, A. Williams), p. 4-3:29-32 (emphasis added).

<sup>122</sup> *Id.* at 13.

assumed contracts. It is also consistent with PG&E testimony that PG&E and Pacific Generation would be jointly and severally liable for any non-compliance with Commission or other regulatory requirements.<sup>123</sup>

**VI. PG&E HAS NOT DEMONSTRATED THE PROPOSED POST-SIGNING ADVICE LETTER PROCESS IS REASONABLE.**

PG&E proposes that a second stage of the regulatory approval process would commence immediately following the Commission’s approval of the Application and PG&E’s execution of “one or more [Minority Sale Agreements (MSAs)] with Minority Investors.”<sup>124</sup>

As part of the second stage of the regulatory process, PG&E would then file one or more Tier 2 Advice Letters .... These advice letter(s) would identify the Minority Investor(s), submit definitive principal transaction documents (including the Separation Agreement and associated schedules and exhibits), submit proposed tariffs and tariff revisions, and provide Pacific Generation’s initial revenue requirement and PG&E’s updated revenue requirement.<sup>125</sup>

PG&E also seeks authorization “to file additional advice letters, as needed, to fully implement the Proposed Transaction and the associated ratemaking and tariff changes.”<sup>126</sup>

As stated above, PG&E is requesting the Commission authorize the Proposed Transaction despite the fact there are still many unknowns related to PG&E’s proposal, including the identity of the Minority Investor(s).<sup>127</sup> Although PG&E is asking the Commission to approve the Application despite these unknowns, PG&E’s Chief Financial Officer has acknowledged that,

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<sup>123</sup> See Hearing Transcript, Vol. 4 (Toy (PG&E) Cross Testimony), pp. 518-528.

<sup>124</sup> Application, p. 18.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Hearing Transcript, Vol. 2 (Rogers (PG&E) Cross Testimony), p. 264:7-10.

regardless of whether Pacific Generation receives Commission authorization, the company will not be able to make its own decision whether to consummate the Proposed Transaction until those unknowns are resolved.<sup>128</sup> Given the complexity of the Proposed Transaction, PG&E’s proposal to rely on Tier 2 Advice Letters to disclose key information, including the identity of the Minority Investor(s), and resolve the substantial number of outstanding issues is unreasonable.

Further, PG&E’s proposal to rely on Tier 1 Advice Letters to advise the Commission of transfers of equity in Pacific Generation greater than 10 percent<sup>129</sup> is unreasonable for the reasons discussed above.

The Commission has explained advice letters as “an informal procedure” that it uses to deal with types of utility requests that are usually minor, noncontroversial, or otherwise appropriate for processing without hearings or a formal evidentiary record.... [I]n many instances, approval or rejection of an advice letter is ministerial, i.e., reviewing staff can determine the advice letter's validity through objective review of the supporting materials and authority cited by the utility. The Commission may lawfully delegate such determinations to its staff.<sup>130</sup>

Under PG&E’s requested sequencing of the Commission’s regulatory decisionmaking, many of the issues key to the Proposed Transaction, issues that will implicate the Commission’s discretion to resolve, will still be outstanding after any Commission decision to approve the

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<sup>128</sup> See, e.g., Hearing Transcript, Vol. 1 (S. Williams (PG&E) Cross Testimony), p. 77:3-5.

<sup>129</sup> Hearing Transcript, Vol. 2 (Rogers (PG&E) Cross Testimony), p. 264:25 – 265:5.

<sup>130</sup> CPUC, “Advice Letter Tiers,” *available at* [https://docs.cpuc.ca.gov/published/FINAL\\_DECISION/64140-04.htm#:~:text=In%20contrast%20to%20a%20Tier,throughout%20any%20subsequent%20review%20per%20iod](https://docs.cpuc.ca.gov/published/FINAL_DECISION/64140-04.htm#:~:text=In%20contrast%20to%20a%20Tier,throughout%20any%20subsequent%20review%20per%20iod) (last accessed Sept. 18, 2023).

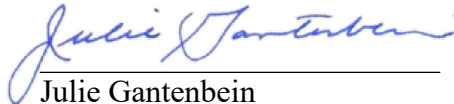
Application. For that reason, PG&E's proposal to rely on Advice Letters to resolve those outstanding issues is unreasonable.

## VII. CONCLUSION

For the foregoing reasons, PG&E has not demonstrated the Proposed Transaction will not adversely impact customers or protect the public interest. However, if the Commission does grant the Application, CHRC recommends that it do so subject to the CHRC's recommended transaction conditions.

September 18, 2023

Respectfully submitted,



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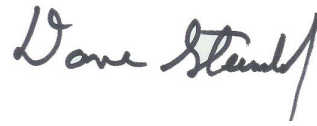
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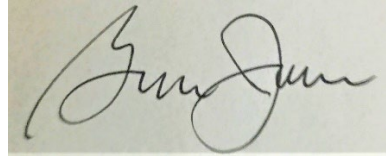
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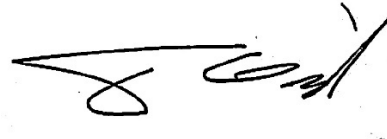
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