BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) 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 UTILITY REFORM NETWORK (PUBLIC VERSION)

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OPENING BRIEF OF THE UTILITY REFORM NETWORK

I. INTRODUCTION

Pursuant to Rule 13.12 of the Commission's Rules of Practice and Procedure and Administrative Law Judge's Ruling Modifying Schedule, issued on March 30, 2023, The Utility Reform Network ("TURN") respectfully submits this opening brief.

On September 28, 2022, Pacific Gas and Electric Company ("PG&E") filed the instant application seeking approval to transfer certain generation assets into Pacific Generation ("PacGen") and then selling 49.9% of PacGen to minority investors ("Proposed Transaction"). As discussed further below, TURN strongly urges the Commission to deny the Proposed Transaction because it is not in the public interest. If the Commission approves the Proposed Transaction, strict conditions, discussed below in Section III, must be imposed as part of the transaction.

II. THE PROPOSED TRANSACTION SHOULD BE DENIED BECAUSE IT IS NOT IN THE PUBLIC INTEREST

Given the clear evidence and record of this proceeding, the Commission should determine that the proposed transaction should be denied because it is not in the public interest. In fact, the proposed transaction is intended to benefit shareholders at the expense of other stakeholders.

A. PG&E Concedes that Approval of the Proposed Transaction Is Unnecessary for PG&E to Meet Its Capital Needs for 2024

In its direct testimony, PG&E misleadingly asserts that completing the Proposed Transaction by the end of 2023 "is critical in order to generate the proceeds PG&E needs to meet

its capital expenditure program in 2024."[1] However, during evidentiary hearings, PG&E's CFO was unable to affirmatively state that the approval of the Proposed Transaction is necessary for PG&E to meet its capital needs for 2024,[2] and she conceded that PG&E has not presented any evidence to show that absent the approval of this transaction, PG&E would not be able to raise the necessary capital for 2024.[3] [redacted] The price of the common stock of PG&E Corporation as of August 18, 2023 ($16.72) [redacted] The price of PG&E's common stock as of September 15, 2023 is $17.32, which is even higher. [redacted]

B. The Proposed Transaction Is Intended to Benefit Shareholders at the Risk of Harming Other Stakeholders

The Proposed Transaction is simply PG&E's "preferred means of raising equity" because it is the option that is most beneficial to shareholders.[7] PG&E notes that the Proposed

[1] Ex. PG&E-01, p. 1-5.
[2] 1 RT 60:14 – 61:7.
[3] 1 RT 63:5-9.
[4] [redacted]
[7] Ex. PGE-13, p. 1-14.

Transaction will avoid a dilutive issuance of stock, and that "equity research analysts reacted positively to PG&E's announcement of the Proposed Transaction."[8] PG&E concedes that the equity research analysts are evaluating the Proposed Transaction based on whether it is good for shareholders.[9] [redacted] and PG&E's credit rating also has not improved since the announcement.[11] [redacted]

(1) Potential Ratepayer Benefits Are Uncertain at Best, and Even If Realized in 2040, Would be a Fraction of Shareholder Benefits

PG&E claims that the Proposed Transaction would benefit customers by accelerating contributions to the Customer Credit Trust ("CCT"), "both by reducing the probability of a deficit in the CCT and by increasing the probability of a surplus that customers would share."[13] The reality is that potential ratepayer benefits are uncertain at best, and even if realized in 2040, would be a fraction of shareholder benefits. By 2040, the CCT will either be underfunded or overfunded. In the case that the CCT is underfunded by 2040, the Commission will require PG&E to contribute a supplemental shareholder contribution up to $775 million.[14] Hence, accelerating contributions to the CCT would only benefit shareholders if the CCT ends up being underfunded. In the case that the CCT is overfunded by 2040, the surplus would be allocated 75% to PG&E shareholders and 25% to ratepayers.[15] Hence, accelerating contributions to the

[8] Ex. PGE-13, p. 1-14.
[9] 1 RT 93:13 – 94:2.
[10] [redacted]
[11] 1 RT 94:13-25; *See* also Ex. TURN-04, TURN-05.
[12] [redacted]
[13] Ex. PGE-13, pp. 1-3 to 1-4.
[14] D.21-04-030, p. 19.
[15] D.21-04-030, p. 19.

CCT would benefit shareholders three times as much as ratepayers in the event that there is a surplus by 2040. Shareholders win either way, not ratepayers.

PG&E further asserts that 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."[16] Yet, even after being provided numerous opportunities during the cross examination, PG&E's CFO could not explain or support why future equity capital from Minority Investor(s) would be better or different from equity capital from other investors, such as when PG&E issues common stock.[17] Future equity capital from Minority Investors may be beneficial to shareholders, but it does not benefit customers. Clearly, PG&E's assertion that this would be a "significant benefit" to customers is unsupported and dubious.

The record is clear that PG&E has failed to show why the Proposed Transaction would benefit ratepayers.

(2) The Proposed Transaction Would Enable PG&E to Unilaterally Make Decisions that Benefit Shareholders or Minority Investors at the Expense of Ratepayers

The Proposed Trasanction would unreasonably allow PG&E to unilaterally make decisions that could benefit shareholders or Minority Investors at the expense of ratepayers. TURN provides two examples below.

PG&E states that "[t]o the extent PG&E conducts vegetation management work in and around Pacific Generation assets, PG&E will charge Pacific Generation for the costs of such work."[18] However, PG&E acknowledges that it does not currently have established policy that determines within what distance of an asset the costs would be charged to that asset.[19] Hence,

[16] Ex. PGE-13, p. 1-3.
[17] 1 RT 64:13 – 70:23.
[18] Ex. PGE-10, p. 10-4.
[19] 1 RT 156:2 – 157:11.

PG&E would have the discretion to determine what vegetation management work is considered "around" PacGen assets and be charged to PacGen. There is an inherent conflict of interest between the Minority Investors and ratepayers, such that the Minority Investors would prefer that as little of the costs as possible would be charged to PacGen. It is inappropriate for PG&E to be able to make this determination unilaterally.

Another example is PG&E's proposal to create a Z-Factor Memorandum Account with a $1 million deductible compared to a $10 million deductible for PG&E.[20] If a project meets the Z-Factor Memorandum Account criteria and could be performed by either PG&E or PacGen, PG&E would be in the position to unilaterally decide how to complete the project in a way that is most beneficial to shareholders (for example, by choosing the entity with a lower deductible). Again, it is inappropriate for PG&E to be able to make these determinations unilaterally that may benefit shareholders at the expense of ratepayers.

(3) The Proposed Transaction Would Likely Result in a Forced and Unreasonable Prioritization of Capital Investment in PacGen Over PG&E Assets

PG&E states that when future needs for capital investments in PacGen arise, it could issue a capital call, at which point PG&E would need to contribute at least 50.1% of the capital in order to maintain 50.1% ownership of PacGen.[21] PG&E further made it clear that it would not be acceptable for PG&E to own less than 50.1% of PacGen,[22] and that there would not be a situation in which PG&E would go below that threshold of ownership – PG&E would "need to find sufficient capital to maintain that ownership."[23] This should be concerning to the Commission because this would likely result in a forced and unreasonable prioritization of

[20] Ex. PGE-10, p. 10-7.
[21] 2 RT 239:5-16.
[22] 2 RT 240:11 – 241:1.
[23] 2 RT 240:11 – 241:1.

capital investment in PacGen over PG&E assets, even if the investments in PG&E assets are necessary due to safety or reliability reasons. This would also lead to a breakdown of the Commission's movement toward risk-based decision making and investment decisions, since investments in PacGen assets would be arbitrarily prioritized over investments in PG&E assets regardless of the risk mitigation benefits of the investments. This is directly contrary to the framework that has been adopted in a series of decisions (D.14-12-025, D.16-08-018, and others) as well as the Risk OIR proceeding (R.20-07-013).

(4) The Proposed Transaction Could Create Regulatory Risks that May Impact the Commission's Jurisdiction

Furthermore, the Proposed Transaction introduces regulatory risks that may impact the Commission's jurisdiction, or at least create uncertainty about whether contractual rights or statutory requirements would prevail. For example, in the event that PG&E does not contribute 50.1% of a capital call by PacGen, PG&E's ownership of PacGen could fall below 50.1%, and PG&E may lose control of PacGen per the contractual agreements.[24] However, as noted by PG&E, Public Utilities Code 854 requires that a change in control of PacGen would require Commission review and approval. PG&E attempted to claim that Section 4.2(g) of its proposed LLC agreement means that the Commission's authority would supersede the contractual rights,[25] but the language is clear that it does not do so – it has to do with regulatory approvals prior to the additional capital contribution, not regulatory approvals after the additional capital contributions have been made.[26]

In addition, PG&E proposes that a Minority Investor with 20% ownership would be able to veto capital expenditures over $50 million in each transaction or $150 million in the aggregate

[24] 2 RT 241:20 – 242:20.
[25] 2 RT 270:25 – 272:14.
[26] Ex. PGE-05, p. 5-AtchA-16.

per year, provided that the capital expenditure is not reasonably expected to be included in rate base.[27] In D.15-04-024, the Commission ordered PG&E to spend $850 million in future gas infrastructure improvements which are not allowed to be included in rate base. If the Commission orders PacGen to do something similar in the future, a Minority Investor with 20% ownership could veto the Commission's order for PacGen to do so. PG&E attempted to claim that Section 4.2(a) of its proposed LLC agreement means that if PacGen is required by the Commission to invest in a capital project, the investors would be required to make capital contributions despite a Minority Investor's veto power.[28] Again, the language does not state that – Section 4.2(a) has nothing to do with capital expenditures by PacGen; it has to do with capital contributions. The scenario above has to do with a Minority Investor being able to veto capital expenditures required of PacGen by the Commission; it has nothing to do with forcing members to make additional capital contributions, which is what Section 4.2(a) addresses.

(5) The Proposed Transaction Would Result in Fewer Resources to Address Future Major or Catastrophic Events

The Proposed Transaction would result in fewer resources to address future major or catastrophic events. Should PG&E have a need for cash, it could not compel a special or even larger dividend than was established and approved by PacGen's Board of Directors and management. Cash and earnings associated with PacGen would truly be out of the control of PG&E and could not be unilaterally called upon to address operating priorities or catastrophic events experienced by PG&E. This would result in a very real and tangible harm to the public if and when PG&E experiences a future catastrophic event or financial crisis. Additionally, organizing PacGen as a Delaware LLC creates strong protections against claims on any PacGen

[27] Ex. PGE-05, p. 5-AtchA-30.
[28] 2 RT 272:15 – 273:13.

assets by creditors. This is highly relevant to the issues raised by other parties that are concerned with PacGen's ability to fulfill its existing contractual obligations.

(6) Despite PG&E's Claims that the Proposed Transaction Is an Efficient Means to Raise Capital, The Proposed Transaction Is Not Efficient, and It Is Unclear How Costs Will Not Be Recovered from Ratepayers

PG&E asserts that the Proposed Transaction is an "efficient means for PG&E to raise equity capital,"[29] but in reality, the Proposed Transaction is not efficient based on commonly used measures, such as resources and time required. [redacted] Furthermore, based on the timeline of the Proposed Transaction since it was first presented to PG&E's Board of Directors, it is also clear that the Proposed Transaction is not efficient in terms of timing. Thus, the Commission should reject PG&E's claim that the Proposed Transaction is efficient.

In addition, even though PG&E offered not to recover transaction costs related to the Proposed Transaction in its rebuttal testimony,[31] PG&E does not describe how the transaction costs will be tracked and refunded back to ratepayers or removed from the GRC (it is currently using numerous PG&E resources as well as outside legal and financial services). Without clear tracking, reporting, and refunding of these costs to ratepayers or removal of costs from the GRC, PG&E's offer does not carry much weight.

[29] Ex. PGE-13, p. 1-1.
[30] [redacted]
[31] Ex. PGE-13, p. 1-AtchA-1 to 1-AtchA-2.

C. PG&E's Claim that The Proposed Transaction Would Have No Effect on Its Operations Is Directly Contradicted by the Evidence

PG&E claims that the Proposed Transaction would have no effect on its operations or interfere with its operation of Pacific Generation. However, PG&E's claim is directly contradicted by evidence in the record.

(1) The Proposed Minority Governance Rights Would Likely Result in Situations Where PG&E Could Lose Operational or Financial Control over PacGen

The Proposed Transaction includes several Minority Investor governance rights that would likely result in situations where PG&E could lose operational or financial control over PacGen. TURN highlights a few of the situations below.

PG&E proposes that a Minority Investor with 5% ownership would be able to veto a decision by PG&E to declare bankruptcy,[32] such as PG&E's voluntary Chapter 11 bankruptcy in 2019. If PacGen faces a similar situation in the future, even if PG&E believes that a voluntary bankruptcy is the best financial decision, a Minority Investor with just 5% ownership could veto PG&E's decision to do so.

PG&E proposes that a Minority Investor with 20% ownership would be able to veto capital expenditures over $50 million in each transaction or $150 million in the aggregate per year, provided that the capital expenditure is not reasonably expected to be included in rate base.[33] In D.15-04-024, the Commission ordered PG&E to spend $850 million in future gas infrastructure improvements which are not allowed to be included in rate base. If the Commission orders PacGen to do something similar in the future, a Minority Investor with 20% ownership could veto the Commission's order for PacGen to do so.

[32] Ex. PGE-05, p. 5-AtchA-28.
[33] Ex. PGE-05, p. 5-AtchA-30.

PG&E also proposes that a Minority Investor with 20% ownership would be able to veto settlement of any third-party litigation where the amount of such settlement is more than 5% of rate base.[34] Thus, if PacGen's assets or employees are involved or responsible for damages in the future, and PG&E management believes that a settlement with a third-party is the best course of action, a Minority Investor with 20% ownership could veto PG&E's decision to do so.

Hence, contrary to what PG&E asserts, all of the above are clear examples where PG&E could lose operational or financial control over PacGen,

(2) PG&E Concedes that the Proposed Transaction Would Result in Redundant Functions and Increased Costs

[redacted] and PG&E agrees that the Proposed Transaction may result in increased costs – it claims that any increases will be small,[36] but PG&E concedes that it has not quantified or estimated the potential increase in costs.[37] [redacted] Given that the Proposed Transaction is intended to benefit shareholders, the Commission should find that this would be an unacceptable outcome.

(3) PacGen's Reliance on Intercompany Agreements to Operate Its Assets Will Likely Affect PG&E's Operation of the Assets to Some Degree

PG&E acknowledges that under the Proposed Transaction, the relationship between the President of PacGen (the sole employee of PacGen) and PG&E would be one of a service

[34] Ex. PGE-05, p. 5-AtchA-30.
[35] [redacted]
[36] Ex. PGE-20, p. 9-1; Ex. PGE-21, p. 10-3.
[37] 1 RT 163:23 – 164:1; 1 RT 164:17 – 165:2.
[38] [redacted]

provider/client relationship,[39] and PG&E employees that operate the assets owned by PacGen would not be reporting up to the President of PacGen.[40] Furthermore, the President of PacGen acknowledges that based on his experience, managing a vendor or service provider is not always the same as managing one's direct reports,[41] and if there are any issues with PG&E employee's performance, he would have to provide feedback as a client to PG&E instead of being able to manage the employee directly.[42] This is clear evidence that PacGen's reliance on intercompany agreements to operate its assets will likely affect PG&E's operation of the assets to some degree.

D. PG&E's Claim that Its Credit Rating Would Be Unaffected Is Unsupported and Unrealistic

PG&E states that the "Proposed Transaction would benefit customers to the extent that PacGen's incremental cost of debt is lower than PG&E's incremental cost of debt."[43] Yet, PG&E also claims that PG&E's credit rating or incremental cost of debt would not be affected by the Proposed Transaction. When asked why removing premium assets that are deemed to have lower risks from PG&E would not result in a lower credit rating for PG&E, PG&E could not provide an explanation,[44] but was only able to offer that it is PG&E's opinion that its credit rating will remain unaffected by the Proposed Transaction,[45] and that it would not proceed with the Proposed Transaction if it would affect PG&E's credit rating.[46]

Meanwhile, the credit rating agencies have not stated that the Proposed Transaction would not affect PG&E's credit rating. In fact, PG&E does not plan to seek the credit rating

[39] 3 RT 481:11-15.
[40] 3 RT 483: 14-17.
[41] 3 RT 481:16 – 483:4.
[42] 3 RT 483:18 – 484:10.
[43] Ex. PGE-13, p. 1-4.
[44] 1 RT 71:15 – 74:21.
[45] 2 RT 315:25 – 316:14.
[46] 1 RT 77:3-5.

agencies' opinion on this matter until *after* the Commission has approved the Proposed Transaction (PG&E states that "it's up to us to manage the impact with our credit rating agencies"),[47] even though PG&E is fully aware that the credit rating agencies provide a service that offers their opinion on proposed transactions – Rating Evaluation Service by S&P and Rating Assessment Service by Moody's.[48] PG&E does not explain why it has chosen not to seek the opinion of credit rating agencies and asks the Commission to simply rely on and trust PG&E's opinion in this matter.[49] PG&E goes as far as to state that it does not plan to provide the estimated impact of the Proposed Transaction on its credit rating in its subsequent advice letters, even after the Minority Investors have been identified.[50] The Commission should find this to be unacceptable.

The Commission should reject PG&E's assertion that somehow there is some magical free benefit to be had as a result of its Proposed Transaction, where the total incremental cost of debt for PG&E and PacGen would be lower than the current incremental cost of debt for PG&E. If such a free benefit does exist, then PG&E could realize this free benefit simply by moving assets into PacGen without selling a 49.9% share to Minority Investors.

Thus, the Commission should find that PG&E's claim that its credit rating would be unaffected is unsupported and unrealistic.

(1) The Proposed Transaction Will Not Result in Deleveraging for PG&E

PG&E claims that the Proposed Transaction will support "the overall deleveraging plans of PG&E and PG&E Corporation" consistent with D.20-05-053.[51] However, during evidentiary

[47] 1 RT 78:10 – 81:23.
[48] 2 RT 317:1-8.
[49] 2 RT 317:9-11.
[50] 1 RT 82:1-12.
[51] Ex. PGE-01, p. 1-2.

hearings, PG&E's CFO could not support or identify why the Proposed Transaction would result in more deleveraging when compared to the option of issuing equity.[52] It does not, and the Commission should reject PG&E's attempt to create phantom benefits of the Proposed Transaction.

E. The Proposed Transaction Is an Asset Sale Disguised an Equity Sale

Prior Commission decisions have required that ratepayers receive compensation from the sale of utility property. For depreciable property, the Commission has held it is generally appropriate for ratepayers to receive 100% of the gain. Even for non-depreciable property, the Commission has required at minimum 50% ratepayer sharing of the gain, which was later updated to 67%.[53]

PG&E claims that the Proposed Transaction is an equity sale. In reality, the Proposed Transaction is an asset sale disguised as an equity sale, and the Commission should not be fooled by PG&E's efforts to avoid sharing proceeds with ratepayers by labeling the Proposed Transaction as an equity sale. PG&E acknowledges that transferring an asset into a holding company and then selling 100% of the holding company is the same as selling the asset outright.[54] Yet, it illogically claims that somehow selling 49.9% instead of 100% in the very scenario would turn the transaction into an equity sale – it does not. It would simply be a 49.9% sale of of the asset. That is exactly the scenario here for the Proposed Transaction; PacGen is a holding company of the non-nuclear generation assets which will not engage in any operations, and the Proposed Transaction would result in a 49.9% sale of these assets.

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[52] 1 RT 98:6 – 100:24.
[53] In D.06-05-041, the gain on non-depreciable property was split 50/50 between ratepayers and shareholders. (D.06-05-041, p. 96). D.06-12-043 modified D.06-05-041 to allocate non-depreciable property to 33% shareholders, 67% ratepayers. (D.06-12-043, p. 1)
[54] 1 RT 91:13-25.

Furthermore, PG&E refuses to commit as a condition of the transaction that it is not allowed to sell the remaining shares of PacGen in the future.[55] It is unclear whether PG&E would propose to share 100% of the gain on sale with ratepayers if it later sells the remaining 49.9% of PacGen. Thus, by breaking up the sale of assets into two parts, ratepayers may or may not receive the full 100% of the gain on sale that belongs to them.

PG&E's efforts to repackage and financially engineer the transaction does not turn an asset sale into an equity sale and avoid having to share the proceeds with ratepayers.

(1) PG&E Designed the Proposed Transaction to Avoid Sharing the Benefits with Ratepayers

[redacted] In fact, PG&E goes as far as to include any requirement to share a portion of the proceeds from the Proposed Transaction with ratepayers as a "Burdensome Condition," which PG&E would not be required to perform per the terms of the Minority Sales Agreement.[57] Thus, it is exceedingly clear that PG&E designed the Proposed Transaction to avoid sharing any benefits of the transaction with ratepayers.

(2) Authorizing this Loophole Would Allow Utilities to Deprive Future Benefits that Are Required to Be Shared with Ratepayers

The Commission should be alarmed by the Proposed Transaction and PG&E's intent to avoid sharing benefits with ratepayers from selling assets that were paid for by ratepayers. By authorizing the Proposed Transaction, the Commission would be establishing a precedent for future attempts to sidestep the requirement to share gains on sale of assets with ratepayers. If this workaround approach is perceived to be viable, the utilities could essentially sell 49% of all

[55] 1 RT 108:12 – 109:6.
[56] [redacted]
[57] Ex. PGE-5, pp. 5-10 to 5-11.

of its assets by copying the same model without having to share proceeds with ratepayers. The language of Section 851 is clear – it applies whenever a utility wishes to "sell, lease, assign, mortgage, or otherwise dispose of, or *encumber the whole or any part*" of utility property.[58] There is no question that the Proposed Transation is encumbering parts of the asset (49.9%) held by PacGen. Hence, Section 851 must apply here.

F. The Fire Victims Trust Is Unlikely to Be Harmed by the Rejection of the Proposed Transaction as PG&E Asserts

PG&E argues that issuing more shares would substantially dilute the value of existing shares and harm the Fire Victim Trust.[59] In reality, as of July 14, 2023, the Fire Victim Trust only has 67 million PG&E shares remaining to sell (out of the original 478 million shares).[60] Furthermore, the Fire Victim Trust has made it clear that it intends to sell all of its remaining PG&E shares in 2023,[61] prior to when a final decision in likely to be issued in this proceeding. The Fire Victim Trust could have already sold all of its remaining shares but has yet to be reported. Thus, contrary to PG&E's assertion, the Fire Victim Trust is unlikely to be harmed by the rejection of the Proposed Transaction, which TURN strongly urges the Commission to do.

G. Approval of the Proposed Transaction Would Lead the Commission Down a Slippery Slope that Is Adverse to the Public Interest

The Commission must ask itself if it believes that PG&E's most recent request will finally deliver on the promised financial improvement. The PacGen assets sale will generate one-time proceeds that constitute only a small fraction of the equity capital that PG&E expects to raise through 2027. PG&E's track record for deleveraging renders any expectation of achieving its authorized capital structure before the end of its capital structure waiver in 2025 unlikely.

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[58] Public Utilities Code Section 851. (Emphasis added)
[59] Ex. PGE-01, p. 1-4.
[60] Ex. TURN-03, p. 2.
[61] Ex. TURN-01, p. 19.

Depriving ratepayers of their gain on the sale of ratepayer-funded property would result in unjust and unreasonable rates. A pattern of asset sales and transactions to raise equity capital without issuing new common share is simply unsustainable and going down a slippery slope. Each non-traditional request by PG&E that the Commission approves encourage the next. An approval of the Proposed Transaction could likely encourage future "me too" applications – will the Commission be faced with applications for asset transfer and minority sales of PG&E Transmission Company or PG&E Low Fire-Threat Area Distribution Company in the future? The Commission must determine where to draw the line between supporting PG&E's progress toward financial recovery and ignoring the interest of all stakeholders save PG&E shareholders.

H. PG&E's Proposed Post-Signing Advice Letter Process Is Unreasonable and Inefficient

PG&E's proposed process for the Proposed Transaction is unreasonable and inefficient. In addition to not being able to determine whether the Proposed Transaction would result in a lower credit rating for PG&E until *after* Commission approval, PG&E also proposes not to finalize the Minority Investor consent rights until *after* Commission approval. Thus, the Commission and the public would not know whether Minority Investor consent rights that are even more egregious than the ones already identified may be conferred to potential investors prior to the Commission's approval of the Proposed Transaction. PG&E concedes that the Minority Investors may be willing to pay a higher premium for greater or more consent rights,[62] and the higher the premium, the more it benefits the shareholders (by having to issue less equity). Thus, PG&E has a perverse incentive to potentially give up more consent rights in order to achieve a higher premium for shareholders, which is adverse to the public interest. This is a clear conflict of interest that should not be in PG&E's control, not to mention the fact that the

[62] 2 RT 250:22 – 251:9.

public will not be made aware of the final consent rights until after the agreements have been finalized. PG&E also concedes that if the Commission does not approve or change the terms, PG&E would have to renegotiate the terms and also potentially renegotiate the price.[63] Thus, the proposed process is unreasonable, inefficient, and unacceptable.

III. STRICT CONDITIONS MUST BE IMPOSED IF THE COMMISSION WERE TO APPROVE THE PROPOSED TRANSACTION

Given the clear evidence and record of this proceeding, the Commission should determine that the proposed transaction should be denied because it is not in the public interest. However, if the Commission were to approve the Proposed Transaction, it must impose strict conditions as part of the transaction.

A. The Gain on Sale Must Be Returned to Ratepayers Through Bill Credits If the Proposed Transaction Is Approved

If the Commission approves PG&E's PacGen structure and asset sale, the Commission should require the gain on sale estimated be awarded to ratepayers and refunded through rates in the year the transactions is completed, consistent with prior Commission decisions. Approving PG&E's request would deprive ratepayers of over $[redacted] in gain that could be used to defray PG&E's continually rising bills.[64]

B. Any Future Sales of PacGen Assets Should Also Be Required to Return Gain on Sale to Ratepayers Through Bill Credits

For any future sale of PacGen assets, ratepayers should also receive 100% of the gain on sale. Further, the Commission should not allow any step-up basis or other accounting adjustment to the book value of PG&E's remaining interest in PacGen that would result in a future gain on

[63] 2 RT 256:21 – 257:14.
[64] Ex. TURN-01, p. 30.

sale of the remaining 50.1% of PacGen that is less than it would have resulted had PG&E sold 100% of PacGen assets in this transaction for purposes of calculating the future gain on sale for the remaining PacGen assets, all else being equal. TURN's recommendation is intended to ensure that should the Commission approve PG&E's Proposed Transaction, ratepayers will not be deprived of their share of the gain on sale for future transactions.

C. The Commission Should Set PacGen's Return on Equity at a Lower Level Than PG&E's Commensurate with PacGen's Lower Operating Risk

PG&E states that "[a]t the same credit rating level, a company with a weaker business risk profile will require lower financial leverage, whereas a company with a stronger business risk profile will be allowed higher financial leverage."[65] PG&E is relatively highly-leveraged with a poor operating record and substantial continuing risk of another catastrophic wildfire caused by its equipment.

In comparison, it is anticipated that PacGen will receive initial investment grade ratings from Moody's and S&P credit rating agencies,[66] and PG&E expects that PacGen is expected to "have ample access to the attractive investment-grade debt market in order to help meet its future capital needs."[67] "This access should only deepen as Pacific Generation, PG&E, and PG&E Corporation's ratings improve over time."[68]

PacGen will have a source of capital other than PG&E, further reducing its financial risk and ensuring its leverage remains within the parameters of PG&E's proposed 48% debt, 52% equity authorized capital structure. Finally, PG&E proposes that PacGen's wildfire risk and liabilities should be indemnified by PG&E.

[65] Ex. TURN-01, p. 6.
[66] Ex. TURN-01, p. 6.
[67] Ex. TURN-01, pp. 6-7.
[68] Ex. TURN-01, pp. 6-7.

Thus, PacGen's borrowing cost and overall cost of capital is likely to be lower than PG&E's. Consequently, PacGen should be assigned a lower authorized return on equity, and debt costs should reflect PacGen's actual cost of borrowing rather than being assumed equal to that of PG&E.

D. The Commission Should Require that PacGen Assets Be Available to Cover Capital Needs of PG&E In the Event of a Catastrophic Event or Financial Crisis

As discussed earlier, the Proposed Transaction would result in fewer resources to address future major or catastrophic events. The Commission should find this to be an unacceptable outcome that increases risks for other stakeholders. Thus, if the Commission approves the Proposed Transaction, the Commission should require that PacGen assets be available to cover capital needs of PG&E in the event of a catastrophic event or financial crisis.

E. The Commission Should Exempt PacGen from the First Priority Condition and Holding Company Conditions

PG&E's rebuttal testimony clarifies its intention that the First Priority Condition would extend only from PG&E Corporation to *both* Pacific Gas and Electric Company and PacGen subsidiaries, but that the First Priority Condition would not extend from Pacific Gas and Electric Company to PacGen.[69] However, TURN disagrees that the First Priority Condition is needed to ensure that PacGen would not be "exposed to the risk of lacking sufficient equity capital to meet its public service obligations."[70]

PG&E has been clear that should the proposed transaction be approved, if PG&E fails to provide a pro-rata share of required equity capital, PG&E's ownership in PacGen could decline below 50.1% and it would lose control of the subsidiary. PG&E is clear that regardless of the application of the First Priority Condition to PacGen, PG&E would not allow this scenario to

[69] PG&E Rebuttal Testimony, p. 11-4.
[70] PG&E Rebuttal Testimony, p. 11-4.

occur, [71] both because strategically "it is not acceptable for PG&E to have less than 50.1 percent"[72] primarily because the amounts of pro rata capital investment required to maintain its 50.1% ownership is "pretty immaterial" relative to PG&E total company rate-based investment.[73] These facts call into question PG&E's assertion that "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 Minority Investor(s).[74] If the relative capital funding burden associated with PacGen is small as PG&E Witness Williams asserts, then the purported benefit of sharing the burden is also "pretty immaterial."

However, PG&E agrees that under the Proposed Transactions, if PG&E experiences a catastrophic event and needs access to cash, the earnings and cash from PacGen would not be available to meet PG&E's needs as they are now.[75] Further, in the face of a future catastrophic event at PG&E, the option to raise equity through the sale of these same attractive, low- risk, non-nuclear generating assets would not be available to support the utility having already been deployed here to delay inevitable shareholder dilution.[76]

Based on the foregoing, should the Commission approve PG&E's proposal, PG&E's request to extend the First Priority Condition to PacGen is both unnecessary to ensure that PG&E provides sufficient capital to PacGen and sets up the potential for conflict between the priority of PacGen relative to PG&E.

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[71] Evidentiary Hearing Vol 1., pp. 135-137, and Evidentiary Hearing Vol. 2, pp. 238-241.
[72] Evidentiary Hearing Vol 2., pp. 240 lines 18-21.
[73] Evidentiary Hearing Vol 1, p. 136 lines 3 to 9.
[74] PG&E Rebuttal Testimony p. 11-4.
[75] Evidentiary Hearing Vol 1, pp. 110-113
[76] Given expected expiration of PG&E's equity waiver and its significant projections of capital investment, TURN does not find it credible that PG&E can avoid dilutive sale of equity indefinitely. Thus, PG&E's proposed transaction simply kicks the can of share dilution while reducing PG&E's future financial flexibility to deal with operating risk.

IV. CONCLUSION

In conclusion, TURN urges the Commission to reject the Proposed Transaction, which as TURN demonstrates above, is designed to benefit shareholders at the risk of harming other stakeholders. Furthermore, the undisputed fact that the Proposed Transaction is not necessary in order for PG&E to meet its capital needs is a strong reason for the Commission to deny the Proposed Transaction.

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Respectfully submitted,

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