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 No. 22-09-018 (Filed September 28, 2022)

PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND PACIFIC GENERATION LLC'S OPENING BRIEF

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Through this Application, PG&E proposes to undertake a corporate transaction involving the sale of a minority interest in its non-nuclear generation business by creating a new, rate-regulated generation subsidiary named Pacific Generation LLC ("Pacific Generation" or "PacGen"). PG&E will contribute substantially all of its non-nuclear generation assets, including hydroelectric, natural gas, and solar generation facilities, as well as the Elkhorn battery energy storage system, to Pacific Generation. After this contribution, with Commission approval, Pacific Generation would operate as a rate-regulated public utility subject to the Commission's jurisdiction, and the output of its generation assets would continue to be dedicated to public service. Under the terms of various Intercompany Agreements between PG&E and Pacific Generation, PG&E personnel would continue to operate and maintain Pacific Generation's assets, would continue to dispatch and schedule generation output from the assets as part of an integrated resource portfolio, and would continue to meet obligations applicable to load-serving entities as part of an integrated resource portfolio. PG&E will sell a minority interest in Pacific Generation to one or more third-party investors ("Minority Investor(s)"). Collectively, these steps comprise the Proposed Transaction.

The Proposed Transaction is fundamentally a financial transaction—not an operational one—for the purpose of raising equity for PG&E to reinvest in rate base to serve customers. The

Proposed Transaction represents the most efficient way for PG&E to raise equity capital in order to meet its near-term need for capital, which is significant. This need is driven in large part by substantial capital investments in PG&E's electric transmission and distribution infrastructure to improve the safety and reliability of its system. The Proposed Transaction will provide PG&E with capital from the initial sale of the minority equity interests in Pacific Generation to fund PG&E's capital plan, particularly its capital expenditures in 2024. It also will help support additional investments in the generation business in the future. The anticipated contribution to Pacific Generation's future capital needs by the Minority Investor(s) will enable PG&E to devote more equity capital to investments to promote the safety and reliability of transmission and distribution infrastructure.

As explained in PG&E's and Pacific Generation's testimony and discussed below, the Proposed Transaction is consistent with the public interest and should be approved under the "no harm" standard required by section 851.[1] But the Proposed Transaction also would yield a number of important benefits for customers—benefits that customers would lose if the Application were not approved. These include providing an efficient source of equity capital for PG&E's near-term capital investments in a manner that supports the Fire Victim Trust ("FVT"), establishing an additional source of funding for future capital investments in the generation business, accelerating PG&E's contributions to the Customer Credit Trust ("CCT"), potentially yielding a lower incremental cost of debt for the benefit of customers, maintaining the deleveraging PG&E has achieved to date, and supporting PG&E's continued deleveraging in the future. The Proposed Transaction would achieve these benefits with no adverse impact on customers or the public, while maintaining the benefit of PG&E's existing fleet of non-nuclear generation assets for customers, the state, and grid reliability, and while preserving the Commission's jurisdiction. Indeed, the Proposed Transaction will not increase overall customer

[1] All statutory references are to the California Public Utilities Code, unless otherwise noted.

rates or negatively impact PG&E's financial condition or credit rating, and PG&E will continue to operate the generation assets contributed to Pacific Generation in the same manner as today.

Because the Proposed Transaction is akin to a stock issuance by PG&E Corporation in that it is designed to raise equity for PG&E's rate base investments, the Commission should reject the invitation from The Utility Reform Network ("TURN") to order a sharing of proceeds from the Proposed Transaction with customers. TURN's arguments are inconsistent with the Commission's precedents and with the core features of the Proposed Transaction, including that the generation assets will remain in service to customers and subject to cost-of-service regulation. Similarly, the Commission should reject efforts by PG&E's contractual counterparties to secure greater rights through this regulatory process than they enjoy by contract today. The Proposed Transaction is structured to preserve the rights and obligations of PG&E and its contractual counterparties through the full assignment to and assumption of relevant agreements by Pacific Generation and thus will have no adverse impact on such counterparties. More broadly, the Proposed Transaction also will have no adverse impact on other potential future claimants.

Moreover, each of the other essential components of the Applicants' proposal is reasonable and consistent with the public interest. These include the proposed contribution of assets, contracts, permits and other rights to Pacific Generation; the various Intercompany Agreements between PG&E and Pacific Generation governing the future relationship between the two utilities; the establishment of Pacific Generation's initial revenue requirement; the ratemaking proposal and proposed tariffs for implementing the Proposed Transaction; and the proposed compliance approach for PG&E and Pacific Generation following the transaction. The Commission also should grant the requested financing authorizations to facilitate Pacific Generation's initial capitalization and meet Pacific Generation's working capital and future long-term debt needs.

Finally, the proposed sale process for marketing the Proposed Transaction to potential Minority Investor(s) and the related transaction documents proposed by PG&E and Pacific

Generation are consistent with industry standards, preserve PG&E's control over Pacific Generation, protect against undue control by the Minority Investor(s), and ensure that the Proposed Transaction poses no risk to wholesale markets.

For all of these reasons, and based on the substantial evidentiary record set forth in this proceeding and described below, PG&E and Pacific Generation respectfully request that the Commission approve the Application and authorize the proposed post-signing advice letter process for implementing the Proposed Transaction.

II. BACKGROUND

A. Summary Of The Proposed Transaction

Through this Application, PG&E requests the Commission's approval to undertake a corporate transaction involving the contribution of substantially all of its non-nuclear generation assets to Pacific Generation, a new, rate-regulated generation-only subsidiary of PG&E, and the sale of a minority interest in Pacific Generation to one or more Minority Investors (the "Proposed Transaction").

Pacific Generation currently exists as a Delaware limited liability company, wholly owned by PG&E. Through the Proposed Transaction, PG&E would contribute substantially all of its non-nuclear generation assets to Pacific Generation, including its hydroelectric, natural gas, solar generation, and battery energy storage facilities, which Pacific Generation will record at book value. PG&E and Pacific Generation would enter into various Intercompany Agreements, pursuant to which PG&E would continue to operate and maintain Pacific Generation's assets and business, and schedule and dispatch the output from Pacific Generation's facilities, in the same manner as it does today, using the same experienced PG&E personnel. Following a marketing process and solicitation of bids, PG&E would sell up to a 49.9 percent equity interest in Pacific Generation to one or more Minority Investors, in order to raise capital that will support critical investments to enhance the safety and reliability of PG&E's infrastructure. With the Commission's approval, Pacific Generation would be established as a generation-only, cost-of-service public utility regulated by the Commission, and would continue to dedicate its output to

public service. The Commission would regulate Pacific Generation in substantially the same way as it regulates PG&E's Power Generation assets and related functions today.

Each step of the Proposed Transaction is described in more detail below.

1. Contribution Of Non-Nuclear Generation Assets To Pacific Generation

With the Commission's approval, at the closing of the Proposed Transaction (the "closing"), PG&E will contribute to Pacific Generation all of its right, title, and interest in and to substantially all of its non-nuclear generation assets, including assets that are currently in PG&E's rate base and those recorded as construction work in progress. This includes PG&E's hydroelectric, natural gas, and solar generation assets, in addition to the Elkhorn battery energy storage system.[2] PG&E will retain the Diablo Canyon nuclear facility, in addition to several small generation facilities and assorted other assets ancillary to the generation business.[3] The generation assets proposed to be contributed have a combined generation capacity of approximately 5.6 GW—approximately 3,848 MW of hydroelectric power, 1,400 MW of natural gas, 152 MW of solar, and 182 MW of battery energy storage.[4] The 2023 weighted average forecasted rate base of these assets is approximately $3.5 billion, equal to around seven percent of PG&E's current total rate base.[5]

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2 The proposed transfer will include 62 hydroelectric powerhouses and one pumped storage facility that operate under 22 FERC hydroelectric licenses, three natural gas facilities (the Gateway, Colusa, and Humboldt Bay generating stations), ten ground-mounted photovoltaic solar stations, and the Elkhorn battery energy storage system. *See generally* PGE-02 (direct testimony of Michael Schonherr).

3 PG&E will retain two small solar facilities in the City of San Francisco, as well as certain ancillary assets situated on the real property transferred to Pacific Generation, including electric transmission- and distribution-related equipment and facilities, gas transmission and distribution facilities, and certain personal property, as well as the real property rights necessary for the operation and maintenance of these retained assets. Two small hydroelectric facilities that have either already been sold or are in the process of being sold to third parties, the Deer Creek and Tule River powerhouses, will also be excluded from the asset contribution.

4 PGE-02 at 2-8 to 2-13 (direct testimony of Michael Schonherr).

5 PGE-01 at 1-1 (direct testimony of Stephanie Williams).

PG&E's contribution of assets to Pacific Generation, and the corresponding assumption by Pacific Generation of certain generation-related liabilities and contracts, will be accomplished through a Separation Agreement between PG&E and Pacific Generation, and the conveyance documents, assumption and assignment agreements, and other agreements contemplated therein. In addition to the generation facilities themselves, the Separation Agreement will set out the related assets to be contributed to Pacific Generation, including real property, real property leases and other interests, rights of way, contracts, tangible personal property, generation business records, generation business permits, and water rights.[6] The Separation Agreement will also specify certain obligations and liabilities related to the contributed assets that will be assigned to and assumed by Pacific Generation at the closing, including those related to licenses, contracts, and permits; taxes; unknown environmental issues; facility decommissioning; and regulatory compliance.[7] PG&E will retain certain specified environmental remediation obligations related to the contributed assets, in addition to pre-closing taxes, and certain liabilities related to the PG&E employees who will support Pacific Generation's business on an ongoing basis.[8]

Pacific Generation will not pay PG&E any cash consideration for the contribution of assets. Instead, PG&E will receive the economic benefit of the asset contribution through its ownership of all of Pacific Generation's equity.[9] Pacific Generation will record the contributed assets on its balance sheet at the same book value at which they are recorded by PG&E today. The Commission would establish Pacific Generation's revenue requirement based on its rate base, which will not change as a result of the asset contribution from PG&E.

PG&E and Pacific Generation will enter into the Separation Agreement, and PG&E will contribute assets to Pacific Generation in accordance with the terms of such agreement.

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6 PGE-02-S at 2-1 to 2-2 (supplemental testimony of Michael Schonherr).

7 PGE-02 at 2-5 to 2-6 (direct testimony of Michael Schonherr).

8 *Id.* at 2-6.

9 PGE-13 at 1-6 (rebuttal testimony of Stephanie Williams).

Following this step, and after the Commission's contemplated issuance of a Certificate of Public Convenience and Necessity ("CPCN") to Pacific Generation and grant of authority for it to file tariffs, Pacific Generation would operate as a public utility regulated by the Commission. Pacific Generation would provide the same benefits currently provided by PG&E's non-nuclear generation assets, but with the added benefits described in Part IV, below.

2. Entry Into Intercompany Agreements

PG&E and Pacific Generation would also enter into various Intercompany Agreements effective as of the closing date, which will provide for the ongoing operation of Pacific Generation's business by PG&E.[10] Under these agreements, PG&E will continue to operate and maintain the generation assets contributed to Pacific Generation, and schedule and dispatch the output from Pacific Generation's facilities, in the same manner as today, using the same employees, practices, and policies. The Intercompany Agreements will also specify the methodologies by which PG&E will bill Pacific Generation for the services it provides, and will provide for Pacific Generation's revenue requirements to be recovered jointly with those of PG&E from retail customers via a single bill.[11] The Intercompany Agreements will govern the post-closing operational relationship between the Applicants, facilitating the safe, efficient, and continuous functioning of Pacific Generation's business.

Under a Generation Facility Operations, Scheduling and Dispatch Agreement ("OS&DA"), PG&E would be granted the authority to operate and maintain the generation facilities and would continue dispatching and scheduling the output generated by Pacific Generation's assets through the same least-cost dispatch approach used today, while a Fuel Procurement Agreement would obligate PG&E to procure fuel for certain of Pacific Generation's facilities.[12] PG&E would continue to provide the services necessary or appropriate to operate

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[10] PGE-04-A at 4-2 (amended and restated testimony of Michael Schonherr and Andrew K. Williams).

[11] *Id.* at 4-2 to 4-3.

[12] *Id.* at 4-1, 4-9 to 4-10, 4-13.

Pacific Generation's business, including those necessary to ensure the continued construction, operation, maintenance, repair, and support of the generation assets by PG&E, pursuant to the terms of an Operations and Services Agreement ("OSA"), which also would detail the corporate services to be provided by PG&E.[13] Interconnection Agreements would govern the interconnection between Pacific Generation's facilities and PG&E's electric transmission and distribution grid, and a Forecast Realization Adjustment Agreement would account for potential forecast-to-actual variance in Pacific Generation's CAISO market revenues and gas fuel costs.[14] Pursuant to a Billing Services Agreement, PG&E would act as billing agent and servicer for Pacific Generation, including billing Pacific Generation's customers and collecting payment of Pacific Generation's charges.[15] PG&E would indemnify Pacific Generation for losses incurred from wildfires caused or alleged to be caused by PG&E or Pacific Generation assets under a Wildfire Indemnification Agreement.[16] PG&E would charge Pacific Generation periodically for the costs of the various services it provides under these Intercompany Agreements, and the materials and supplies it purchases on behalf of Pacific Generation, in accordance with cost assignment and allocation methodologies that are consistent with and implement the General Rate Case ("GRC") applicable to the period such services are provided.[17]

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13 *Id.* at 4-1, 4-3 (amended and restated testimony of Andrew K. Williams).

14 *Id.* at 4-1 to 4-2, 4-10, 4-14 to 4-15 (amended and restated testimony of Michael Schonherr and Andrew K. Williams).

15 *Id.* at 4-2, 4-11 (amended and restated testimony of Andrew K. Williams).

16 *Id.* at 4-2, 4-12 to 4-13. The remaining Intercompany Agreements that are contemplated relate to legal and regulatory matters and benefits. Forms of all of the contemplated Intercompany Agreements are attached to PGE-04-A (amended and restated testimony of Andrew K. Williams and Michael Schonherr).

17 *Id.* at 4-2, 4-6. The cost of services and expense items not currently billed to PG&E's Power Generation functional area will be collected by PG&E in rates until the TY 2027 GRC proceeding, in which the Applicants intend to address the portion of such costs that relate to Pacific Generation for inclusion in Pacific Generation's revenue requirement, subject to the Commission's approval. *Id.* at 4-2 to 4-3.

3. Creation Of New HoldCo

Following the contribution of assets to Pacific Generation pursuant to the Separation Agreement and the entry into the Intercompany Agreements, and prior to the sale of equity in Pacific Generation to one or more Minority Investor(s), PG&E would contribute one percent of Pacific Generation's equity to a new wholly owned subsidiary of PG&E ("New HoldCo"), to be formed for the purpose of holding this Pacific Generation equity.[18] Having this new entity hold a portion of Pacific Generation equity prior to any sales of Pacific Generation equity to third-party investors has certain tax advantages.[19] After the sale of up to 49.9 percent of the equity in Pacific Generation to the Minority Investor(s), New HoldCo would continue to own one percent of the Pacific Generation interests, while PG&E would own at least 49.1 percent. As a result, PG&E would directly and indirectly own a majority (at least 50.1 percent) of Pacific Generation.[20]

4. Sale Of Minority Equity Interests

The Proposed Transaction involves one or more Minority Investor(s) purchasing up to 49.9 percent of Pacific Generation's equity (the "Minority Equity Interests") from PG&E, through a marketing and sale process coordinated by PG&E's financial advisor, Barclays Capital Inc. ("Barclays"). Terms of the proposed purchase and sale of the Minority Equity Interests will be set out in a Minority Sale Agreement ("MSA") between Pacific Generation, PG&E, and the Minority Investor(s). If there is more than one Minority Investor, each will have a separate MSA with substantially similar terms. The Minority Investor(s) will also be a party to the Amended and Restated Limited Liability Company Agreement of Pacific Generation ("LLC Agreement"), which will set out the proposed structure of Pacific Generation and the provisions that govern its management and operation.[21]

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18 PGE-05 at 5-7 (direct testimony of Sienna Rogers).

19 PGE-08 at 8-2 to 8-3 (direct testimony of Elizabeth Min).

20 PGE-03 at 3-2 (direct testimony of David Gabbard).

21 PGE-05 at 5-6 to 5-11 (direct testimony of Sienna Rogers).

PG&E and Barclays anticipate that the Minority Investor(s) in Pacific Generation will be infrastructure investors with deep financial capabilities seeking the long-term value of a regulated revenue stream, such as pension funds, infrastructure funds, or sovereign wealth funds.[22] These types of investors would not be interested in, or capable of, operating Pacific Generation's assets or controlling the day-to-day operations of its business, functions which will be expressly reserved for PG&E, both as operator pursuant to the Intercompany Agreements and as majority owner of Pacific Generation.[23]

PG&E and Pacific Generation, in consultation with Barclays, are pursuing a competitive auction process for the sale of the Minority Equity Interests. This process is closely coordinated with the anticipated regulatory timeline for approval of the Proposed Transaction, and is designed to maximize both investor engagement across that timeline and the value received for the Minority Equity Interests. As proposed, this marketing process will allow investors to complete diligence following a proposed decision on the Application—scheduled to issue by early January 2024[24]—and sign the MSA(s) for the purchase of up to 49.9 percent of Pacific Generation immediately following the Commission's decision. PG&E and Pacific Generation would then submit Tier 2 advice letters identifying the Minority Investor(s) and attaching the signed MSA(s) (along with the final forms of the LLC Agreement and Separation Agreement[25]). The contribution of assets to Pacific Generation and the sale of the Minority Equity Interests will not close until the disposition of the advice letters by Commission staff.

The closing of the sale of the Minority Equity Interests to the Minority Investor(s) will occur within an agreed-upon number of business days following the satisfaction or waiver of the closing conditions set out in the MSA(s), and at least two calendar days following the completion

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22 PGE-01 at 1-4 (direct testimony of Stephanie Williams).

23 *Id.*

24 *See* A.22-09-018, Administrative Law Judge's Ruling Modifying Schedule, at 3 (Mar. 30, 2023).

25 The LLC Agreement and Separation Agreement will be submitted via the advice letter process in their agreed-upon final forms following negotiation with the Minority Investor(s), but neither will be executed until after the disposition of the advice letters.

of the asset contribution pursuant to the Separation Agreement. At the closing of the minority sale, the Minority Investor(s) will acquire the Minority Equity Interests and pay PG&E the agreed-upon purchase price in cash, and PG&E, Pacific Generation, New HoldCo, and the Minority Investor(s) will execute the LLC Agreement.

B. Procedural Background

PG&E and Pacific Generation filed this Application on September 28, 2022. Notice appeared in the Commission's Daily Calendar on October 5, 2022. The following parties filed protests or responses to the Application: California Community Choice Association ("CalCCA"), City of Santa Clara dba Silicon Valley Power ("SVP"), Coalition of California Utility Employees ("CUE"), Energy Producers & Users Coalition ("EPUC"), Nevada Irrigation District ("NID"), Northern California Power Agency ("NCPA"), Placer County Water Agency ("PCWA"), and TURN. Public Advocates Office at the California Public Utilities Commission ("Cal Advocates") and the California Hydropower Reform Coalition ("CHRC"), among others, filed motions for party status.

Administrative Law Judge ("ALJ") Sophia J. Park and Assistant Chief Administrative Law Judge Anthony Colbert presided over the prehearing conference held on December 2, 2022. On January 20, 2023, Assigned Commissioner Alice Reynolds issued a Scoping Memo and Ruling, which identified the following issues to be considered in the proceeding:[26]

1. Whether the requests comply with applicable statutes, Commission decisions, and other legal requirements;
2. Whether the requests are adequately justified, reasonable, and in the public interest;
3. Whether there are alternative sources of funding available to PG&E to address its capital needs and the relative merits of such alternative sources of equity capital;
4. Potential impacts on ratepayers and rates over time, including potential revenue requirement impacts;

[26] Jan. 20, 2023 Assigned Commissioner's Scoping Memo and Ruling ("Scoping Memo") at 2–4.

5. Potential impacts on any future claimants, including for example, future wildfire victims;
6. Whether the resulting tax structure and recoverability of taxes or changes in the basis, and resulting impacts on the CCT, are reasonable;
7. Whether the proposed transaction will result in dyssynergies and increases in billing, service, and other costs, and if so, who should bear responsibility for the increased costs;
8. The transaction costs and fees that will be incurred in connection with the proposed transaction and who should bear responsibility for such transaction costs and fees;
9. The estimated amount of benefits associated with the proposed transaction, the circumstances under which such benefits would no longer be realized (*e.g.*, low sale price or higher share price), and whether any of the benefits should be shared with ratepayers;
10. Impacts of the proposed transaction on the future financial condition of PG&E and Pacific Generation, including any potential impacts on the aggregate amount of debt associated with the assets, credit metrics of each utility, risk profile of each utility, and cost of debt and cost of equity of each utility;
11. Whether there are adequate minority investor governance controls to protect against conflicts of interest and undue control, and whether there should be conditions or limitations placed on such controls (*e.g.*, establishing a lower maximum percentage of Pacific Generation that should be available to be sold);
12. Potential impacts on the Commission's jurisdiction and existing regulatory proceedings, processes, and requirements;
13. Whether the proposed uses of transaction proceeds are appropriate and if there should be any conditions or restrictions on how proceeds from the proposed transaction are used;

14. Whether the proposed transaction will enable PG&E and Pacific Generation to operate and maintain utility assets safely and reliably;
15. Potential impacts on system reliability;
16. Potential implications for California energy and capacity markets and market structure;
17. Whether the proposed multi-stage regulatory approval process, including the use of Advice Letters to fully implement the proposed transaction and associated ratemaking and tariff changes, is reasonable;
18. Applicability of and compliance with the Commission's Tribal Land Transfer Policy; and
19. Whether the requests impact environmental and social justice communities and achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

PG&E served supplemental testimony for Chapter 2 (Description of Property and Assets to be Transferred and Liabilities to Be Assumed) on March 8, 2023, attaching drafts of various schedules to the Separation Agreement that provided further detail on the assets to be contributed to Pacific Generation, including the categories of third-party contracts proposed to be assigned. PG&E served amended and restated testimony for Chapter 4 (Pacific Generation's Future Relationship with PG&E) on March 17, 2023, which included forms of the proposed Intercompany Agreements between PG&E and Pacific Generation, and for Chapter 9 (Ratemaking) on April 10, 2023, which included further details on the proposed ratemaking for Pacific Generation and its revenue requirement.

On March 21, 2023, TURN requested a 60-day extension for intervenor testimony, seeking additional time to review the amended and restated testimony. PG&E opposed that request on the same day. On March 30, 2023, ALJ Park issued a ruling modifying the schedule, which extended the date for intervenor testimony and shifted back future proceeding schedule dates. The resulting schedule provided for opening briefs to be filed and served by September 18, 2023; reply briefs to be filed and served and the matter to be submitted by October 5, 2023;

the proposed decision to be issued within 90 days of the matter being submitted; and the Commission decision to be issued no earlier than 30 days after the proposed decision.[27]

Parties engaged in extensive discovery. CalAdvocates,[28] CalCCA, CHRC, SVP, East Bay Municipal Power District ("EBMUD"), EPUC, PCWA, and TURN sent 26 sets of data requests. In response, PG&E provided a voluminous amount of narrative responses and supplemental data.

On June 8, 2023, the Applicants moved to request official notice of the Federal Energy Regulatory Commission ("FERC")'s May 31, 2023 order in Docket No. EC23-38-000. FERC's order found the proposed asset contribution from PG&E to Pacific Generation to be consistent with the public interest, pursuant to the Federal Power Act Section 203(a)(1).[29] ALJ Park granted the motion on August 28, 2023.

The following parties and witnesses served testimony on June 16, 2023: CalCCA (Brian Dickman); CHRC (Chris Shutes and Dave Steindorf); EBMUD (David Briggs); EPUC/TURN (Michael Gorman); NID (Jennifer Hanson); PCWA (Andrew Fecko and Einar Maisch); SVP (Kevin Kolnowski); and TURN (Jennifer Dowdell).

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

The Commission held evidentiary hearings on August 21, 22, 24, 25, and 28. The hearings produced around 680 pages of transcripts and over 150 individual exhibits.[30]

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27 Mar. 30, 2023 Administrative Law Judge's Ruling Modifying Schedule at 3.

28 In seeking party status, CalAdvocates stated its intent "to closely monitor this proceeding and, if needed, . . . conduct discovery, perform an independent analysis of the ratepayer impacts, and provide input and offer recommendations on issues within the scope of this proceeding, consistent with its statutory mandate, in order to protect the interests of ratepayers." A.22-09-018, Motion for Party Status of the Public Advocates Office (Nov. 4, 2022) at 2. Apart from seeking clarification on a few issues via data requests, CalAdvocates did not otherwise actively participate in the proceeding, either by serving testimony or at the evidentiary hearings.

29 A.22-09-018, Pacific Gas and Electric Company and Pacific Generation LLC's Motion for Official Notice of FERC Order Related to the Proposed Transaction (June 8, 2023) ("Section 203 Approval").

30 On the final hearing day, ALJ Park ordered EPUC to submit a written motion for EPUC's request to admit certain non-stipulated EPUC exhibits. On August 31, 2023, EPUC served a motion to

C. Post-Decision Steps In Transaction And Regulatory Review

If the Commission issues a decision granting the relief sought in the Application, PG&E and Pacific Generation will proceed to sign MSA(s) with the Minority Investor(s). PG&E and Pacific Generation would then submit two Tier 2[31] advice letters containing the definitive principal transaction documents: (1) the Separation Agreement along with its exhibits and schedules, and (2) the MSA(s) and the LLC Agreement.[32] The Tier 2 advice letters would identify the Minority Investor(s) and identify any changes to the transaction documents from the forms that are part of the record of this proceeding.[33] Applicants propose to file two advice letters to facilitate the Commission's review. Following the Commission's disposition of the advice letter regarding the Separation Agreement, PG&E would proceed to contribute the

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admit confidential exhibits containing PG&E's confidential responses to certain EPUC data requests. *See* Motion of the Energy Producers & Users Coalition to Admit Confidential PG&E Data Responses Into Evidence [EPUC-01, EPUC-01-C, EPUC-01-S, EPUC-01-S-C, EPUC-04, and EPUC-04-C]. PG&E served a written reply in response on September 6, 2023. *See* PGE's Opposition to Motion of Energy Producers and Users Coalition to Admit Confidential PG&E Data Responses Into Evidence. On September 12, 2023, ALJ Park denied EPUC's motion to admit exhibits EPUC-01, EPUC-01-C, EPUC-01-S, EPUC-01-S-C, EPUC-04, and EPUC-04-C into evidence. *See* Administrative Law Judge's Ruling Addressing Motions to Admit Evidence.

During the evidentiary hearing, NID objected to PG&E's motion to admit PGE-42 (June 29, 2023 Letter from Stephanie Maggard (PG&E) to Nevada Irrigation District regarding PG&E's Application to Transfer the Drum-Spaulding Project to Pacific Generation LLC and Section 8.2 of the Coordinated Operations Agreement) on the basis that it is a confidential settlement communication pursuant to Rule 12.6. On September 12, 2023, ALJ Park granted PG&E's motion to admit exhibit PGE-42 into evidence. *See* Administrative Law Judge's Ruling Addressing Motions to Admit Evidence.

31 The Commission has the discretion to elevate the advice letters to Tier 3.

32 PGE-13 at 1-17, lines 3–6 (rebuttal testimony of Stephanie Williams).

33 Aug. 21, 2023 Tr. at 80:21–24 (cross-examination testimony of Stephanie Williams) ("[A]fter executing the minority sale agreement, we're proposing to issue two Tier 2 advice letters that would identify the minority investors, and where we would submit the transaction documents."); Aug. 22, 2023 Tr. at 264:7–10 (cross-examination testimony of Sienna Rogers) ("The identity of the minority investor would be provided in a Tier 2 advice letter after the approval of this application, but before closing of the transaction."); PGE-05 at 5-4, lines 24–27 (direct testimony of John Plaster) ("After executing a MSA with each of the winning bidder(s), PG&E proposes to file a Tier 2 Advice Letter (AL) with the Commission to identify the Minority Investor(s) and submit related documentation.").

specified assets and contracts to Pacific Generation.[34] Following the Commission's disposition of both letters, PG&E would proceed to close the sale of equity to the Minority Investor(s).[35] In order to raise the equity needed to fund PG&E's 2024 capital budget, Applicants wish to close the Proposed Transaction by June 2024. Accordingly, Applicants anticipate filing the Tier 2 advice letters in February 2024 and respectfully request that the Commission dispose of each of the advice letters within four months of filing.[36]

D. Summary Of Relief Sought

Applicants' requested relief includes the following:[37]

1. Approve the transfer to Pacific Generation of PG&E's right, title, and interest in all of PG&E's non-nuclear generation assets—including its hydroelectric facilities (except facilities that are the subject of previously-filed applications under section 851), natural gas-fired facilities, solar facilities (except two small solar facilities near PG&E's San Francisco service center), the Elkhorn battery energy storage system, and the other contributed assets. The transfer will be accomplished pursuant to a contribution of assets to Pacific Generation under the terms of the Separation Agreement, the final form of which will be submitted under a Tier 2 advice letter. The transfer may involve fee

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[34] This transfer would be effectuated prior to the closing of the sale of equity to the Minority Investor(s) in order to facilitate Pacific Generation's issuance of debt.

[35] Aug. 22, 2023 Tr. at 273:21–274:6 (redirect examination testimony of Sienna Rogers) ("A. Sure. So my understanding is that in -- once there is an approved -- and if this application is approved, PG&E would sign with Pacific minority investors, finalize transaction documents. The names of those investors and the final transaction documents would be filed with the Commission. And then only after the Commission has issued dispositions of those advice letters, the transaction would be able to be closed. So we would not be closing before any disposition of the Commission -- of the advice letters.").

[36] PGE-13 at 1-17, lines 7–12 (rebuttal testimony of Stephanie Williams) ("Applicants hope to close the transaction within approximately four months following the filing of the advice letters, after both disposition of the advice letters and approval by the Federal Energy Regulatory Commission of the Minority Investor(s)' acquisition of the equity interests in Pacific Generation. Applicants urge the Commission to adopt the proposed advice letter process to enable Applicants to meet this timeline.").

[37] *See* Application (A.) 22-09-018 ("Application") at 53–61 (Part XIV).

interests in, among others, real property, real property leases, licenses, rights of way, easements, assumed contracts, tangible personal property, generation business records, generation business permits, and water rights.[38]

2. Authorize the transfer from PG&E to Pacific Generation and, in some cases, from Pacific Generation to PG&E of such leases or easements as are necessary to effectuate this Proposed Transaction and related business purposes, including a lease or easement in the PG&E-owned land that underlies and accesses the Humboldt Bay Generating Station. In the event PG&E effectuates a separation of the Humboldt Bay land into separate parcels containing nuclear and non-nuclear generating assets, respectively, authorize the post-closing transfer from PG&E to Pacific Generation of a fee interest in the resulting non-nuclear generation Humboldt Bay land parcel(s).
3. Authorize PG&E to transfer to Pacific Generation such rights as are consistent with Pacific Generation obtaining the benefits of PG&E common plant assets in connection with PG&E's operation, maintenance, and scheduling and dispatch of Pacific Generation's assets.
4. Issue a Certificate of Public Convenience and Necessity to Pacific Generation as an "electrical corporation" owning "electric plant" and as a "public utility" that is subject to cost-of-service regulation by the Commission.[39]
5. Confirm that the proceeds of PG&E's sale of the Pacific Generation Minority Interests can be utilized by PG&E as equity.
6. Confirm that Pacific Generation will be subject to the Commission's affiliate transaction rules ("ATR") as a utility and that ATR IX.A and IX.B apply to Pacific Generation. Further confirm that Pacific Generation and PG&E will not be "affiliates" of one another under the ATR, or, alternatively, exempt Pacific Generation from the definition of

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[38] PGE-02-S at 2-1 to 2-2 (supplemental testimony of Michael Schonherr).

[39] §§ 216, 217, 218, 1001.

"affiliate" and refrain from applying the ATR to the relationship between Pacific Generation (or any wholly owned subsidiaries) and PG&E.

7. Confirm that the Minority Investor(s) will not qualify as "affiliates" under the ATR.

8. Confirm that Ordering Paragraphs 15-16 of Decision ("D.") 96-11-018 apply to Pacific Generation.

9. Modify Ordering Paragraph 8 of D.99-04-068 to read: "[t]he capital requirements of PG&E and Pacific Generation, as determined to be necessary and prudent to meet the obligation to serve or to operate the utility in a prudent and efficient manner, shall be given first priority by PG&E Corporation's Board of Directors."

10. Exempt Pacific Generation from the requirements imposed on PG&E by D.20-05-053 to report on the sale or encumbrance of assets by PG&E's subsidiaries and to obtain Commission approval for such subsidiaries' sale or encumbrance of assets valued over $5 million.

11. Confirm that the contemplated forms of agreement pursuant to which the Minority Investor(s) will acquire Pacific Generation Minority Interests would not involve a change in control under section 854.

12. Confirm that the Proposed Transaction does not trigger application of section 854.2 because it does not involve a successor employer and does not implicate any of the employee protection-related remedies or policy concerns addressed by that section.

13. Confirm that the Proposed Transaction does not trigger the Commission's gain on sale rules because it involves the transfer of rate base assets at book value and the assets will remain dedicated to public service and subject to cost-of-service regulation by the Commission.

14. Confirm that the Proposed Transaction is not a "project" within the meaning of the California Environmental Quality Act ("CEQA"), and thus is not subject to CEQA review. *See* Cal. Pub. Res. Code § 21065.

15. Determine that the Tribal Land Transfer Policy is inapplicable or conclude that the Proposed Transaction is subject to an exemption from said policy. *See* Tribal Land Transfer Policy Implementation Guidelines, January 14, 2021, § 1.3(d).

16. Confirm that the Proposed Transaction is consistent with PG&E's Land Conservation Commitment ("LCC"), in light of Pacific Generation's pledge to assume responsibility for those obligations when it takes title to lands subject to the LCC. *See* D.03-12-035.

17. Find that the Proposed Transaction will not affect system reliability and that Pacific Generation's assets will continue to be dedicated to the public and operated by PG&E in the same manner as today, consistent with section 362.

18. Set Pacific Generation's authorized capital structure at 52 percent equity and 48 percent long-term debt and extend the Commission's decision in PG&E's Test Year (TY) 2023 Cost of Capital application (A.22-04-008), including with respect to the Commission's determination regarding PG&E's cost of long-term debt, rate of return on equity, weighted and consolidated rate of return, and request for a Yield Spread Adjustment, to apply to Pacific Generation.

19. Authorize Pacific Generation pursuant to sections 817, 818, and 851 to issue, sell and deliver or otherwise incur at any time or times and from time to time and in one or more series, as applicable, long-term debt securities, such as first and refunding mortgage bonds and other secured long-term debt securities, debentures, notes, overseas indebtedness, foreign currency denominated securities, medium-term notes, trust preferred securities, direct loans, accounts receivable facilities, other floating or variable rate debt, hybrid securities, and other evidences of indebtedness (collectively, "Long-Term Debt Securities") in an aggregate principal amount not to exceed $2.1 billion, in order to capitalize Pacific Generation as part of the Proposed Transaction and reorganization of PG&E and to finance Pacific Generation's rate base in line with its authorized capital structure, as well as for other statutorily authorized purposes.

20. Authorize Pacific Generation pursuant to sections 817, 818 and 851 to issue, sell and deliver or otherwise incur at any time or times and from time to time and in one or more series, as applicable, Long-Term Debt Securities in an aggregate principal amount not to exceed $350 million to fund Pacific Generation's anticipated capital expenditures over the 2024–2026 period and to allow it to finance its ongoing capital spending requirements and to replace maturing debt.

21. Authorize Pacific Generation pursuant to sections 823 and 851 to issue, sell and deliver or otherwise incur various types of short-term debt securities, such as direct loans, revolving credit facilities, term loan facilities, letter of credit facilities, accounts receivable financing, commercial paper, and extendible commercial notes (collectively, "Short-Term Debt Securities" [and, together with Long-Term Debt Securities, the "Debt Securities"]) in an aggregate principal amount not to exceed $1.2 billion including the amount authorized by section 823(c).

22. Authorize Pacific Generation to arrange credit agreements or other credit facilities as may be necessary for the purpose of issuing the Debt Securities as set forth in or contemplated by the testimony and other documents filed with the Commission in support of this Application and to modify such credit facilities in the manner set forth without further authorization from the Commission.

23. Authorize Pacific Generation to guarantee the securities or other debt instruments of regulated direct or indirect subsidiaries or affiliates of Pacific Generation, or of governmental entities that issue securities on behalf of Pacific Generation and to enter a performance guaranty (or PG&E to enter into a performance guaranty) in connection with transactions involving accounts receivable facilities in which Pacific Generation does not act as servicer (or does not appoint PG&E to act as sub-servicer).

24. Authorize Pacific Generation pursuant to section 851 to pledge or otherwise dispose of or encumber utility property in order to secure the Debt Securities by (i) a mortgage on Pacific Generation's property, including by issuing collateral mortgage bonds or first

mortgage bonds, (ii) a pledge or sale of Pacific Generation's accounts receivable, including related collateral pledged under accounts receivable facilities, and/or (iii) a lien on Pacific Generation's property or another credit enhancement arrangement.

25. Authorize Pacific Generation to execute and deliver one or more indentures or supplemental indentures and other instruments evidencing or governing the terms of the Debt Securities and mortgages, security agreements, pledge agreements, and such other collateral documents or instruments to secure the Debt Securities authorized by the Commission in this proceeding, and to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property in connection with the issuance of the Debt Securities; provided that any such encumbrance of utility property, to the extent undertaken as credit enhancement for the primary obligation, shall not be counted against the amounts authorized.

26. Authorize Pacific Generation to issue, sell, and deliver Debt Securities by public offering or private placement.

27. Provide that Pacific Generation may utilize at its discretion the features to enhance Debt Securities as described in PG&E's testimony, including but not limited to, credit enhancement features (such as letters of credit, standby bond purchase agreements, surety bonds or insurance policies, other credit support arrangements, mortgage security and debt used as credit enhancement), redemption provisions, put options, sinking funds, and tax-exempt financing structures and warrants, and may enter into interest rate hedges.

28. Specifically find, as required by section 818, that in the opinion of the Commission, the money, property, or labor to be procured or paid for by such issues of Long-Term Debt Securities is reasonably required for the purposes so specified, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

29. Authorize PG&E pursuant to section 823(d) to retire any short-term debt issued in connection with facilitating the Proposed Transaction with the long-term debt proceeds repatriated to PG&E in connection with the reorganization of PG&E.

30. Authorize PG&E to recoup the long-term debt authorizations PG&E previously used to issue the associated long-term debt retired in connection with the Proposed Transaction and upon which PG&E has already paid section 1904(b) fees[40] or, in the alternative, authorize PG&E to account for the fees paid on its long-term debt that is retired in connection with the Proposed Transaction in its next long-term debt application.

31. Approve the related ratemaking requested by PG&E and Pacific Generation.

32. Authorize Pacific Generation to file tariffs, including joint tariffs with PG&E, to establish rates sufficient to recovery Pacific Generation's authorized revenue requirement, as well as tariffs that would establish memorandum and balancing accounts similar to those maintained by PG&E today, and to update its rates via an Annual Electric True-Up ("AET") and other joint advice letter filings with PG&E.

33. Authorize Pacific Generation to adopt the electric rules, electric forms, and other tariffs, in a manner substantially similar to PG&E's, necessary to operate as a public utility.

34. Authorize PG&E to revise its electric rate schedules, preliminary statements, electric rules, electric forms, and other tariffs as necessary to accommodate the formation of Pacific Generation and implement the Proposed Transaction.

35. Authorize PG&E, concurrent with the contribution of assets to Pacific Generation, to transfer balances from certain memorandum and balancing accounts to newly created equivalent accounts at Pacific Generation, on an as-needed basis.

36. Authorize PG&E to continue to maintain its existing tariffs and memorandum and balancing accounts, notwithstanding the establishment of certain parallel tariffs and

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[40] *See* § 1904(b) ("No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note, or other evidence of indebtedness on which a fee has theretofore been paid to the commission.").

accounts through Pacific Generation, in order to ensure operational continuity, facilitate certain ongoing support and indemnification obligations, and promote a smooth transition.

37. Grant authority for PG&E and Pacific Generation to file additional advice letters, as needed, to fully implement the Proposed Transaction and the associated ratemaking and tariff changes contemplated thereby.

38. Approve Applicants' proposals regarding safety governance, the Independent Safety Monitor, and the Enhanced Oversight and Enforcement Process, and confirm that other governance requirements adopted in D.20-05-053 do not apply to Pacific Generation.

39. Authorize PG&E and Pacific Generation to jointly comply with obligations applicable to load-serving entities, including reporting and forecasting obligations under the resource adequacy program, integrated resource planning requirements, greenhouse gas-related reporting and compliance obligations, and compliance with renewable portfolio standards, and enter into arrangements or take other steps necessary to effectuate such joint compliance obligations. *See* § 380; *id*. §§ 399.11 *et seq*.; *id.* §§ 454.51, 454.52.

40. Authorize PG&E and Pacific Generation to jointly submit and obtain approval of a Wildfire Mitigation Plan.

41. Confirm that PG&E, not Pacific Generation, will retain its designation as provider of last resort and as the central procurement entity for its electric distribution service area. §§ 216(a)(2), 387; R.21-03-011; D.20-06-002.

42. Grant such additional authorizations or further relief to PG&E and Pacific Generation with respect to the authorizations sought herein as the Commission may deem appropriate.[41]

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[41] This approval is in parallel to certain approvals from FERC that are required for the Proposed Transaction, including the transfer of relevant hydropower licenses (to be effectuated in coordination with the transfer of the physical assets subject to those licenses) to Pacific Generation, which PG&E will seek through separate proceedings before that agency.

III. LEGAL STANDARDS

Applicants generally bear the burden of proof on the appropriateness of granting the relief sought.[42] The specifics of what this burden entails depend upon the context and governing statute, as described below.

Section 851 Standard. Because the Proposed Transaction involves an assignment of property used for public utility service, it requires Commission approval under section 851.[43] In evaluating transactions under section 851, the Commission performs a "public interest" analysis.[44] A showing of affirmative benefits to customers is not required; rather, the standard of review is that the transaction is "not adverse to the public interest."[45] Accordingly, the "no harm" standard should govern the Commission's review here, particularly as the Proposed Transaction is fundamentally a corporate reorganization in aid of more efficient financing.[46]

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42 *See, e.g.*, *Application of Pac. Gas & Elec. Co. for Wildfire Mitigation & Catastrophic Events Interim Rates (U39e)*, No. 20-02-003, 2020 WL 6318403, at *12–13 (2020) (ratemaking proceedings); *Application of Cal. Water Serv. Co. (U60w) for Auth. to Establish Its Authorized Cost of Cap. for the Period from Jan. 1, 2009 Through Dec. 31, 2011 & Related Matters*, No. 08-05-002, 2009 WL 2473483 (2009) (reasonableness of cost of capital mechanism); *Application of San Diego Gas & Elec. Co. (U-902-E) for a Certificate that Present and Future Public Convenience and Necessity Require or Will Require SDG&E to Participate in the Construction and Operation of a 500 kV Transmission Line* (1988) 27 Cal. P.U.C. 2d 407, 410, 1988 WL 1663706 (CPCN).

43 "A public utility … shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whore or any part of its … plant, system, or other property necessary or useful in the performance of its duties to the public … without first having [ ] secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars …." § 851(a).

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

45 *Id*. (Commission encourages but does not require affirmative public interest); *see also* D.22-08-005 at 14 (noting that in conducting its public interest review, the Commission "has more routinely applied the 'ratepayer indifference standard' which requires a finding that is no harm or adverse impact to the ratepayers" rather than requiring a net benefit); D.11-06-032 at 12 (noting that the Commission "has occasionally articulated" a standard requiring a showing that an application be "'in the public interest,'" but that "the legal standard of review for § 851" is that an application be "not 'adverse to the public interest'").

46 *See* PGE-013 at 1-2 to 1-3 (rebuttal testimony of Stephanie Williams); PGE-02-S at 2-3, lines 16–23 (supplemental testimony of Michael Schonherr).

Financing Applications Standard. As with section 851, the standard for Commission review of debt and equity securities issuances is the "no harm" standard.[47] If that standard is met, the applicant need only show the funds are being raised for a proper purpose under section 817.

Section 854 Standard. A "merger, acquisition, or [change in] control" of a public utility requires prior authorization from the Commission.[48] Subject to the Commission's waiver authority,[49] such a transaction shall only be approved if the Commission finds that the proposed transaction: provides economic benefits to ratepayers; equitably allocates at least 50 percent of the projected benefits to ratepayers; does not adversely affect competition; and ensures the resulting corporation will have an adequate workforce.[50] These requirements would govern any *future* transfer by PG&E (i.e., subsequent to the Proposed Transaction) of its LLC ownership interests sufficient to result in PG&E no longer controlling Pacific Generation. However, as discussed in Part VIII below, the proposed transaction does not involve any change in control under section 854, and accordingly that section's requirements for Commission findings of various benefits do not apply to this proceeding.

IV. WHETHER THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST [SCOPING MEMO #2]

Fundamentally, the Proposed Transaction is an efficient means of raising equity for PG&E without any change to the day-to-day operations of PG&E's existing fleet of non-nuclear

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47 *See* Section 817 (listing permissible purposes, including "construction, completion, extension, or improvement of [utility] facilities" (subpart (b)) and "improvement or maintenance of its service" (subpart (c)) & Section 818 (equity or debt issuances are contingent on the Commission finding "the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order") (here, the purposes being general utility purposes currently performed within the Generation group at PG&E). *See also, e.g.*, *In Re S. Cal. Water Co.*, No. 00-08-055, 2000 WL 33128281 (2000) (approval upon finding the "proposed issue of Debt Securities and Equity Securities are for proper purposes and not adverse to the public interest"); D.23-04-041 (authorizing issuance of PG&E debt securities upon finding that funding was for proper purposes under Section 817).

48 § 854(a).

49 § 853(b).

50 § 854(b)(1)–(4).

generation assets. When filing A.22-09-018, PG&E explained that "the Proposed Transaction represents the best path forward for [PG&E] to raise capital while balancing a variety of important objectives," namely "(1) meeting PG&E's near term capital needs, including substantial safety and reliability investments in the coming years; (2) supporting the overall deleveraging plans of PG&E and PG&E Corporation consistent with Decision (D.) 20-05-053; (3) avoiding the dilutive effect of a PG&E Corporation common stock issuance and its associated impact on the FVT; and (4) retaining the economic and operational benefits of PG&E's generation assets for customers while continuing to provide safe, reliable, and affordable service."[51] This rationale for the Proposed Transaction, including its distinct advantages to a traditional stock issuance by PG&E Corporation, continues to hold true today.

Although the Application should be approved under a no harm standard, the Proposed Transaction also would yield a number of important benefits for customers—benefits that customers would lose if the Application were not approved. And the Proposed Transaction would achieve these benefits while not negatively impacting customer rates and maintaining the benefit of PG&E's existing fleet of non-nuclear generation assets for customers, the state, and grid reliability. The Proposed Transaction also preserves the Commission's existing jurisdiction over PG&E's non-nuclear generation assets and does so in a manner that maintains current regulatory regimes and without increasing the regulatory burden, including of the GRC cycle.

The Commission should not mandate a sharing of proceeds with customers since the Proposed Transaction is akin to a stock issuance by PG&E Corporation and is designed to raise equity for PG&E's rate base investments in the most efficient manner. Moreover, arguments in favor of such mandated sharing incorrectly apply the Commission's precedents and ignore the fact that the non-nuclear generation assets contributed to Pacific Generation will remain in service to customers and subject to the Commission's cost-of-service regulation.

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[51] PGE-01 at 1-2 (direct testimony of Stephanie Williams).

Furthermore, the Proposed Transaction is structured to preserve the rights of contractual counterparties to PG&E. Such preservation of rights includes offers by PG&E to remain liable under existing contracts that will be assigned to Pacific Generation, such that PG&E's contractual counterparties are in a position no worse than they are today. The Commission should reject the efforts by third parties to leverage this regulatory process to obtain greater rights than they enjoy by contract today. The Proposed Transaction is also structured to have no adverse impact on other potential future claimants.

A. The Transaction Benefits Customers

The Proposed Transaction would generate important benefits for customers. First, the Proposed Transaction would provide a source of equity capital to support the significant investments being made by PG&E to improve the safety and reliability of its electric transmission and distribution system. Second, the Proposed Transaction would establish a relationship with a long-term economic partner that PG&E expects will serve as a source of equity capital for potential future investments in electric generation and storage to meet the state's and the Commission's broader policy goals and directives. Third, the Proposed Transaction would generate additional income at PG&E that would accelerate PG&E's contributions to the CCT, yielding important timing benefits for investments by the Trust. Fourth, the Proposed Transaction may result in a lower incremental cost of debt at Pacific Generation than at PG&E, and any such savings on cost of debt will flow through to customers in a future cost of capital proceeding. Fifth, the Proposed Transaction is consistent with overall deleveraging of PG&E (and PG&E Corporation).

1. Provides A Source Of Equity Capital To Support PG&E's Rate Base Investments [Scoping Memo #3, #13]

PG&E has a significant need for equity capital to help fund essential energy infrastructure investments in the coming years. These capital expenditures will improve the safety and reliability of PG&E's transmission and distribution system and help achieve the state's decarbonization and electrification goals in the face of increasing challenges posed by

climate change.[52] PG&E expects to invest between $40 billion and $53 billion from 2022 to 2026, and will need a substantial amount of equity from external sources to fund that capital investment consistent with its regulated capital structure.[53] Although the Proposed Transaction cannot satisfy PG&E's substantial equity need on its own (nor is it designed to), the Proposed Transaction is an essential and efficient source of near-term funding for PG&E's capital plan, particularly for PG&E's capital expenditures in 2024.[54] Indeed, PG&E estimates investing between $8 billion and $12 billion in 2024 alone.[55]

PG&E pursued a variety of strategies to raise capital to support its emergence from bankruptcy and post-emergence recovery, "including issuing debt at the parent holding company and utility levels, issuing new stock, suspending dividends, monetizing net operating losses, and selling assets."[56] Of these, only a stock issuance by PG&E Corporation or an asset sale by PG&E remain realistically available as sources of equity funding.[57] Since a broader strategy of selling assets would not retain the economic benefits of the assets for customers and would potentially alter the Commission's jurisdiction, a stock issuance by PG&E Corporation was the main alternative PG&E considered when deciding to pursue the Proposed Transaction.[58] In that regard, the Proposed Transaction compares favorably: it presents a number of key advantages to a common stock issuance and "remains the preferred means of raising equity capital."[59]

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52 *Id.*

53 *Id.*

54 Aug. 21, 2023 Tr. 60:14–61:7 (cross-examination testimony of Stephanie Williams).

55 CalCCA-01 at 7 (direct testimony of Brian Dickman) & Attachment C (PG&E Response to CalCCA 004-Q003).

56 PGE-01 at 1-3 (direct testimony of Stephanie Williams).

57 *Id.* at 1-3 to 1-4. *See* Scoping Memo at 3, issue 3 ("Whether there are alternative sources of funding available to PG&E to address its capital needs and the relative merits of such alternative sources of equity capital[.]").

58 *Id.* at 1-3 to 1-4; PGE-13 at 1-14 to 1-15 (rebuttal testimony of Stephanie Williams).

59 PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams).

Most significantly, the Proposed Transaction is a more efficient way to raise capital for PG&E because it "will generate equity proceeds at a better valuation than an issuance of stock by PG&E Corporation."[60] The precedent electric utility subsidiary minority sale transactions described in the opening testimony achieved "a significant valuation premium versus a common stock issuance by the parent company,"[61] and since then additional similar transactions were announced that further confirm both the significant interest in such transactions by minority investors and their efficiency and success as a mechanism for utilities to raise equity capital.[62]

The Proposed Transaction also would avoid a common stock issuance by PG&E Corporation that would be potentially dilutive in the current environment.[63] Indeed, PG&E Corporation's share price has increased since the Application was filed on September 28, 2022,[64] and the current price reflects the market's expectation of the benefits of the Proposed Transaction, including its efficiency and avoiding a dilutive stock issuance in 2024.[65] This

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60 *Id.* at 1-14 to 1-15. *See also* PGE-05 at 5-3 to 5-4 (direct testimony of John Plaster); PGE-17-E at 5-2 to 5-4 (rebuttal testimony of John Plaster); Aug. 21, 2023 Tr. at 27:2–13 (cross-examination testimony of Stephanie Williams).

61 PGE-05 at 5-4 (direct testimony of John Plaster) ("The $2.375 billion sale price for the 19.9 percent minority stake in FirstEnergy Transmission valued the subsidiary at 40 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 16.1 for the parent, FirstEnergy, based on the value of its common stock at the time of the transaction. The $2.05 billion sale price for the 19.9 percent minority stake in Duke Energy Indiana valued the subsidiary at 27.7 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 18.3 for the parent, Duke Energy, based on the value of its common stock at the time of the transaction.").

62 PGE-17-E at 5-2 to 5-4 (rebuttal testimony of John Plaster) (describing a second FirstEnergy Transmission transaction at a price that "valued the subsidiary at 39.0 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 16.9 for the parent, based on the value of FirstEnergy's common stock prior to the deal's announcement" and a NiSource transaction where the "sale price valued the subsidiary at 32.5 times its earnings for the last 12 months (based on company guidance), which favorably compared to a price/earnings ratio of 18.4 for the parent, based on the value of NiSource's common stock prior to the deal's announcement.").

63 PGE-01 at 1-2 (direct testimony of Stephanie Williams); PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams).

64 PGE-30 ¶¶ 1–2 (TURN Stipulation).

65 PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams); Aug. 21, 2023 Tr. at 27:2–13 (cross-examination testimony of Stephanie Williams).

positive reaction in the market and by equity research analysts further confirms the benefits of the Proposed Transaction and that it "would be accretive relative to the sale of common stock."[66] Moreover, the effect that pursuing the Proposed Transaction has had on PG&E Corporation's share price has already benefited the FVT, and will continue to benefit the FVT for as long as the Trust continues to hold shares of PG&E Corporation common stock.[67]

Thus, the Proposed Transaction remains the preferred and most efficient manner for PG&E to raise equity in the near term to support its capital plan. "If it were not, PG&E would not complete the Proposed Transaction."[68] In fact, PG&E has made clear that it "will continue to evaluate the relative efficiency of a stock issuance by PG&E Corporation as compared to PG&E's sale of equity interests in Pacific Generation, based on the facts and circumstances in the future, including but not limited to the then-prevailing price of PG&E Corporation's stock and the amount offered by Minority Investor(s) to purchase equity interests in Pacific Generation."[69] More specifically, PG&E "would not move forward with the proposed transaction if it weren't in the best interest and it was better for us to issue common stock equity."[70] That said, if PG&E were not allowed to move forward with the Proposed Transaction notwithstanding the transaction's superiority to the alternatives, such a scenario likely would negatively impact PG&E Corporation's stock price given the expectations embedded in the current price. The scenario would also potentially have other adverse consequences for PG&E.[71]

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66 PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams).

67 *Id.* at 1-5; Aug. 21, 2023 Tr. at 10:14–11:13, 13:7–12, 15:4–11 (cross-examination testimony of Stephanie Williams).

68 PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams).

69 PGE-30 (TURN Stipulation); Aug. 21, 2023 Tr. at 25:7–15 (cross-examination testimony of Stephanie Williams) ("And if, you know, at the end of the day it's not in the best interest to move forward with the transaction in comparison to the company's stock issuance, that is something that we will evaluate.").

70 Aug. 21, 2023 Tr. at 99:1–4 (cross-examination testimony of Stephanie Williams).

71 *Id.* at 11:8–13 (cross-examination testimony of Stephanie Williams) ("so, we believe if this proposed transaction were to not move forward, it would have an adverse impact on PG&E's common stock price"), *id.* at 100:19–24 ("So the proposed transaction has had a positive impact

PG&E has been clear from the outset that the primary rationale for the Proposed Transaction, and the contemplated use of the proceeds from the sale of the Minority Equity Interests, is to support "PG&E's utility capital expenditure program, including investments in system safety and reliability upgrades, risk mitigation, and investments in electrification and related state-sponsored efforts to combat climate change."[72] Such uses are investments in PG&E's transmission and distribution infrastructure.[73] In this regard, PG&E is willing to "commit, within 18 months of closing, to expend capital in an amount no less than the net proceeds from the sale of the Minority Equity Interests in Pacific Generation (after deducting tax liabilities and transaction costs) divided by 0.52."[74] Thus, "PG&E would invest equity in capital expenditures in an amount that is no less than the net equity sale proceeds,"[75] and this equity capital would be matched by long-term debt financing consistent with PG&E's authorized capital structure in terms of the total amount invested by PG&E.[76] PG&E's commitment in this regard should provide parties and the Commission sufficient assurance regarding use of the equity

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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 (indecipherable) stock, right, which would impact our ability to do other things, such as debt paydown."); *see also id.* at 13:7–12 ("we believe that the issuance of additional shares of common stock would have an adverse impact to the current share price in relation to the proposed transaction, as the proposed transaction is reflected in the positive nature in the current share price of PG&E common stock"); *id.* at 60:14–61:7.

72 Application at 16; *see also* PGE-01 at 1-2 (direct testimony of Stephanie Williams); PGE-13 at 1-15 (rebuttal testimony of Stephanie Williams). *See* Scoping Memo at 4, issue 13 ("Whether the proposed uses of transaction proceeds are appropriate and if there should be any conditions or restrictions on how proceeds from the proposed transaction are used[.]").

73 Aug. 21, 2023 Tr. at 31:6–12, 97:22–98:5 (cross-examination testimony of Stephanie Williams).

74 PGE-13 at 1-16 (rebuttal testimony of Stephanie Williams); *see id.* at 1-AtchA-1 ¶ 4.

75 *Id.* at 1-16.

76 Aug. 21, 2023 Tr. at 129:7–132:2 (examination testimony of Stephanie Williams by ALJ Park). The proceeds would be *divided by* 0.52 to reflect that 48 percent of the rate base investment would be funded by debt. To illustrate, if the net proceeds of the Proposed Transaction were $1 billion, then PG&E would commit to invest $1.923 billion in rate base, of which $1 billion would be funded by equity (52 percent) and approximately $923 million would be funded by debt (48 percent). (PG&E's authorized capital structure is 47.5 percent long-term debt and 0.5 percent preferred stock; for simplicity of illustration, the foregoing figures ignore preferred stock.)

proceeds from the Proposed Transaction. PG&E is strongly opposed to suggestions, such as by CalCCA, that PG&E should segregate the proceeds from the Proposed Transaction.[77] Doing so would be both infeasible and impractical.[78] Such segregation of proceeds also would "result in inefficiencies in PG&E's cash management, including higher short-term borrowing needs and associated costs."[79]

2. Provides A Source Of Future Equity Capital To Support Pacific Generation's Investments

The Proposed Transaction also benefits customers by facilitating a long-term source of capital to support PG&E's electric generation business. PG&E expects that the Minority Investor(s) will serve as an additional source of equity capital for future investments by Pacific Generation in electric generation and storage.[80] Indeed, the same factors that motivate Minority Investor(s) to initially invest in Pacific Generation, including a stable, rate-regulated investment profile, will incentivize continued future investment in the generation business.[81] Continued future investment benefits customers in two ways. First, it creates greater opportunity for Pacific Generation to build additional assets, subject to Commission review, through incremental investments in the electric generation business. This is important for California and the Commission "to advance the State's safety, reliability, clean energy and affordability goals," including with respect to development of new generation capacity and energy storage, all for the benefit of customers and the public.[82] Second, "future equity capital provided by Minority Investor(s) will reduce the amount of equity capital that PG&E must devote to the generation

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77 CalCCA-01 at Attachment B ¶ 4.

78 PGE-13 at 1-15 to 1-16 (rebuttal testimony of Stephanie Williams); *see id.* at 1-AtchA-1 ¶ 4.

79 CalCCA-01 at Attachment C (PG&E Response to CalCCA 004-Q003).

80 PGE-01 at 1-2 to 1-3 (direct testimony of Stephanie Williams); PGE-13 at 1-3 (rebuttal testimony of Stephanie Williams).

81 Aug. 21, 2023 Tr. at 48:11–17 (cross-examination testimony of Stephanie Williams); *id.* at 117:4–9 (ALJ examination testimony of Stephanie Williams).

82 PGE-13 at 1-3 (rebuttal testimony of Stephanie Williams).

business."[83] This, in turn, will enable PG&E "to devote more equity capital to investments to promote the safety and reliability of transmission and distribution infrastructure."[84]

3. Contributions To The Customer Credit Trust Will Accelerate [Scoping Memo #6]

The Proposed Transaction further benefits customers by accelerating PG&E's contributions to the CCT. The Commission authorized the creation of the CCT in connection with a $7.5 billion securitization transaction. The CCT funds credits that offset the fixed recovery charges to amortize the securitized bonds. PG&E's customers have a strong interest in increasing the assets held by the CCT, for two reasons. First, the more valuable the Trust's assets are, the lower the risk that the Trust will be unable to fully fund offsetting credits. Second, 25 percent of any balance remaining in the Trust when the securitized bonds are paid in full will be allocated to customers.[85]

The sale of the Minority Equity Interests promotes customers' interest in increasing the Trust's assets. The sale will generate taxable gain at PG&E, and the net effect of the Proposed Transaction will be an acceleration in the timing of the Additional Shareholder Contributions by PG&E to the CCT.[86] Although the total amount contributed to the CCT does not change, there is a significant timing advantage for the Trust as accelerated contributions give the Trust greater opportunity to generate investment returns.[87] As TURN itself recognized in the proceeding in which the Commission approved the securitization transaction, the size of the Trust's assets is heavily dependent on the timing of contributions.[88] Moreover, customers would lose this benefit

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83 *Id.*

84 *Id.*; *see* Aug. 21, 2023 Tr. at 51:4–16 (cross-examination testimony of Stephanie Williams).

85 D.21-04-030 at 92 (Ordering Paragraph 12).

86 PGE-08 at 8-7 to 8-9 and Attachment C (direct testimony of Elizabeth Min).

87 Aug. 22, 2023 Tr. at 181:1–16 (cross-examination testimony of Brian Dickman).

88 PGE-13 at 1-3 to 1-4 (rebuttal testimony of Stephanie Williams).

if the Proposed Transaction does not go through, because a traditional stock issuance by PG&E Corporation would not accelerate contributions to the CCT.[89]

4. Pacific Generation's Cost of Debt May Yield Customer Savings

Customers also will benefit from the Proposed Transaction to the extent that Pacific Generation's incremental cost of debt is lower than PG&E's incremental cost of debt.[90] "PG&E and Pacific Generation expect that Pacific Generation will receive credit ratings on its debt that are either equivalent to or better than PG&E's. Thus, a debt issuance by Pacific Generation—as opposed to PG&E—would result in debt costs that are the same, if not lower, all else equal."[91] Witness Dowdell opines that Pacific Generation's debt costs are "likely to be lower than [PG&E] or PG&E Corporation"[92] and Witness Dickman has no "independent opinion" on this topic but has no basis to disagree with Witness Dowdell's conclusion.[93] To the extent that Pacific Generation is able to achieve a lower incremental cost of debt than PG&E, those savings will flow through to customers in the normal course as part of the next cost of capital proceeding. Specifically, in the Test Year 2026 cost of capital proceeding the Commission would set Pacific Generation's authorized cost of capital based on Pacific Generation's embedded cost of debt, reflecting any such savings from a lower incremental cost of debt.[94] However, although PG&E and Pacific Generation do not expect this to be the case in light of the current interest rate environment, to the extent the embedded cost achieved by Pacific Generation on the long-term

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89 Aug. 22, 2023 Tr. at 182:19–183:17 (cross-examination testimony of Brian Dickman) ("Q. But as between a stock sale and the proposed transaction, the acceleration of contributions to the trust could only be achieved through the proposed transaction? A. Comparing those two alternatives, there is additional net income from the proposed transaction, correct. Q. And, therefore, only – as between those two, only the proposed transaction would result in an acceleration of contributions to the trust? A. Yes.").

90 PGE-13 at 1-4 (rebuttal testimony of Stephanie Williams).

91 PGE-07 at 7-5, lines 1–5 (direct testimony of Margaret K. Becker); *see id.* at 7-4, lines 24–26 ("PG&E and Pacific Generation do not anticipate any increase in the incremental cost of debt for the combined enterprise or in the overall cost of debt as a result of the Proposed Transaction.").

92 TURN-01 at 7, lines 13–14 (direct testimony of Jennifer Dowdell).

93 Aug. 22, 2023 Tr. at 184:7–20 (cross-examination testimony of Brian Dickman).

94 PGE-13 at 1-4, lines 12–14 (rebuttal testimony of Stephanie Williams).

debt issued for its initial capitalization is lower than PG&E's *authorized* cost of debt set in D.22-04-008, that would be reflected in Pacific Generation's initial revenue requirement.[95]

5. The Proposed Transaction Is Consistent With Deleveraging [Scoping Memo #10]

Finally, the Proposed Transaction is consistent with and supports PG&E's deleveraging plans. Deleveraging the enterprise is a priority for PG&E, and PG&E has "pursued a variety of deleveraging strategies consistent with D.20-05-053, including PG&E's rate-neutral securitization transaction."[96] As compared to a scenario in which PG&E relies on the capital structure waiver in D.20-05-053 to issue additional long-term debt to finance PG&E's capital expenditures in 2024, the Proposed Transaction would enable PG&E to continue on its deleveraging trajectory. Indeed, PG&E expects to be in compliance with its authorized capital structure at the end of the waiver period.[97] Likewise, as compared to a scenario in which PG&E Corporation issues additional common stock, the relative efficiency of the Proposed Transaction as a means for raising equity capital helps facilitate deleveraging by PG&E. In particular, a dilutive common stock issuance by PG&E Corporation would negatively impact share price, which could impair raising equity through a PG&E Corporation common stock issuance in the future.[98] In other words, all else equal, pursuing the Proposed Transaction to meet PG&E's near-term equity capital needs better preserves PG&E Corporation's position for issuing equity in the future, including for deleveraging activities, such as paying down PG&E Corporation debt. Thus, the Proposed Transaction is an important element of maintaining the deleveraging PG&E has achieved to date and supporting PG&E's continued deleveraging in the future.

Much of the testimony of EPUC/TURN Witness Gorman focuses on PG&E's capital structure and offers broader commentary on deleveraging.[99] This includes "recommendations for

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95 *Id.* at 1-AtchA-2 ¶ 12.

96 PGE-07 at 7-2, lines 30–32 (direct testimony of Margaret K. Becker).

97 Aug. 22, 2023 Tr. at 306:21–22 (cross-examination testimony of Margaret K. Becker).

98 Aug. 21, 2023 Tr. at 100:18–24 (cross-examination testimony of Stephanie Williams).

99 *See generally* EPUC/TURN-01 (direct testimony of Michael Gorman).

alternative accounting treatments in evaluating PG&E's capital structure and additional 'transparency' in PG&E's dividend policies and deleveraging plans."[100] To a large extent, Witness Gorman's testimony goes beyond the relationship between the Proposed Transaction and PG&E's deleveraging or the overall impact of the Proposed Transaction on PG&E's financial condition, and therefore Witness Gorman's testimony falls outside the scope of this proceeding.[101] That alone is reason enough for the Commission to disregard this testimony. Indeed, Witness Gorman does not "assert that the Proposed Transaction would worsen PG&E's capital structure or change the way in which PG&E determines its compliance with its regulated capital structure."[102] To the contrary, Witness Gorman appears to agree with PG&E regarding the benefits of the Proposed Transaction for deleveraging, noting that it is "designed to increase common equity capital for PG&E Utility which can be used to further increase its equity ratio of total actual ratemaking capital structure while minimizing shareholder dilution."[103]

Moreover, in addition to being out of scope, Witness Gorman's testimony and recommendations also collaterally attack prior decisions by seeking to relitigate issues that have been squarely resolved by the Commission. For instance, Witness Gorman recommends reporting by PG&E on its deleveraging plan,[104] yet in considering PG&E's bankruptcy Plan of Reorganization in Investigation (I.) 19-09-016 the Commission already adopted measures for reviewing PG&E's capital structure and deleveraging progress.[105] Likewise, in recommending

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100 PGE-13 at 1-11, lines 21–23 (rebuttal testimony of Stephanie Williams) (citing EPUC/TURN-01 at I-3 ¶¶ 3–5, 7-8 to 7-10).

101 *See* Scoping Memo at 3 ¶ 10.

102 PGE-13 at 1-11, lines 23–26 (rebuttal testimony of Stephanie Williams).

103 EPUC/TURN-01 at 1-2, lines 18–21 (direct testimony if Michael Gorman).

104 *Id.* at 1-3, lines 69–76.

105 *See* D.20-05-053 at 83–84 (rejecting Witness Gorman's recommendation to impose specific financial metrics and standards, and instead stating that the Commission will "closely monitor[] PG&E's actual financial metrics"), 85 (directing PG&E, if it requires an ongoing capital structure waiver beyond the five years granted, to file an application with a deleveraging plan), Ordering Paragraph 9 (PG&E "shall annually submit to the Commission's Energy Division a Tier 1 Advice Letter, until further direction, informing the Commission of its current capital structure and

that the Commission exclude non-cash accounting adjustments related to securitization in calculating PG&E's regulated capital structure,[106] Witness Gorman ignores the fact that the Commission expressly approved PG&E's proposal to make these adjustments associated with future contributions to the CCT.[107] The Commission should reject the suggestion to revisit the determinations reached in these prior decisions.

B. The Transaction Does Not Harm Customers

1. There Will Be No Negative Impact On Rates [Scoping Memo #4, #7, #8, #10]

The Proposed Transaction will not increase customer rates and will not adversely affect PG&E. As an initial matter, it is undisputed that there will be no increase in overall customer rates upon the approval of this Application or the closing of the Proposed Transaction.[108] As described further in Parts V.E and V.F, the ratemaking and tariff changes to implement the Proposed Transaction involve simply dividing the existing revenue requirements approved by the Commission for PG&E (with no change to the total combined revenue requirements of PG&E and Pacific Generation) and establishing certain joint rate schedules comparable to PG&E's existing rate schedules.[109] In other words, "Pacific Generation will inherit the relevant portion of PG&E's current GRC, PG&E's ERRA, and PG&E's COC"[110] with no change in the overall total rates. Accordingly, the operations and maintenance ("O&M") costs and the capital costs

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deviation from its authorized capital structure, and updated annual forecast for de-leveraging, and its current credit ratings for secured and unsecured debt."); *see also* EPUC-05-C (Aug. 21, 2023 PG&E 2022 capital structure advice letter (Advice Letter 4689G/7690E) submitted pursuant to D.20-05-053).

106 EPUC/TURN-01 at 1-3, lines 64–68 (direct testimony of Michael Gorman).

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

108 *See* PGE-20 at 9-3, lines 5–8 (rebuttal testimony of Marques Cruz).

109 PGE-07 at 7-3 to 7-4 (direct testimony of Margaret K. Becker); *see* PGE-09-E (direct testimony of Eric Brown, Marques Cruz and Stephanie A. Maggard); PGE-10, at 10-1 to 10-2 and Attachment A (direct testimony of Benjamin Kolnowski); PGE-20 at 9-3 to 9-4 (rebuttal testimony of Marques Cruz).

110 PGE-20 at 9-3, lines 6–8 (rebuttal testimony of Marques Cruz).

recovered in rates related to the non-nuclear generation business will not change as a result of the transaction; the associated revenue requirement will just shift from PG&E to Pacific Generation. Beginning with the first jointly filed GRC (for Test Year 2027), the Commission will review forecast costs specific to Pacific Generation.[111]

Moreover, customers will not bear transaction or transition costs related to the Proposed Transaction.[112] Specifically, PG&E is tracking all transaction and transition costs consistent with FERC's "hold harmless" policy.[113] This includes the costs incurred to evaluate, negotiate, and consummate the Proposed Transaction (transaction costs) and the costs incurred to integrate the operations and assets to achieve synergies (transition costs).[114] PG&E and Pacific Generation have committed to apply the hold harmless policy to both FERC- and CPUC-jurisdictional rates.[115]

In any event, given the structure of the Proposed Transaction and PG&E's continued role in operating the assets in the same manner as today, PG&E expects that if there are any changes in overall administrative or overhead costs as a result of the Proposed Transaction, they will be negligible.[116] CalCCA Witness Dickman estimates such costs at only $3 million per year,[117] and also concedes that any such incremental costs could be outweighed by the benefits of the

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111 PGE-09-E at 9-5 (direct testimony of Marques Cruz).

112 PGE-20 at 9-3, lines 15–23 (rebuttal testimony of Marques Cruz); *see* Scoping Memo at 3 ¶ 8.

113 *See* Policy Statement on Hold Harmless Commitments, 155 FERC ¶ 61,189 (2016) ("Hold Harmless Policy Statement").

114 *Id.*

115 PGE-20 at 9-3, lines 15–23 (rebuttal testimony of Marques Cruz); PGE-13 at 1-AtchA-1 to 1-AtchA-2 ¶ 7 (rebuttal testimony of Stephanie Williams). For clarity, the costs incurred by Pacific Generation for its long-term debt issuance, which are the same types of costs PG&E incurs for its debt issuances and would incur for the debt it would need to issue in a no-transactions scenario, do not come within FERC's hold harmless policy or this commitment. Those costs would be incurred with or without the Proposed Transaction. The long-term debt that Pacific Generation would issue would enable PG&E to avoid issuing new long-term debt.

116 PGE-20 at 9-4, lines 2–3 (rebuttal testimony of Marques Cruz).

117 CalCCA-01 at 20, line 14 (direct testimony of Brian Dickman).

Proposed Transaction, specifically the potential for lower incremental debt costs.[118] In a future GRC proceeding, the Commission could evaluate whether and to what extent there are incremental costs as a result of the Proposed Transaction, whether the transaction has generated benefits that outweigh those costs, and, if so, whether the incremental costs should be rate recoverable.[119] Thus, since PG&E is not currently recovering any of these costs in customer rates and has not requested to do so in this proceeding, the Commission can defer consideration of this issue to a future proceeding, if and when PG&E or Pacific Generation requests to do so.

Relatedly, the Proposed Transaction will have no adverse effect on PG&E's financial condition.[120] PG&E expects that there will be no negative impact on PG&E's credit rating from the Proposed Transaction, and PG&E has made clear that it would not move forward with the Proposed Transaction if it were to cause a downgrade for PG&E.[121] Accordingly, the Proposed Transaction will not increase PG&E's incremental cost of borrowing or increase the overall, enterprise-wide cost of debt relative to a no-transaction scenario.[122] In particular, since the long-term debt issued by Pacific Generation will displace an equivalent amount of long-term debt that PG&E otherwise would issue, as long as the cost of debt achieved by Pacific Generation is equal to or lower than PG&E's *incremental* cost of debt, there will be no harm to customers.[123] In light of the structure of the Proposed Transaction and the fact that Pacific Generation's debt costs are expected to be "the same, if not lower" as compared to PG&E's,[124] there will be no overall

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118 Aug. 22, 2023 Tr. at 185:15–186:11 (cross-examination testimony of Brian Dickman).

119 *Id.* at 187:8–188:2.

120 *See* Scoping Memo at 3 ¶ 10.

121 PGE-07 at 7-1 to 7-2 (direct testimony of John Plaster); PGE-19 at 7-1 to 7-2 (rebuttal testimony of John Plaster and Margaret K. Becker); Aug. 22, 2023 Tr. at 313:5–314:10 (redirect examination testimony of Margaret K. Becker).

122 PGE-07 at 7-3 to 7-7 (direct testimony of Margaret K. Becker).

123 *Id.* at 7-5, lines 6-25.

124 *Id.* at 7-5, line 4.

increase in the enterprise cost of debt between the transaction and no-transaction scenarios.[125] In any event, the Applicants propose that Pacific Generation initially inherit the Commission's decision in PG&E's Test Year (TY) 2023 cost of capital application,[126] which means there would be no change as between pre- and post-transaction to the authorized cost of debt or rate of return used for ratemaking.[127] Indeed, Pacific Generation's authorized cost of debt for ratemaking would not be updated to reflect its actual embedded cost of debt until the next joint cost of capital application filed by PG&E and Pacific Generation, or earlier if and when PG&E's authorized cost of capital is updated.[128]

2. Reliability Is Not Jeopardized By The Transaction [Scoping Memo #14, #15]

Consistent with section 362, the Proposed Transaction will have no adverse impact on overall reliability of the electrical system or safe and reliable operation of the generation assets contributed to Pacific Generation.[129] As noted, the Proposed Transaction is fundamentally a financial transaction, not an operational one, and thus there will be no change to the day-to-day operations of PG&E's existing fleet of non-nuclear generation assets.[130] These assets will continue to be maintained and operated by PG&E pursuant to the Intercompany Agreements in the same manner as they are today, using the same PG&E processes and personnel, with the same safety and risk programs and oversight, and in compliance with the same applicable legal and regulatory requirements.[131] Indeed, the assets will remain dedicated to public use, subject to the Commission's jurisdiction, and operated for the benefit of the same set of customers as part

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125 *Id.* at 7-7, lines 4–5; Aug. 21, 2023 Tr. at 133:15–134:2 (redirect examination testimony of Stephanie Williams).

126 D.22-12-031, as corrected by D.23-01-002.

127 PGE-09-E at 9-7 (direct testimony of Marques Cruz).

128 *Id.* at 9-7; PGE-13 at 1-AtchA-1 to 1-AtchA-2 ¶ 7.

129 Application at 23; PGE-01 at 1-1, lines 16–20, 1-8, lines 24–27 (direct testimony of Stephanie Williams); *see* Scoping Memo at 4 ¶¶ 14–15.

130 *See* PGE-04-A (amended and restated testimony of Andrew K. Williams and Michael Schonherr).

131 *See id.*; PGE-11 (direct testimony of Michael Schonherr and Deanna C. Toy).

of a broader, joint PG&E-Pacific Generation portfolio.[132] Although PG&E will no longer be the direct owner of the assets, by virtue of PG&E's role as operator pursuant to the Intercompany Agreements and its majority ownership and control of Pacific Generation, PG&E will have both the obligation and the strong incentive to ensure that the assets operate reliably and safely. Moreover, the Proposed Transaction is likely to support system reliability overall. To the extent Pacific Generation invests in new generation or storage resources in the future, such investment benefits system reliability, especially during capacity shortages, and as noted, the Proposed Transaction enables PG&E "to devote more equity capital to investments to promote the safety and reliability of transmission and distribution infrastructure."[133] Thus, the Proposed Transaction will have no adverse impact on safety or system reliability.

C. The Commission Should Not Mandate A Sharing Of Proceeds [Scoping Memo #9]

The purpose of the Proposed Transaction is to raise equity for PG&E to invest in transmission and distribution infrastructure. If PG&E raised this equity through the issuance of common stock by PG&E Corporation, no portion of the proceeds of the stock issuance would be allocated to customers. The Proposed Transaction similarly raises equity capital, albeit in a more efficient manner compared to the issuance of common stock, and the proceeds likewise should be devoted entirely to capital investment. No portion of the proceeds of the sale of equity interests in Pacific Generation should be allocated to customers.

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132 *See* PGE-01 at 1-1, lines 16–20, 1-8, lines 24–27 (direct testimony of Stephanie Williams); PGE-03 at 3-3 to 3-4 (direct testimony of David Gabbard); Aug. 22, 2023 Tr. at 290:14–18 (cross-examination testimony of Sienna Rogers) ("So this portfolio is a really important part of our – of the – of the overall market in California. And that the – it would be important to make sure that the – our customers continue to receive the benefit of these – these generation assets in their portfolio.").

133 PGE-13 at 1-3 (rebuttal testimony of Stephanie Williams); *see* Aug. 21, 2023 Tr. at 51:4–16 (cross-examination testimony of Stephanie Williams).

TURN's argument that the Proposed Transaction amounts to an asset sale that would require the sharing of proceeds as a gain on sale[134] is incorrect. D.06-05-041, as modified by D.06-12-043 (collectively, the Gain on Sale Decision), sets forth the Commission's approach for treatment of gains and losses on sale of utility assets, namely, whether and how to allocate such gains between shareholders and customers. Under the Gain on Sale Decision, for transactions with a sale price of $50 million or below and post-tax gain or loss of $10 million and below, the Commission will split gains (or losses) on sales of non-depreciable assets—67 percent to ratepayers and 33 percent to shareholders.[135] For gains on sale for depreciable assets, the rules require allocation of 100 percent to ratepayers.[136]

The Gain on Sale Decision does not apply to the Proposed Transaction for multiple reasons. First, the Proposed Transaction does not involve the sale of assets. In the first step of the Proposed Transaction, PG&E will contribute assets to Pacific Generation. This does not involve a sale because Pacific Generation will not pay PG&E for the assets. In addition, Pacific Generation will record the contributed assets at the same book value as they are recorded on PG&E's balance sheet. The second step of the Proposed Transaction involves PG&E's sale of equity interests in Pacific Generation. Under consistent Commission precedent, proceeds from the sale of equity are not subject to sharing.[137] TURN nevertheless suggests that the Gain on Sale Decision should apply to the Proposed Transaction because transferring an asset to a holding company and then selling an interest in the holding company is substantively equivalent

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134 TURN-01 at 11, lines 13–15 (direct testimony of Jennifer Dowdell) ("PG&E's proposal ignores prior Commission practice [that] has consistently allocated proceeds from the sale of depreciable utility assets 100% to ratepayers rather than the 100% shareholder allocation that PG&E anticipates.").

135 D.06-12-043 at 1.

136 D.06-05-041 at 2.

137 PGE-13 at 1-9, lines 24–28 (rebuttal testimony of Stephanie Williams) ("When utilities issue equity, however, the proceeds are not credited to customers, regardless of whether the stock sells at a premium to net book value. There is no reason to treat PG&E's sale of equity in Pacific Generation any differently from a utility's normal course sale of equity.") (citing D.15-06-051 and D. 92-05-063).

to selling the asset.[138] Whatever the merits of TURN's position in the hypothetical example where the utility sells 100 percent of the equity in the holding company,[139] TURN's argument does not apply to the Proposed Transaction, in which PG&E would retain a majority of the equity in Pacific Generation, PG&E would continue to operate the assets, and the Commission would continue to regulate Pacific Generation as a cost-of-service utility.

This leads to the second reason the Gain on Sale Decision does not apply: customers will continue to receive the benefits of the assets, which will remain dedicated to public use and regulated by the Commission in the same manner as they are today. The Gain on Sale Decision applies only when utility assets are transitioned to unregulated status. The first sentence of D.06-05-041 states that the gain-on-sale rules apply when a utility sells "tangible or intangible assets *formerly used to serve utility customers*."[140] In the Commission decisions TURN cites, PG&E sold depreciable assets to a purchaser not regulated by the Commission, and for that reason the Commission applied the Gain on Sale Decision.[141] When an asset sale transitions the asset from regulated to unregulated status, the "incidence of risk" changes, and that is why customers receive the gain on sale as compensation for the risk they bore when the asset was regulated.[142]

But when the asset remains regulated by the Commission after the transaction occurs, customers have the same risk before and after the transaction. For this reason, the Commission

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138 Aug. 21, 2023 Tr. at 91:13–16 (cross-examination testimony of Stephanie Williams) ("Q. So back to our earlier question, if the holding company holds as asset, and you sell a hundred percent of the holding company, how is that not also selling the asset?"); *id.* at 90:8–15 ("Q. So isn't it true that under your understanding, or under PG&E's proposed framework, PG&E could turn any asset sale into an equity sale by always doing the same thing, transferring the asset sale into a holding company and then selling shares in the holding company[?] Wouldn't it always be able to side-step selling assets and, therefore, falling under Section 851?").

139 We are unaware of any Commission precedent addressing this situation.

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

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

142 D.06-05-041 at 26.

consistently has ruled that 100 percent of the gain on sale of assets that remain regulated are retained by shareholders. In addition to the *Redding II* decision,[143] which applied that principle, the Commission's *Wild Goose* decision makes this point clear:

> A gain-on-sale issue ... arises when you have property that is no longer used and useful, and the utility seeks to rid of the utility property. Post transfer, however, Wild Goose will continue to operate as a natural gas storage provider subject to all conditions previously ordered by the Commission. Thus, the net effect of the change of control is that Wild Goose's operations will continue unchanged. Wild Goose's utility assets are still used and useful as utility property, and thus there is no gain-on-sale issue, and there is no ground for alleging legal error.[144]

To similar effect is the Airtouch spin-off decision.[145] There, the Commission held that no gain was involved in a spin-off of wireless subsidiaries to shareholders. The Commission emphasized that (at that time) the wireless assets would continue to be regulated and dedicated to public service. The Commission cited *United States v. American Telephone & Telegraph Co.*, 552 F. Supp. 131, 201–05 (D.D.C. 1982)[146] in support of the conclusion that "there [was] no disposition of assets from which a gain could be realized."[147]

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

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143 D.89-07-016, 32 CPUC 2d 233, 1989 Cal. PUC LEXIS 587, at *5 (1989).

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

145 D.93-11-011, 51 CPUC 2d 728, 1993 Cal. PUC LEXIS 850 (1993).

146 *AT&T* involved a corporate reorganization where AT&T's operating companies transferred regulated telecommunications assets to its subsidiaries and then spun them off to AT&T shareholders. The AT&T court distinguished between a scenario where assets were removed from utility operation, realizing a gain that needed to be allocated, and the instant transaction where "no assets [were] being removed from public service: the same assets will continue to be used to provide the same services to the same ratepayers[.]" *AT&T*, 552 F. Supp. at 203. Since the assets would stay in utility service, the court found there was no gain and therefore compensation to customers was not required.

147 D.93-11-011, 51 CPUC 2d 728, 1993 Cal. PUC LEXIS 850, at *93 (1993).

In addition to these precedents, TURN's proposal to allocate a portion of the proceeds of the equity sale to customers conflicts with the underlying rationale of the Gain on Sale Decision and fundamental principles of cost-of- service ratemaking. TURN asks the Commission to set rates (i.e., to provide a rate refund) on the basis of the market value of Pacific Generation's assets, as purportedly reflected in the market value of Pacific Generation's equity. Cost-of-service ratemaking, however, bases rates on original cost and ignores the fluctuations in the market value of the assets used to provide utility service. If, as TURN recommends, the Commission were to recognize the difference between net book value and market value in setting rates, then, to be logically and legally consistent, the Commission also would have to increase rate base to reflect its market value. TURN, however, argues for exactly the opposite approach, recommending that the Commission prohibit Pacific Generation from adjusting its book value to reflect the equity sale.[148] Applicants agree with this aspect of TURN's recommendation, which is consistent with Commission precedent refusing to increase rate base to reflect an acquisition premium.[149] But accepting the premise that rate base will not change as a result of the Proposed Transaction, and that the Commission will continue to set rates based on original cost, means that rates cannot be adjusted to reflect market value. As the Commission explained in *Redding II*:

> In the case of a transfer from one regulated privately-owned utility to another, our policy has been clear: the assets in question continue in the rate base at their previously-determined value without any consideration for a premium above book value that might have been paid in the acquisition. In that way the gain on sale is implicitly awarded to the (transferred) ratepayers, since increase in value above book of the distribution plant is not reflected in rates.[150]

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

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148 TURN-01 at 5 (direct testimony of Jennifer Dowdell).

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

150 D.89-07-016 , 32 CPUC 2d 233, 1989 Cal. PUC LEXIS 587, at *5 (1989).

Third, proceeds from the sale of equity in a utility are not shared. TURN asserts that the Commission should treat the difference between the net book value of Pacific Generation's assets and the proceeds of PG&E's sale of equity in Pacific Generation as a gain to be credited to customers. When utilities issue equity, however, the proceeds are not credited to customers, regardless of whether the stock sells at a premium to net book value.[151] There is no reason to treat PG&E's sale of equity in Pacific Generation any differently from a utility's normal course sale of equity. Indeed, the alternative to the Proposed Transaction is the sale of equity by PG&E Corporation. A stock issuance could also be expected to generate proceeds that exceed the fractional share of book value, yet TURN does not recommend that that premium be allocated to customers. The outcome should be no different for the premium realized on the sale of equity in Pacific Generation.

The Commission's precedents on change-in-control transactions reinforce this conclusion. Under section 854(b)(2), at least 50 percent of the "economic benefits" of a change of control transaction involving a utility with revenue greater than $500 million must be allocated to customers.[152] The Commission has not included an acquisition premium as part of the "economic benefits" allocated to customers. The Commission has clarified that the allocation of economic benefits of a section 854 change in control transaction "did not involve an allocation of any gain on sale."[153] The Commission's decision not to treat an acquisition premium as an economic benefit to be allocated to customers in a change in control transaction

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151 *See, e.g.*, D.15-06-051 (approving application of Southwest Gas to issue common stock for capital expenditures, with no sharing of proceeds with customers); D.92-05-063, 44 CPUC 2d 456, 1992 WL 605003 (1992) (similar).

152 § 854.

153 D.05-05-014 at 11–12 (The Commission authorized the gain on a stock sale to flow to shareholders and explained that "[t]he approach that the Commission has taken in allocating gain-on-sale should not be confused with the allocation of other benefits from a transaction.... [Section] 854(b)(2) requires that ratepayers receive an equitable allocation of the transaction's benefits. Even in transactions not explicitly covered by § 854(b)(2) the Commission has sometimes allocated a portion of the transaction benefits to ratepayers. However, those cases did not involve an allocation of any gain on sale. They involved a quantification of economic benefits of a transaction and an allocation of an equitable share of those benefits to ratepayers").

means that the Commission should follow the same approach as to the Proposed Transaction, which does not result in a change in control. TURN's recommendation to allocate to customers the difference between net book value and equity sale proceeds as a "gain on sale" directly contradicts this precedent.

The foregoing applies equally to TURN's assertion that the Proposed Transaction would unduly restrict the gains ratepayers would receive on "future PacGen asset sales" from 100 percent of net book value to 50.1 percent of net book value.[154] If Pacific Generation proposes to sell its assets in the future to a buyer the Commission does not regulate, it would comply with section 851, and the Commission would allocate gain or loss on sale to customers as appropriate. If PG&E decided to pursue a sale of equity in Pacific Generation, such that PG&E would own less than a majority of Pacific Generation's equity, PG&E would comply with section 854, which requires Commission approval for a change in control transaction. As noted, however, under section 854, the Commission has not allocated to customers the premium on the sale of equity. Although it is premature to address how the Commission would address a future sale of equity by PG&E, which is not planned, there is no basis for TURN's objection that the current Proposed Transaction, or a hypothetical future transaction, would "deprive" customers of their share of sale proceeds.

D. The Proposed Transaction Preserves The Rights Of Contractual Counterparties

1. The Assignments, Combined With PG&E's Agreement To Remain Contractually Liable, Fully Protect SVP, PCWA and NID

Placer County Water Agency (PCWA), Nevada Irrigation District (NID) and Silicon Valley Power (SVP) (collectively, "Water Entities") baselessly assert that the Proposed Transaction jeopardizes their rights under contract or common law. To the contrary, their rights are entirely unaffected by the Proposed Transaction.[155]

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154 TURN-01 at 11 (direct testimony of Jennifer Dowdell).

155 *See* NID-01 at 11, lines 13–16 (direct testimony of Jennifer Hanson); PCWA-01 at 5 (direct testimony of Andrew Fecko); SVP-01 at 44 (direct testimony of Kevin Kolnowski).

Under the Proposed Transaction, Pacific Generation will assume and accept "all of [PG&E's] duties, liabilities, and obligations under or pursuant to, the Assumed Contracts."[156] The Assumed Contracts include the contracts under which the Water Entities currently receive water and/or power from PG&E.[157] And PG&E, as the contracted operator of Pacific Generation, will continue to perform all of these contractual obligations on Pacific Generation's behalf.[158] The Water Entities cannot point to any term of the Proposed Transaction that would purportedly negate any rights that the Water Entities may have today, under contract or other law.[159]

PG&E has sought to further allay any potential concerns of the Water Entities by offering to have PG&E also remain liable, along with Pacific Generation, for its obligations under the Water Entities' respective contracts.[160] Despite the passage of substantial periods of time, as of the evidentiary hearing (and still as of today), neither NID nor PCWA has identified any purported deficiency in those proposals.[161]

SVP has suggested that it prefers a different assignment arrangement, where PG&E retains certain contractual obligations while Pacific Generation assumes others.[162] PG&E has

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156 PGE-02 at 2-AtchA-58 (Assignment And Assumption Agreement). *See also* Aug. 24, 2023 Tr. at 403–04 (redirect examination testimony of Michael Schonherr).

157 PGE-02-S at 2-3 & Schedule 2.2(f) (supplemental testimony of Michael Schonherr).

158 *Id.* at 2-3, lines 16–23.

159 PGE-14 at 2-11 (rebuttal testimony of Michael Schonherr); *see also* Aug. 24, 2023 Tr. at 405:8–14 (redirect examination testimony of Michael Schonherr); Aug. 25, 2023 Tr. at 563:10–23 (cross-examination testimony of Andrew Fecko); Aug. 28, 2023 Tr. at 670:13–671:24 (cross-examination testimony of Jessica Hanson).

160 PGE-14 at 2-5 to 2-8 (rebuttal testimony of Michael Schonherr) (describing details specific to SVP); *id.* at 2-14, line 11 to 2-15, line 2 (PCWA); *id.* at 2-13, lines 14–22; PGE-35 (June 28, 2023 Letter from PG&E to SVP); PGE-39 (July 5, 2023 Letter from PG&E to PCWA); PGE-42 (June 29, 2023 Letter from PG&E to NID).

161 PGE-14 at 2-14, line 9 to 2-15, line 2 (rebuttal testimony of Michael Schonherr) (PCWA); *id.* at 2-13, lines 17–22 (NID); Aug. 24, 2023 Tr. at 404:22–405:14 (redirect examination testimony of Michael Schonherr) (NID); Aug. 28, 2023 Tr. at 641:15–20 (cross-examination testimony of Jessica Hanson); Aug. 25, 2023 Tr. at 563:10–23 (cross-examination testimony of Michael Fecko).

162 *See* Aug. 24, 2023 Tr. at 450, 454 (cross-examination testimony of Kevin Kolnowski).

made significant efforts to work with SVP to accommodate that request and allay its concerns, and is continuing to do so. By letter of April 19, 2023, PG&E explained that SVP's contractual rights would remain entirely unimpaired by the proposed transaction, and PG&E's performance of those obligations on Pacific Generation's behalf would ensure that those obligations are performed to the same standards as currently.[163] PG&E clarified that it would not assign to Pacific Generation the contractual obligations relating to power transmission and delivery, and proposed a prompt meeting to work through any concerns. SVP never responded, instead serving direct testimony two months later raising the same concerns on which PG&E had unsuccessfully attempted to engage.[164] On June 28, 2023, PG&E sent a letter to SVP offering an alternative structure with respect to the two contracts between PG&E and SVP relating to the Bucks Creek Project. PG&E offered to remain the Operation Manager of the SVP-owned Grizzly Development, by remaining the direct counterparty to SVP on the Grizzly Operation and Maintenance Agreement (GOMA) and not assigning that contract, and further offered to remain liable, along with Pacific Generation, for any PG&E contractual obligations assigned to Pacific Generation under the Grizzly Development and Mokelumne Settlement Agreement (GDMSA).[165] Because the GOMA and GDMSA together protect SVP's rights in the Bucks Creek Project, as SVP's witness confirmed,[166] PG&E's offer to retain the GOMA and remain liable on the GDMSA ensures SVP's rights will continue to be protected post-transaction. SVP's witness confirmed that the offer preserves its ability to pursue a remedy against PG&E,[167] and was unable to explain how PG&E's offer is not consistent with the public interest.[168]

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163 PGE-14 at 2-4, line 16 to 2-5, line 9 (rebuttal testimony of Michael Schonherr).

164 *Id*.

165 *Id.* at 2-5, line 15 to 2-7, line 20; *see also* Aug. 24, 2023 Tr. at 447–449, 452–453 (cross-examination testimony of Kevin Kolnowski).

166 Aug. 24, 2023 Tr. at 440:2-4 (cross-examination testimony of Kevin Kolnowski).

167 *See id*. at 460.

168 *See* Aug. 24, 2023 Tr. at 461:23–462:5 (cross-examination testimony of Kevin Kolnowski).

2. The Concerns Raised About Future Operations Are Without Merit

The Water Entities raise concerns that operational performance may suffer as a result of the Proposed Transaction. However, they fail to articulate any reasonable basis to expect any such degradation in performance. It is undisputed that as part of the Proposed Transaction, PG&E will enter into an OSA with Pacific Generation, whereby PG&E would 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 on an ongoing basis 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."[169] In short, PG&E personnel will operate the assigned facilities just as they do today.[170]

PCWA suggests a concern about "a third party with investor rights to direct investments and operations" "whose investor interests may incent them to demand deferral of critical investments."[171] SVP and NID raise comparable issues.[172] Their concerns are misplaced for multiple reasons.

First, the Minority Investor(s) will not have rights to direct Pacific Generation's investments and operations. Rather, and as discussed further in Part VII.B.1 below, the Minority Investor(s) will have only a limited set of consent rights regarding the budget and capital expenditures (and no rights to *direct* Pacific Generation's management, investments, or operations).[173]

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169 PGE-04-A at 4-3, lines 8–15 (amended and restated testimony of Andrew K. Williams). *See also id.* at Attachment A (form of OSA).

170 *Id.*; PGE-16-E at 4-2, lines 12–16 (rebuttal testimony of Andrew K. Williams); Aug. 25, 2023 Tr. at 575:16–576:3, 576:15–20 (cross-examination testimony of Andrew Fecko) (Pacific Generation will owe PCWA the same contractual standard of care as PCWA is owed today), 578:21–25 (not aware of possible sale of water elsewhere under Proposed Transaction).

171 PCWA-01-E at 5, lines 11–12, 16–17 (direct testimony of Andrew Fecko).

172 SVP-01 at 30, 43 (direct testimony of Kevin Kolnowski); NID-01 at 13–14 (direct testimony of Jennifer Hanson).

173 PGE-17-E at 5-8 (rebuttal testimony of Sienna Rogers).

Second, the Water Entities' concerns are premised on a misunderstanding of the incentive structures for Pacific Generation's Minority Investor(s).[174] Pacific Generation will be subject to cost-of-service ratemaking, so reducing operating expenses will not enhance long term profitability.[175] And indeed, Minority Investor(s) would view greater capital expenditures as a positive, as they would lead to increased rate base and corresponding increases in their returns on rate base.[176]

NID expresses a concern that following the Proposed Transaction, PG&E may charge Pacific Generation (and, by extension, NID) more for O&M services than it currently charges to NID.[177] This concern is without basis. PG&E's incentives remain unchanged.[178] Moreover, the basis for charges from PG&E to Pacific Generation will be reviewed and approved by the Commission in GRCs.

Finally, the Water Entities' other operational concerns are not linked to the Proposed Transaction. Rather, such concerns also apply today with the assets in the hands of PG&E.[179] Accordingly, even if such concerns had any merit, which they do not, they are not a basis to reject the Proposed Transaction.

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174 *See, e.g.*, Aug. 25, 2023 Tr. at 571:21–572:14 (cross-examination testimony of Andrew Fecko); *id.* at 602:12–15 (recross-examination testimony of Andrew Fecko) ("Q: Mr. Fecko, under cost-of-service ratemaking, how does deferral of critical investments increase shareholder returns? A: I don't know.").

175 *See id.* at 5-7 to 5-8.

176 *Id*.

177 NID-01 at 12, line 34 to 13, line 7 (direct testimony of Jennifer Hanson).

178 PGE-14 at 2-11, lines 18–26 (rebuttal testimony of Michael Schonherr).

179 Aug. 25, 2023 Tr. at 578:21–579:6 (cross-examination testimony of Andrew Fecko) (potential for water sales to other parties); Aug. 28, 2023 Tr. at 644:18–645:11 (cross-examination testimony of Jessica Hanson) (concern for use public use of water within Placer and Nevada Counties exists today with PG&E), 652:14–16 (concern with respect to movement of water through the facilities exists today with PG&E irrespective of the Proposed Transaction); PCWA-02-E at 15, lines 11–12 (direct testimony of Einar Maisch) (longstanding concern that PG&E supposedly increasingly distancing itself from responsibility to operate safely and reliably).

3. The Concerns Raised About A Future Sale By PG&E Or Pacific Generation Are Without Merit

Certain intervenors express concern that PG&E or Pacific Generation may in the future (i.e., after the Proposed Transaction) sell ownership interests in Pacific Generation or the underlying hydroelectric assets.[180] This concern is purely hypothetical, as there is no evidence in the record of any such contemplated future sale. Pacific Generation assets remain subject to Commission review under section 851, and the Commission will review in that context whether any sale to which section 851 applies is consistent with the public interest.[181] The time to address any issues regarding such a potential future sale is when there is actually such a proposal pending, not now in a vacuum based on a speculative concern. Similarly, any sale of PG&E's ownership interests that would cause PG&E to no longer control Pacific Generation would be subject to advanced Commission review under section 854 as a change of control.[182] Intervenors would have a full opportunity to participate in any potential such proceeding in order to protect their interests.[183] Again, it is in that context—rather than today, with an absence of any pertinent facts—that the public interest regarding such a future sale should be evaluated by the Commission.

4. Requests By PCWA And NID For Greater Rights Than They Currently Have Are Unjustified

NID requests that any approval of the Proposed Transaction be conditioned on granting them specified rights, outlined below.[184] These proposed conditions are not rights that NID currently possesses, and there is no basis for so expanding its contractual rights here.

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180 NID-01 at 11, lines 20–25 (direct testimony of Jennifer Hanson).

181 § 851(a).

182 § 854(a).

183 *See* Aug. 24, 2023 Tr. at 462:9–463:7, 473:16–23 (cross-examination testimony of Kevin Kolnowski).

184 PCWA also suggested that the Proposed Transaction should not be approved "[w]ithout safeguards," but did not put forth any specific proposals. PCWA-01-E at 5, line 21 to 6, line 2 (direct testimony of Andrew Fecko).

- *Right of First Refusal*. NID asks that Pacific Generation be precluded from selling its Drum-Spaulding water rights (to the extent such water historically has been used by NID) to any entity other than NID.[185] NID admits that it currently has no such right.[186] PCWA similarly acknowledges that it has no such right.[187] NID and PCWA offer no basis for expanding their contractual rights, or privileging them over others in connection with some future transaction.
- *Cost of Service*. NID asks that PG&E be precluded from charging Pacific Generation or NID more than cost for providing operation and maintenance service.[188] NID does not assert that it has any existing right to such a restriction. Moreover, the reasonableness of costs charged to Pacific Generation will be subject to Commission review as part of its cost-of-service ratemaking; there is no reason to attempt to anticipate now what issues might be presented with respect to such costs.[189]
- *Budget & Improvements Plans*. NID asks that the Commission impose advance restrictions on Pacific Generation's budgets and require that 1-year, 3-year and 5-year capital and maintenance plans be shared with NID and others.[190] NID acknowledges that it does not currently have such rights, and it provides no reasonable basis for expanding its contractual rights in this manner.[191] Also, as discussed above, this proposed condition is designed to solve a potential problem that NID envisions solely

185 NID-01 at 11, lines 20–25 and 15, lines 4–14 (direct testimony of Jennifer Hanson).

186 Aug. 28, 2023 Tr. at 659:19–660:25 (cross-examination testimony of Jessica Hanson).

187 Aug. 25, 2023 Tr. at 561:2–4 (cross-examination testimony of Andrew Fecko).

188 NID-01 at 13, lines 10–13 (direct testimony of Jennifer Hanson).

189 *See e.g.*, PGE-04-A at 4-AtchA-19 (OSA Section 6.1) ("All compensation payable by PacGen to PG&E … will be consistent with and implement the General Rate Case ….").

190 NID-01 at 14, lines 1–7 (direct testimony of Jennifer Hanson).

191 Aug. 28, 2023 Tr. at 654:4–655:5 (cross-examination testimony of Jessica Hanson).

based on its misunderstanding of the economic incentive structure for Pacific Generation.[192]

- *Encumbrance*. NID asks that the Commission forbid PG&E from encumbering the Drum-Spaulding project absent safeguards as to contractual protections. NID does not claim that it has any such right presently.[193] In fact, as discussed in Part VI below, NID's contract with PG&E (the COA) allows PG&E to encumber the assets as part of a broad grant of security interests, such as PG&E's first mortgage bond indenture, and NID does not contend that such encumbrances are absent currently.[194] Rather, NID is asking the Commission for an order that would nullify this provision of the contract between NID and PG&E in connection with the assignment and assumption by Pacific Generation.[195]

The Proposed Transaction does not impair NID's contractual rights and there is no basis to expand them.

NID's proposed conditions should be rejected, as should PCWA's invitation to impose unspecified "safeguards."[196]

E. The Proposed Transaction Does Not Affect Potential Future Claimants [Scoping Memo #5]

The Proposed Transaction will have no adverse impact on potential future claimants.[197] As discussed, the Proposed Transaction preserves the rights of contractual counterparties, and PG&E's offer to remain contractually liable on its existing contracts with SVP, PCWA and NID fully protects their interests in the event of any potential future claims. More broadly, with

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192 *See infra*, Part IV.D.2.

193 Aug. 28, 2023 Tr. at 655:21–656:14 (cross-examination testimony of Jessica Hanson).

194 *Id.* at 656:1–18; NID-01 Ex. 1 at 32 (COA Section 2.1(a)).

195 Aug. 28, 2023 Tr. at 658:5–659:4 (cross-examination testimony of Jessica Hanson).

196 *See supra* note 184.

197 *See* Scoping Memo at 3, issue 5 ("Potential impacts on any future claimants, including for example, future wildfire victims.").

respect to other potential future claimants, the non-nuclear generation assets proposed to be contributed to Pacific Generation represent a small portion—just 7 percent—of PG&E's overall rate base.[198] As PG&E also will continue to own a majority interest in Pacific Generation, the sale of the Minority Equity Interests as part of the Proposed Transaction is more akin to "approximately 3.5 percent of PG&E's rate base, which is a small percentage compared to the enterprise as a whole."[199] Moreover, PG&E has committed to reinvest the equity proceeds from the Proposed Transaction to fund additional capital expenditures in rate base.[200] Thus, the Proposed Transaction does not diminish PG&E's assets and will not affect potential future claimants. With respect to other potential future claimants against Pacific Generation, as distinct from PG&E, Pacific Generation will be a utility with significant assets and financing capacity,[201] and will be covered by PG&E's third-party liability insurance policies.[202]

F. The Commission's Jurisdiction Is Not Jeopardized or Burdened [Scoping Memo #12]

1. All Current Regulatory Regimes Remain Unimpaired

The Proposed Transaction would not alter the Commission's jurisdiction and would not materially change its existing regulatory proceedings and processes.[203] Following the Proposed Transaction, the assets contributed to Pacific Generation will remain regulated on a cost-of-service basis by the Commission in the same manner as today.[204]

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198 PGE-07 at 7-1, lines 28–31 (direct testimony of John Plaster).

199 *Id.* at 7-2, lines 1–2.

200 *See supra*, Part IV.A.1.

201 *See generally* PGE-02 (direct testimony of Michael Schonherr) (describing the assets to be contributed to Pacific Generation; PGE-06 at 6-10 to 6-29 (direct testimony of Margaret K. Becker) (describing Pacific Generation's requested financing authorizations).

202 PGE-18 at 6-6, lines 3–5 (rebuttal testimony of Margaret K. Becker).

203 *See* Scoping Memo at 4, issue 12 ("Potential impacts on the Commission's jurisdiction and existing regulatory proceedings, processes, and requirements.").

204 *See* Aug. 21, 2023 Tr. at 26:13–18 (cross-examination testimony of Stephanie Williams) ("I would just like to note, in regards to this proposed transaction, there's really no change from an end of transaction basis in terms of how the assets will be used moving forward. They will still be regulated under cost-of-service ratemaking, just as they are today.").

Intervenors assert that Pacific Generation's status as a generation-only utility is novel, but they fail to identify any specific way in which the Proposed Transaction would change the Commission's jurisdiction.[205] Similarly, intervenors express concerns regarding added complexity for regulatory proceedings, but they offer no specific examples. The Applicants have demonstrated that the Proposed Transaction is fully compatible with existing Commission processes and will not result in any material change in how the Commission regulates.[206]

2. The General Rate Case Burden Will Not Increase

The Proposed Transaction would not increase the administrative burdens associated with the GRC for PG&E and Pacific Generation, for interested parties, or for Commission staff. PG&E and Pacific Generation propose to jointly file GRC Phase 1 and 2 applications.[207] This proposal aligns with current practice and will allow for coordinated review by the Commission and interested parties of both companies' GRC filings.[208] This joint filing approach essentially replicates the existing process, because the costs involved are already segregated today.[209]

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205 *See, e.g.*, CalCCA-01 at 26, lines 11–18 (direct testimony of Brian Dickman). At most, CalCCA suggests that the Commission should "consider whether any jurisdiction or other regulatory issues could arise." *See id.* at 28, lines 1–3.

206 Concerns regarding administrative complexity and burden are addressed in Parts IV.F.2, V.F, and V.G.

207 PGE-09 at 9-2, lines 3–8 (direct testimony of Stephanie A. Maggard); PGE-20 at 9-2, lines 4–6 (rebuttal testimony of Stephanie A. Maggard).

208 PGE-09 at 9-2, lines 3–8 (direct testimony of Stephanie A. Maggard).

209 *See* Aug. 21, 2023 Tr. at 158:23–159:7 (cross-examination testimony of Stephanie A. Maggard) ("Well, what I would say is that today the costs originate or are incurred in the various lines of businesses associated with the various assets. So they're pretty well segregated today. But any costs associated with generation-related assets are easily identified as generation-related costs today. You know, they all get combined together in one place, but they're presented as, you know, sort of separate -- separate chapters, separate functional areas today, and I don't see that being any different post transaction."); *id.* at 164:20–165:2 ("[A]s I stated previously, all the costs originate with either generation, or transmission, or distribution, and so I don't believe -- my judgment is that it will not be -- there won't be a measurable increase in the complexity. All the data, the existing data, is already segregated. It's just rolling up into two kind of separate accounts at this point. I don't believe it will be administratively burdensome.").

No intervenor challenges this proposal. In fact, multiple intervenors request that PG&E and Pacific Generation follow this same proposal to jointly file in GRC proceedings.[210]

V. WHETHER THE COMMISSION SHOULD AUTHORIZE THE CONTRIBUTION OF ASSETS FROM PG&E TO PACIFIC GENERATION AND GRANT PACIFIC GENERATION A CPCN [SCOPING MEMO #2]

A. Whether The Proposed Contribution Of Assets, Contracts, Permits, And Other Rights Is Adequately Justified, Reasonable And In The Public Interest

The proposed contributions of assets and assignment of liabilities from PG&E to Pacific Generation is reasonable, as PG&E would transfer all of the assets, rights, and obligations required for Pacific Generation to operate as a generation-only public utility under the Commission's regulation. As detailed in the Separation Agreement and its associated schedules, this contribution will include all real property, real property leases, rights-of-way, contracts, tangible personal property, business records, permits, and water rights necessary for Pacific Generation to access and operate the assets and to function as a public utility that dedicates the output of its assets to public use.

With respect to the contribution of generation-related assets, intervenors have generally not objected to the transfer of the generation facilities themselves, instead focusing mainly on certain third-party contracts with PG&E and raising questions regarding post-transaction rights of the counterparties to those contracts. As discussed above in Part IV.D.1, through assignment and assumption agreements, Pacific Generation will step into PG&E's rights and be bound to perform PG&E's obligations under all third-party contracts that relate exclusively to the operation of the assets to be transferred and that PG&E proposes to assign to Pacific Generation, without otherwise changing the rights or obligations of any counterparties. And because these contract assignments will operate in a manner complementary to the proposed Intercompany Agreements, which provide for PG&E to perform all required generation-related services for Pacific Generation as its contracted operator, PG&E personnel will continue to administer the

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[210] CalCCA-01 at Attachment B, proposed condition no. 14; EPUC/TURN-01 at 7-11, lines 19–23 (direct testimony of Michael Gorman).

third-party contracts in the same manner as they do today. In short, there will be no change to the contractual rights of counterparties following the Proposed Transaction. Nevertheless, in response to the ongoing concern of various counterparties with respect to rights under contracts that relate to various of the generation assets proposed to be contributed, and as part of the Applicants' continued effort to work to satisfy all parties to this proceeding, PG&E has agreed to modify its planned assignment of certain third-party contracts to Pacific Generation, as described in Part IV.D, above.

B. CHRC's Concerns Are Out-Of-Scope And Not Transaction-Related

CHRC raises several issues related to dam safety, yet these arguments address CHRC's concerns regarding PG&E's existing management of the dams and do not address how the Proposed Transaction would heighten dam safety risks. The Commission should disregard CHRC's arguments, which are outside the scope of this proceeding and which provide no basis for rejecting or imposing conditions on the Application.

CHRC's arguments do not relate to Scoping Memo issue 14: "Whether the proposed transaction will enable PG&E and Pacific Generation to operate and maintain utility assets [including dam assets] safely and reliably."[211] CHRC itself states that it is concerned with "the *current* operation and maintenance of numerous hydroelectric power facilities that PG&E proposes to transfer to Pacific Generation,"[212] and its testimony overwhelmingly focuses on *existing* dam safety operational matters. Thus, CHRC's critiques generally relate not to the Proposed Transaction's impact on safe and reliable operations but to PG&E's generation operations pre-transaction. As evidenced by the numerous attachments that refer to ongoing FERC review of the condition and maintenance of PG&E's hydroelectric assets,[213] this proceeding is not the appropriate forum to litigate the quality of PG&E's current dam asset operations. Nevertheless, PG&E's position is that the Proposed Transaction would give PG&E

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211 Scoping Memo at 4 ¶ 14.

212 CHRC-01 at 7, lines 22–24 (direct testimony of Dave Steindorf) (emphasis added).

213 CHRC-04; CHRC-05; CHRC-06; CHRC-07; CHRC-08; CHRC-09; CHRC-10; CHRC-12.

additional equity resources that would enhance its ability to operate its dam assets safely and reliably. PG&E's Dam Safety Program will also continue to ensure robust, safe, and effective dam safety operations.

Even if CHRC's critiques were considered on the merits, they are without merit and should be disregarded. CHRC's concerns coalesce around the following: (1) whether Pacific Generation will have the requisite operational, technical, and financial capacity to operate the generation assets; (2) the adequacy of PG&E's dam safety efforts; (3) accountability for damage or injury from the hydroelectric assets once Pacific Generation is licensee; and (4) specific technical dam safety information that in many cases is shielded from disclosure as Critical Energy/Electric Infrastructure Information (CEII).[214]

Pacific Generation will be operationally, technically, and financially equipped as owner of the transferred generation assets, including the hydroelectric assets. PG&E, as contracted operator, will continue to operate, maintain, and support the generation assets with the same experienced and dedicated personnel.[215] Pacific Generation will oversee the operations.[216] Pacific Generation will also be sufficiently capitalized to support dam safety needs. In connection with this Application, Pacific Generation is requesting "long-term debt authorizations both (a) for Pacific Generation's initial capitalization; and (b) up to $350 million for Pacific Generation's anticipated capital expenditures on a going-forward basis, including on dam-related projects" and a "up to $1.2 billon short-term debt authorization[.]"[217] PG&E's capital

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214 CHRC-01 (direct testimony of Dave Steindorf).

215 CHRC-41 (PG&E Response to CHRC_002-Q001) ("As described in the Operation and Services Agreement, PG&E will provide all services necessary or appropriate for the operation of Pacific Generation's business.").

216 Aug. 24, 2023 Tr. at 487:19–488:4 (cross-examination testimony of David Gabbard) ("A. I will continue to provide day-to-day direction to the PG&E routine responsible for operating and maintaining Pacific Generation assets. The way by which I will ensure those assets are safely and reliably operated is by requiring reporting to understand performance interacting directly with the leaders within [PG&E] and providing direct feedback on performance and direction for where I see opportunities, closing any gaps needed to deliver on the expectations set forth in the intercompany agreement.").

217 CHRC-45 (PG&E Response to CHRC_002-Q005).

commitments include about $100 million annually for dam capital projects including "repairs for aging infrastructure, dam retrofits, and spillway projects."[218] These capital commitments would continue with Pacific Generation as licensee. Pacific Generation would assume PG&E's obligations for the capital work, including for the capital projects at McCloud, Lake Almanor, and Pit 7.[219] PG&E must obtain FERC approval to transfer the hydroelectric licenses, and in its review of the license transfer, FERC will examine and make a determination regarding Pacific Generation's technical, operational, and financial capability.[220]

PG&E's dam safety efforts are robust and effective. PG&E's Dam Safety Program (DSP), based on FERC's 2007 Owner's Dam Safety Program Guidance, is well-developed and implements thorough measures to mitigate the risk of dam failures.[221] The DSP is highly regulated, as evidenced by its annual FERC and DSOD inspections and 5-year independent consultant audits.[222] A Dam Safety Advisory Board is tasked with critically evaluating the DSP's performance.[223]

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218 PGE-14 at 2-20, lines 14–15 (rebuttal testimony of Michael Schonherr and Eric A. Van Deuren).

219 CHRC-46 (PG&E Response to CHRC_002-Q006).

220 PGE-14 at 2-18, lines 8–11 (rebuttal testimony of Eric A. Van Deuren).

221 CHRC-42 (PG&E Response to CHRC_002-Q001) ("The primary DSP objective is continual long-term safe and reliable operation of Company dams which is achieved by: 1. Implementing this formal DSP. 2. 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. 3. Clearly communicating policies and expectations regarding dam safety and regulatory compliance to: All DSP team members[,] O&M personnel[,] Other stakeholders. 4. Defining protocols for communicating and reporting dam safety issues. 5. Defining the responsibilities and authority of the Chief Dam Safety Engineer (CDSE). 6. Providing and implementing the following: comprehensive training plan for dam safety[,] formal dam safety quality assurance and quality control (QA and QC) programs[,] Dam Safety Surveillance and Monitoring Program. 7. Requiring internal and external audits and assessments to: a. Verify and document compliance [and] b. Maintain an ongoing focus on dam safety and regulatory compliance. 8. Continuously improving the DSP through the avenues described in Section 8 of this standard.").

222 PGE-14 at 2-17, lines 2–6 (rebuttal testimony of Eric A. Van Deuren).

223 *Id.* at 2-17, lines 9–10.

Post-transaction, Pacific Generation generally would be liable for losses or claims that might result from the operation of the hydro facilities.[224] Pacific Generation will be designated as an additional insured under PG&E's insurance policies.[225]

CHRC argues that PG&E should release certain additional, technical dam safety information that is designated CEII and shielded from disclosure.[226] PG&E's reliance on the CEII designation is consistent with FERC's guidance.[227] CEII designations are essential for protecting the security and safety of critical dam infrastructure. Releasing the technical information that is safeguarded under CEII would run counter to CHRC's stated goal of enhancing dam safety and mitigating risk. Moreover, the dam safety information under CEII designation is not completely withheld—regulators, who are the established experts for evaluating such information, have access.[228]

C. Whether the Intercompany Agreements Are Reasonable

Under the terms of the Intercompany Agreements, PG&E will provide Pacific Generation with all of the services required for its operation as a generation utility. More specifically, these agreements will enable Pacific Generation and Pacific Generation's facilities to be operated in the same manner as today by the same experienced PG&E personnel, scheduled and dispatched

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224 *Id.* at 2-18, line 29 to 2-19, line 2 ("Allocation of responsibility is clear: Pacific Generation would be responsible for the consequences of the dam operations—thus, CHRC's concerns about 'defer[red] or avoid[ed] responsibility' and the implications for victim compensation, capital investments, and public safety are unfounded." (footnote omitted)).

225 CHRC-51 (PG&E Response to CHRC_002-Q011).

226 CHRC-01 at 9, lines 16–17 (direct testimony of Dave Steindorf) ("My testimony, therefore, omits important dam safety information that PG&E has withheld from public disclosure."); *id.* at 13, lines 11–13 ("I have been unable to assess all issues posed by Project No. P-2106 because PG&E has asserted that information related to the damage caused by the project . . . is CEII.").

227 PGE-14 at 2-19, lines 8–19 (rebuttal testimony of Eric A. Van Deuren).

228 *Id.* at lines 17–19 ("PG&E's dam safety information is in the hands of regulators who are highly skilled experts and the established representatives for conducting necessary reviews.").

into the CAISO market in the same manner as today, and used to meet obligations applicable to load-serving entities in the same manner as today.[229]

For a number of the Intercompany Agreements, including the Fuel Procurement Agreement, the interconnection agreements, and the Benefits Agreement, intervenors raise only general concern about assignment clauses and potential for additional transfers in the future.[230] SVP similarly argues that the OSA's "successors and assigns" clause means that parties cannot be assured that PG&E personnel and contractors will continue to operate and maintain the transferred assets.[231] Intervenors' concern is both centered on an improbable scenario and unrelated to the Proposed Transaction. Today, PG&E has the ability to hire a third-party service provider to operate the generation assets in question.[232] The Proposed Transaction does nothing to alter that possibility. Further, PG&E and Pacific Generation do not foresee any scenario in which PG&E ceases to operate Pacific Generation's assets.[233]

CalCCA cites the Forecast Realization Adjustment Agreement as an example of a proposal that "shift[s] business risk away from PacGen and back to PG&E" and thus "create[s] a new shareholder group . . . with preferential status."[234] This complaint misunderstands the function of the FRAA. The FRAA preserves the status quo for PG&E's CAISO market exposure, which could result in variance related to revenues that are lower *or higher* than forecasted.[235] In addition, the variances in question are ultimately rate-recoverable, and the FRAA does nothing to change that. Absent the FRAA, Pacific Generation and PG&E would both ultimately recover any shortfalls, or refund to customers any overcollections, associated

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229 PGE-04 at 4-2, lines 17–26 (amended and restated testimony of Michael Schonherr and Andrew K. Williams).

230 *See* SVP-01 at 45–46 (direct testimony of Kevin Kolnowski).

231 *See id.*

232 *See* PGE-16 at 4-2, lines 16–17 (rebuttal testimony of Andrew K. Williams).

233 *Id.* at lines 12–14.

234 *See* CalCCA-01 at 24, line 11 to 25, line 11 (direct testimony of Brian Dickman).

235 *See* PGE-20 at 9-4, lines 21–24 (rebuttal testimony of Erica Brown).

with the variances addressed by the FRAA.[236] CalCCA Witness Dickman acknowledged as much during cross-examination.[237] In sum, the FRAA serves to benefit *both* PG&E and Pacific Generation because, absent the FRAA, *both* companies would experience greater cash flow fluctuations than with the agreement in place, as Witness Dickman conceded during cross-examination.[238]

CalCCA requests that the Commission impose a condition under which the Commission would have "the authority to monitor compliance by PG&E and the Minority Investor(s) with the obligations under the Intercompany Service Agreements."[239] This condition, as framed, inaccurately describes the Minority Investor(s) as possessing performance or compliance obligations under the Intercompany Agreements and suggests that the Commission would need to take additional action to "monitor compliance." PG&E proposes instead to make clear that the Commission has the authority to review PG&E's performance of its obligations under agreements with Pacific Generation, including the Intercompany Agreements.[240] The Commission could review such performance at its discretion, and could do so as part of GRC or other proceedings.

Given the ongoing need to identify and memorialize the functions PG&E will perform for Pacific Generation in accordance with current practice, Applicants anticipate that during the post-closing period, the Intercompany Agreements may be amended—as the agreements contemplate and permit—and/or additional agreements may become necessary. The

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236 *Id.* at 9-5, lines 3–11.

237 Aug. 22, 2023 Tr. at 193:1–5 (cross-examination testimony of Brian Dickman) ("Q: Right. That's what I was getting to. So just to clarify, the FRAA does not affect the ultimate risk of recovery. It's just the timing; correct? A: It does not affect the risk of recovery in total.").

238 *See* Aug. 22, 2023 Tr. at 195:24–196:3 (cross-examination testimony of Brian Dickman) ("Q: .... So with the proposed transaction and without the FRAA, PG&E would face greater fluctuations in revenues and cash than it would with the FRAA; correct? A: I would say generally I would agree.").

239 CalCCA-01 at Attachment B ¶ 1.

240 PGE-13 at 1-AtchA-1 ¶ 1.

Commission will have plenary authority to review any such amendments or additions to the Intercompany Agreements, including in future GRC proceedings. Applicants, however, do not believe that advance Commission approval for such amendments or new agreements should be required. Seeking advance Commission approval would impose an unnecessary burden on the Commission and create substantial delay in implementing any amendments or additions that may be needed to adapt the working relationship between PG&E and Pacific Generation to changed circumstances. Any such amendments or agreements between PG&E and Pacific Generation would not constitute an encumbrance of utility assets, nor would they involve a change in control. As such, neither sections 851 nor 854 would be implicated, and such amendments or agreements should not require advance Commission approval.

CalCCA also requests that the Commission require that any chargebacks to PG&E for disputed excess costs be unrecoverable from customers.[241] PG&E and Pacific Generation find this condition acceptable, provided that it does not affect PG&E's recovery of previously authorized rates.[242]

D. Whether The Proposed Initial Revenue Requirement For Pacific Generation Is Reasonable

To establish Pacific Generation's initial revenue requirement, PG&E and Pacific Generation propose to segregate a portion of PG&E's authorized revenue requirement from the most recent GRC.[243] Establishment of Pacific Generation's revenue requirement would be accompanied by a simultaneous and equal reduction in PG&E's revenue requirement, resulting in no net change in rates for customers.[244] A similar approach would divide the ongoing revenue requirement associated with ERRA forecast proceedings.[245]

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241 CalCCA-01 at Attachment B ¶ 3.

242 PGE-13 at 1-AtchA-1 ¶ 3.

243 PGE-09 at 9-2, lines 23–30 (direct testimony of Stephanie A. Maggard).

244 *Id.*

245 *Id.* at 9-3, line 25 to 9-4, line 3.

In line with this approach, Pacific Generation requests to set its initial authorized rate of return as the same as PG&E's currently authorized rate of return, including the same cost of debt and rate of return on equity.[246]

Intervenors request that the cost of debt used to determine Pacific Generation's initial authorized revenue requirement be the lesser of PG&E's cost of debt authorized in D.22-04-008 or Pacific Generation's actual cost of debt issued to fund the initial capitalization.[247] PG&E and Pacific Generation find this condition acceptable so long as Pacific Generation's authorized cost of capital is updated if and when PG&E's authorized cost of capital is updated.[248]

Intervenors also request that Pacific Generation's return on equity not exceed the return on equity authorized for PG&E.[249] PG&E and Pacific Generation agree with the substance of this proposal: following the Proposed Transaction, Pacific Generation's authorized return on equity should equal PG&E's authorized return on equity.[250] Discussions of Pacific Generation's future cost of capital remain best suited for subsequent cost of capital proceedings.[251]

E. Whether The Ratemaking Proposal Is Reasonable

The ratemaking proposal set forth by PG&E and Pacific Generation is reasonable. The proposal aims to allow Pacific Generation to recover its full revenue requirement while avoiding adverse impact to customers, establishing a durable and comprehensible structure, and preserving Commission jurisdiction.[252]

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246 *See* PGE-07 at 7-4, lines 14–20 (direct testimony of Margaret K. Becker).

247 CalCCA-01 at Attachment B ¶ 12.

248 PGE-13 at 1-AtchA-2 ¶ 12.

249 CalCCA-01 at Attachment B ¶ 13.

250 PGE-13 at 1-AtchA-2 ¶ 13.

251 *See, e.g.*, Aug. 21, 2023 Tr. at 133:8–133:22 (redirect examination testimony of Stephanie Williams); *id.* at 134:17–23 ("Q: So, you said that it's not necessary that PG&E's cost of debt would go up. My question is, is it necessary and definitely true that it will stay the same? A: No. Right, I can't -- I could -- it could be lower. It could be the same. It could be different, right.").

252 *See* PGE-09 at 9-16, line 20 to 9-17, line 5 (direct testimony of Erica Brown).

Under the proposed ratemaking construct, Pacific Generation's revenue requirement would be collected through a combination of market revenues (including from the sale of output into the CAISO marketplace and from sales of attributes to third parties), an ERRA generation rate charged to retail customers for the imputed value of retained attributes, a New System Generation Charge to recover the net capacity cost associated with the Elkhorn battery system, and a PCIA rate collected from or paid to both departed load and bundled service customers in a functionally identical manner to the method used today for PG&E's PCIA-eligible assets.[253] These components replicate the existing ratemaking construct currently applicable to the assets to be transferred to Pacific Generation.

PG&E and Pacific Generation anticipate no effect on the total PCIA charges as a result of the Proposed Transaction.[254] Intervenors argue that any incremental costs associated with the transaction could flow through to PCIA rates.[255] However, intervenors acknowledge that any change in PCIA rates would result from approval of Pacific Generation's revenue requirement in the next GRC and not from approval of the Proposed Transaction.[256] As such, those concerns are premature and provide no basis for rejecting or conditioning approval of the Application. In addition, intervenors acknowledge that any incremental administrative costs flowing to the PCIA could easily be more than offset by lower incremental cost of debt at Pacific Generation.[257]

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253 *Id.* at 9-17, lines 7–22.

254 *Id.* at 9-19, lines 21–24.

255 *See* Aug. 22, 2023 Tr. at 205:13–19 (redirect examination testimony of Brian Dickman) (stating that "incremental costs after the proposed transaction on an ongoing basis would impact the PCIA").

256 *Id.* at 188:21–189:1 (cross-examination testimony of Brian Dickman) ("Q: So prior to the next general rate case, the PCIA will be no different with the proposed transaction compared to a no-transaction scenario, correct? A: The ultimate outcome–- the determination of the PCIA would be more complicated, but yes, the bottom line would be the same.").

257 *Id.* at 185:14–186:5 ("Q: . . . If Pacific Generation's incremental cost of debt is lower than PG&E's incremental cost of debt, would the impact on PCIA rates be greater than the 3 million dollars in incremental administrative costs you mention on page 20 of your testimony? A: It depends. It depends on the change in the cost of debt, right? So, for example, PacGen's initial capitalization is expected to include 2.1 billion dollars of debt. So if we sort of round that to 2

Ultimately, Commission consideration of any increased incremental costs is best suited for the 2027 GRC, where more information will be available about any administrative costs as well as any cost savings brought about by the transaction, including potentially a lower incremental cost of debt.

Intervenors raise concerns that the ratemaking proposal "cuts an already complicated PG&E ratemaking puzzle into more pieces."[258] This generic concern is misplaced and inapplicable to the proposed ratemaking construct. PG&E and Pacific Generation's proposal replicates the current ratemaking construct that applies to the assets today. The concern with "complexity" raised here instead centers around concerns related to administrative complexity regarding filings and accounts, addressed in Parts IV.F, V.F, and V.G.[259]

Other complaints put forth by intervenors regarding "ratemaking" attempt to relitigate prior Commission decisions regarding PG&E's regulated capital structure rather than address the ratemaking proposal set forth here.[260]

F. Whether The Proposed Tariffs Are Reasonable

In support of the ratemaking proposal, Pacific Generation and PG&E propose the use of certain joint tariffs and rate schedules to maintain PG&E's existing rate design.[261] The proposed approach will use joint versions of currently existing PG&E rate schedules setting forth rates for generation service, the PCIA, and the NSGC.[262] In addition, this approach would use a joint

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billion dollars of debt and if PacGen's incremental cost of debt is, say, 25 basis points lower than the cost of debt that otherwise would have flown through the PCIA, then that results in annual savings of roughly 5 million dollars, which compares, actually, pretty closely to the incremental costs that I identified in my testimony of 3 million dollars.").

258 CalCCA-01 at 34, lines 2–4 (direct testimony of Brian Dickman).

259 *See id.* at 32, line 14 to 34, line 4 (direct testimony of Brian Dickman).

260 *See generally* EPUC/TURN-01 (direct testimony of Michael Gorman); *see also* TURN-01, section VI (direct testimony of Jennifer Dowdell).

261 PGE-10 at 10-1, lines 23–27 (direct testimony of Benjamin Kolnowski).

262 *Id.* at 10-2, lines 8–11 (direct testimony of Benjamin Kolnowski and Stephanie A. Maggard).

tariff, similar to the existing PG&E Electric Preliminary Statement I, that will govern and enable allocation of the billed revenue stream from joint rate components.[263]

Intervenors raise general concerns that PG&E and Pacific Generation's use of joint tariffs and joint balancing accounts will create an administrative burden. Intervenors argue that, as an example, PG&E and Pacific Generation's proposed joint structure "would increase the complexity of the ERRA Proceedings at least twofold" because under the new structure, there would be two versions of various accounts rather than one.[264] This simple calculation is incorrect. The Proposed Transaction does not alter the already-established accounting procedures and already-tracked costs used today.[265] The Applicants' proposal is similar to creation of a new subaccount (accounting for existing tracked costs in two separate subaccounts), not the establishment of a brand new proceeding.[266]

Intervenors request that Pacific Generation submit for Commission approval all balancing accounts and tariffs applicable to the assets to be transferred prior to the Proposed Transaction.[267] PG&E and Pacific Generation find this condition acceptable, provided that PG&E and Pacific Generation retain the ability to make subsequent advice letter filings as necessary.[268]

G. Whether The Proposed Compliance Approach Is Reasonable

PG&E and Pacific Generation propose a joint compliance approach with respect to various compliance requirements.[269] These include load serving entity (LSE) obligations, such

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263 *Id.* at lines 12–24.

264 CalCCA-01 at 33, lines 8–13 (direct testimony of Brian Dickman).

265 PGE-21 at 10-3, lines 5–8 (rebuttal testimony of Stephanie A. Maggard).

266 *Id.* at lines 8–10.

267 CalCCA-01 at Attachment B ¶ 11.

268 PGE-13 at 1-AtchA-2 ¶ 11.

269 PGE-11 at 11-2, line 6 to 11-5, line 2 (direct testimony of Deanna C. Toy); PGE-22 at 11-2, lines 3–9 (rebuttal testimony of Deanna C. Toy).

as those relating to resource adequacy, renewable portfolio standards, and integrated resource planning.[270] PG&E will remain the provider of last resort and the Central Procurement Entity.[271]

Intervenors raise concerns that "[t]he complexity of dual procurement obligations . . . and dual compliance review . . . may have significant consequences that are unforeseeable at this time."[272] This concern misunderstands the nature of PG&E and Pacific Generation's proposal. The joint compliance approach does not double the relevant compliance obligations and related reviews. Instead, the compliance review and compliance assessment for each obligation remains essentially the same as it is today, with compliance achieved by the actions of the same PG&E personnel using the same portfolio of assets as today.[273] The Proposed Transaction does not change existing compliance assessments and proceedings.[274]

CalCCA Witness Dickman requests that the Commission impose a condition that binds Pacific Generation to "abide by the Commission's Standard of Conduct 4" and "demonstrate . . . that scheduling and bidding practices for assets transferred to Pacific Generation are the same

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270 PGE-11 at 11-2, line 14 to 11-3, line 10 (direct testimony of Deanna C. Toy).

271 *Id.* at 11-3, lines 11–29.

272 CalCCA-01 at 30, lines 7–12 (direct testimony of Brian Dickman).

273 PGE-22 at 11-1, line 30 to 11-2, line 12 (rebuttal testimony of Deanna C. Toy); *see* Aug. 25, 2023 Tr. at 542:22–543:10 (redirect examination testimony of Deanna C. Toy) ("Q: And for those compliance approaches, for the joint-compliance approaches, would the compliance determination be any different after the proposed transaction than it is today? A: No, I don't believe so. Q: So would the compliance determination generally assess the same obligations applying solely to PG&E today, instead of applied jointly to Pacific Generation and PG&E? A: Yes. Q: And would the compliance determination generally evaluate the same portfolio of compliance instruments and requirements that PG&E manages today? A: Yes, it would.").

274 Aug. 25, 2023 Tr. at 522:9–523:5 (cross-examination testimony of Deanna C. Toy) ("Q: Okay. You don't think it's likely that PG&E might state in a pleading this issue is a Pacific Generation issue and not a PG&E issue and, therefore, it's out of scope? You don't envision that happening? A: Would you provide a scenario. Q: Sure. Let's say an issue is raised with regard to a nonnuclear asset and how it was managed. It's difficult to provide a scenario there. Give me one moment please. So an issue that is tied to a specific Pacific Generation asset within a proceeding that only addresses PG&E, could you envision in that an argument be made in that proceeding? A: Again, I'm not clear on when that scenario would arise because PG&E and Pacific Generation are envisioning that they would jointly comply with all PUC–- CPUC -- all regulatory requirements. And I think in your scenario, it would be reasonable to assume that Pacific Generation would also be a party to the proceeding. Q: Okay. So you don't think that will ever happen? A: To the best of my knowledge, I don't.").

before and after the transaction."[275] PG&E and Pacific Generation find the spirit of this proposal agreeable, but the specific condition misunderstands how scheduling and dispatch will operate following the Proposed Transaction.[276] After the Proposed Transaction, PG&E will continue to schedule and dispatch output from the assets in question and do so under the guidance of the same principles that guide dispatch and scheduling of the assets today, including least-cost dispatch generally and Standard of Conduct 4 in particular.[277]

CalCCA also raises concerns that PG&E and/or Pacific Generation will remove assets from the purview of PG&E's current Commission-approved Bundled Procurement Plan.[278] PG&E and Pacific Generation anticipate that resources contributed to Pacific Generation will continue to be managed in the same manner as they are today, including with respect to obligations applicable to load-serving entities.[279] Similarly, CalCCA requests that the Commission require Pacific Generation to seek approval of its own Bundled Procurement Plan "adopting all aspects" of PG&E's most recent Bundled Procurement Plan.[280] PG&E and Pacific Generation believe that a similar result can be accomplished in a more efficient manner by allowing Pacific Generation to adopt PG&E's most recent approved Bundled Procurement Plan, apply it to the assets transferred, and jointly file Bundled Procurement Plans with PG&E in the future.[281]

As noted, PG&E will indemnify Pacific Generation for losses incurred from wildfires caused or alleged to be caused by PG&E or Pacific Generation assets.[282] The Wildfire Fund

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275 CalCCA-01 at Attachment B ¶ 5.

276 *See* PGE-13 at 1-AtchA-1 ¶ 5.

277 *See* PGE-16-E at 4-5, line 9 to 4-6, line 14 (rebuttal testimony of Andrew K. Williams).

278 CalCCA-01 at 29, line 20 to 30, line 2 (direct testimony of Brian Dickman).

279 CalCCA-01 at Attachment C (PG&E Response to CalCCA_002-Q039).

280 CalCCA-01 at Attachment B ¶ 6.

281 *See* PGE-13 at 1-AtchA-1 ¶ 6.

282 PGE-04 at 4-2, lines 7–9; *id.* at 4-12, line 13 to 4-13, line 5 (amended and restated testimony of Andrew K. Williams).

Administrator has confirmed that Pacific Generation is an additional insured under the Memorandum of Coverage.[283] PG&E and Pacific Generation propose that PG&E's Wildfire Mitigation Plan would also cover Pacific Generation's assets.[284]

Compliance obligations that apply both to PG&E and to Pacific Generation will be joint and addressed by PG&E employees going forward.[285] Compliance obligations arising from authorizations that are obtained solely for purposes of the power generation assets, and that are tied to the operation of those assets, would be transferred to Pacific Generation. The Commission should confirm that these obligations would cease to apply to PG&E and instead would apply to Pacific Generation—though, Pacific Generation will achieve compliance through the actions of PG&E employees.[286] These include obligations relating to ISO 55000 certification and corrective actions relating to the Pit 5, Unit 2 powerhouse.[287]

Pacific Generation will be subject to the Commission's affiliate transaction rules (ATRs) as an electrical corporation with gross annual operating revenues expected to exceed $1 billion.[288] Pacific Generation will comply with Rule IX.A and IX.B, governing annual financial filings and balanced capital structure.[289] Pacific Generation qualifies as a regulated subsidiary of PG&E under the rules and Pacific Generation and PG&E should not be considered "affiliates" of one another.[290] Alternatively, the Commission could grant a waiver of the ATRs for interactions between PG&E and Pacific Generation. The Commission also should clarify that the ATRs related to a utility's relationship with its "holding company" or "parent holding company" will apply to the relationship between Pacific Generation and PG&E Corporation (the ultimate

283 PGE-44.

284 PGE-11 at 11-4, lines 24–30 (direct testimony of Deanna C. Toy).

285 *Id.* at 11-5, lines 7–15.

286 *Id.*, lines 18-25.

287 *Id.* at 11-6, lines 1–7.

288 *Id.* at 11-15, lines 10–22.

289 *Id.* at 11-16, lines 9–18.

290 *Id.* at 11-15, lines 22–28.

parent), not as between Pacific Generation and PG&E (the utility that is Pacific Generation's immediate parent).[291] Pacific Generation's interactions with any covered affiliates of PG&E and/or Pacific Generation would remain subject to the ATRs.[292] PG&E and Pacific Generation will submit a joint ATR compliance plan.[293]

The Applicants expect that the Minority Investor(s) would not qualify as affiliates as that term is defined in the ATRs.[294] The Commission can confirm this conclusion in its review of the post-signing advice letters.

PG&E and Pacific Generation also believe that it is reasonable to extend to Pacific Generation certain conditions related to the Holding Company Decision[295] that, by their terms, apply only to PG&E.[296] These include the requirement for a balanced capital structure, establishment of a dividend policy as though Pacific Generation were a stand-alone utility company, and prohibition of guaranteeing notes, debentures, debt obligations, or other securities of the holding company or subsidiaries without prior Commission approval.[297]

TURN suggests that Pacific Generation should be exempted from the First Priority Condition.[298] This recommendation is grounded in a misunderstanding of the First Priority Condition. The First Priority Condition applies to the board of PG&E Corporation and not to the board of PG&E.[299] As applied to Pacific Generation, the First Priority Condition will require that PG&E Corporation gives first priority to the capital needs of both PG&E and Pacific

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291 *Id.*

292 *Id.* at 11-16, lines 6–8.

293 *Id.*, lines 19–21.

294 *Id.* at 11-17, lines 3–24.

295 D.96-11-017, 69 CPUC 2d 167, 1996 WL 752962 (1996). The Commission modified D.96-11-017 in certain respects in D.99-04-068, 86 CPUC 2d 76, 1999 WL 589171 (1999).

296 PGE-11 at 11-18, lines 4–6 (direct testimony of Deanna C. Toy).

297 *Id.* at lines 7–19.

298 *See* TURN-01 at 8, lines 13–15 (direct testimony of Jennifer Dowdell).

299 *See* PGE-22 at 11-4, lines 3–21 (rebuttal testimony of Deanna C. Toy).

Generation.[300] That proposal maintains the status quo by protecting Pacific Generation's access to equity capital.

Although most of the conditions imposed on PG&E in the decision approving the Plan of Reorganization[301] should not extend to Pacific Generation, the Applicants have demonstrated how Pacific Generation's governance addresses safety considerations.[302] Pacific Generation proposes that it would independently be subject to the Enhanced Enforcement and Oversight Process.[303] PG&E and Pacific Generation would provide joint reports on safety metrics.[304] The Applicants further request that the Commission exempt Pacific Generation from the requirements of the Plan of Reorganization decision that require quarterly reports of the sale or encumbrance of assets of PG&E's affiliates and subsidiaries and to seek prior Commission approval for any sale or encumbrances of assets of affiliates or subsidiaries with a value greater than $5 million.[305]

Pacific Generation and PG&E propose that, upon transfer of relevant lands, Pacific Generation will assume responsibility for compliance with requirements of the LCC Settlement.[306] PG&E will also, under the terms of the OSA, manage compliance with conservation easements.[307]

VI. WHETHER THE COMMISSION SHOULD GRANT THE REQUESTED FINANCING AUTHORIZATIONS

Pacific Generation requests a number of financing authorizations both for its initial capitalization as part of the Proposed Transaction and to meet its ongoing financing needs for its

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300 *Id.*

301 D.20-05-053.

302 PGE-11 at 11-11, line 22 to 11-13 line 14 (direct testimony of Deanna C. Toy).

303 *Id.* at 11-14, lines 4–10.

304 *Id.* at 11-15, lines 3–7.

305 *Id.* at 11-19, lines 9–30.

306 *See* PGE-11 at 11-8, lines 20–24 (direct testimony of Michael Schonherr); *see also* D.03-12-035, Appendix C.

307 *See* PGE-11 at 11-10, lines 3–10 (direct testimony of Michael Schonherr).

operation as a public utility following the closing of the Proposed Transaction.[308] Specifically, Pacific Generation requests financing authorizations pursuant to Public Utilities Code sections 701, 701.5, 816 et seq. and 851 for the following: (1) to issue up to $2.1 billion in long-term debt to capitalize Pacific Generation in line with its authorized capital structure as part of the Proposed Transaction and reorganization of PG&E; (2) to issue up to $1.2 billion[309] in short-term debt authority for Pacific Generation's working capital and other short-term liquidity needs; and (3) to issue up to $350 million in long-term debt to fund Pacific Generation's anticipated capital expenditures over the 2024–2026 period following the closing of the Proposed Transaction.[310] These requests "are substantially similar in type to those requested in PG&E's most recent applications of this kind."[311]

With respect to long-term debt, in Request (1), "Pacific Generation seeks authorization to issue, sell and deliver, or otherwise incur up to $2.1 billion in long-term debt for the purposes described in Section E.5. [of PGE-06 (at 6-28 to 6-29)] in order to capitalize Pacific Generation as part of the Proposed Transaction and reorganization of PG&E and to finance its rate base in line with its authorized capital structure."[312] The total amount of this request is based on a projection of Pacific Generation's rate base and Construction Work-in-Progress as well as a contingency to account for uncertainties in the forecast and related to the timing of the Proposed Transaction, but the total quantum of long-term debt actually issued by Pacific Generation will align with its authorized capital structure.[313] "In Request (3), Pacific Generation seeks

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308 PGE-06 at 6-10 to 6-29 (direct testimony of Margaret K. Becker). *See also* Application at 48–50, 56–59 ¶¶ 19–30, Exhibits B–G, & Schedules I-X.

309 Historically, the Commission has expressed PG&E's authorized short-term debt as an authorized amount, including amounts allowed by section 823(c) (i.e., 5 percent of the par value of PG&E's outstanding long-term securities). The same approach is taken here for Pacific Generation.

310 PGE-06 at 6-10 to 6-11 (direct testimony of Margaret K. Becker).

311 *Id.* at 6-10, line 23 to 6-11, line 1 (citing D.21-05-008 (short-term debt); D.20-12-025 (long-term debt); D.20-05-053 (short-term and long-term debt)).

312 PGE-06 at 6-11, lines 17–21 (direct testimony of Margaret K. Becker).

313 *Id.* at 6-11, line 21 to 6-12, line 4.

authorization to issue, sell and deliver, or otherwise incur up to $350 million in long-term debt, from time to time and in one or more series, as applicable, for the purposes described in Section E.5. [of PGE-06 (at 6-28–6-29)], with all such issuances to take place at any time at or following the closing until the aggregate principal amount authorized has been fully utilized."[314] The total amount of this request is based on anticipated capital expenditures over the 2024-2026 period as well as a contingency so that Pacific Generation has the "flexibility to address capital needs that exceed current expectations."[315] In these requests, Pacific Generation seeks authorization to issue the various types of long-term debt securities and instruments described in the testimony[316] as well as related authorizations, including authority to: "(a) guarantee the securities and other debt instruments of regulated direct or indirect subsidiaries or affiliates of Pacific Generation . . . that issue securities on behalf of Pacific Generation; (b) execute and deliver one or more indentures or supplemental indentures and other instruments evidencing or governing the terms of Debt Securities; and (c) sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property, including but not limited to its accounts receivable."[317] Pacific Generation also seeks authorization to enter into interest rate hedges in connection with Request (3).[318]

With respect to short-term debt, in Request (2), Pacific Generation seeks "authority to issue, sell and deliver, or otherwise incur up to $1.2 billion in short-term debt authority for its working capital and other short-term liquidity needs as part of and following consummation of the Proposed Transaction."[319] The amount of this request reflects "benchmarking against the credit facilities in place at utilities considered comparable to Pacific Generation, based on standard measures—such as rate base—and is a conservative approach intended to give Pacific

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314 *Id.* at 6-12, lines 5–10.

315 *Id.*, lines 10–15.

316 *Id.* at 6-13 to 6-20.

317 *Id.* at 6-12, lines 16-30; *see id.* at 6-24, line 3 to 6-25, line 6; *see also* §§ 701, 701.5, 851.

318 *Id.* at 6-12, lines 28–30 & 6-17, line 29 to 6-20, line 23.

319 *Id.* at 6-20, lines 26–29.

Generation flexibility to manage liquidity needs and maintain a contingency for unforeseen needs" and would be inclusive of amounts authorized under section 823(c).[320] Pacific Generation likewise requests authority for various types of short-term debt securities and instruments described in the testimony[321] as well as related authorizations comparable to those described above, including section 851 authority to "sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property, including but not limited to its accounts receivable."[322]

Pacific Generation also requests authorization for various types of features to enhance debt securities.[323]

In addition, PG&E makes two financing authorization requests related to the Proposed Transaction. Specifically, PG&E seeks: (i) section 823(d) authorization to retire any short-term debt, used temporarily by PG&E to retire maturing long-term debt in order to facilitate the Proposed Transaction, with the proceeds of Pacific Generation long-term debt repatriated to PG&E; and (ii) authorization to recoup the long-term debt authorizations PG&E previously used to issue the debt retired in connection with the Proposed Transaction.[324]

The specifics of the requested financing authorizations for Pacific Generation and PG&E are set forth in the Application[325] and in Part II.D (¶¶ 19–30), above, and supported by testimony describing the requests in detail[326] as well as information, schedules and exhibits contained in the Application.[327] The financing requests are well-supported, largely uncontested and should be granted by the Commission. One party, NID, expressed concern that Pacific Generation's

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320 *Id.* at 6-20, line 30 to 6-21, line 2.

321 *Id.* at 6-22, line 8 to 6-24, line 2.

322 *Id.* at 6-21, line 3 to 6-22, line 7; *see id.* at 6-24, line 3 to 6-25, line 6.

323 *Id.* at 6-25 to 6-27.

324 Application at 49–50; PGE-06 at 6-28, line 24 to 6-29, line 9 (direct testimony of Margaret K. Becker).

325 Application at 56–59 ¶¶ 19–30; *see also id.* at 48–50 (section 1904(b) fees).

326 PGE-06 at 6-10 to 6-29 (direct testimony of Margaret K. Becker).

327 Application at 48–50, 56–59 ¶¶ 19–30, Exhibits B–G, & Schedules I-X.

request to issue secured debt would allow it to pledge a security interest in the Drum-Spaulding Hydroelectric Project and expose NID to risk in the event of a foreclosure.[328] NID requests that the Commission adopt a condition prohibiting Pacific Generation from encumbering the Drum-Spaulding Hydroelectric Project assets for its issuance of secured debt.[329] NID makes this request without knowing whether the Drum-Spaulding Hydroelectric Project assets are currently pledged under PG&E's mortgage indenture and despite the fact that the existing agreement between NID and PG&E expressly authorizes such an encumbrance.[330] In fact, this is the same type of risk that exists today with respect to PG&E's secured debt issuances. Just as is the case for PG&E today, if Pacific Generation were to default and if title to Pacific Generation's assets that are necessary or useful in the performance of Pacific Generation's duties to the public were transferred pursuant to the terms of a secured debt indenture, pledge, or other encumbrance, PG&E and Pacific Generation expect that the Commission would require those assets to continue to be used to provide utility service to the public until the Commission authorizes otherwise.[331] No more has been required of PG&E, and no more should be required of Pacific Generation. The Commission should disregard NID's attempt to secure greater rights than it has today by asking the Commission, in effect, to nullify a provision of the existing NID-PG&E agreement as applied to Pacific Generation once it assumes the contract as part of the Proposed Transaction.[332]

VII. WHETHER THE SALE PROCESS AND MINORITY GOVERNANCE RIGHTS ARE LAWFUL AND CONSISTENT WITH THE PUBLIC INTEREST

The proposed sale of the Minority Equity Interests represents an efficient method of raising equity capital to meet a portion of PG&E's capital needs in 2024 and beyond. In order to

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328 NID-01 at 14, lines 16–23 (direct testimony of Jennifer Hanson); Aug. 28, 2023 Tr. at 655:10–20 (cross-examination testimony of Jennifer Hanson).

329 NID-01 at 15, lines 4–10; Aug. 28, 2023 Tr. at 655:10–20 (cross-examination testimony of Jennifer Hanson).

330 Aug. 28, 2023 Tr. at 656:1–22 (cross-examination testimony of Jennifer Hanson).

331 *See* D.23-04-041 at 13.

332 Aug. 28, 2023 Tr. at 658:5–659:4 (cross-examination testimony of Jennifer Hanson).

maximize value, PG&E is marketing the sale through a phased bidding process running in parallel to the process for regulatory approval. PG&E anticipates granting the winning bidder(s) a limited set of governance rights (for consent, review, and consultation), in line with the industry standard for utility infrastructure investments, which will not threaten PG&E's control of Pacific Generation nor grant the Minority Investor(s) the ability to influence its affairs in a manner that would deprive PG&E of control of Pacific Generation's day-to-day operations. Neither does the identity of the Minority Investor(s) nor any affiliation they may have with market participants pose an issue of market power or threaten the state's energy goals, as sufficient protections are built into the draft LLC Agreement and existing regulation to safeguard against conflicts of interest or hypothetical transfers to undesirable investors. The Commission should approve the sale process and the minority governance provisions in the draft LLC Agreement and reject intervenors' attempts to impose additional, unnecessary restrictions on the Minority Investor(s) that would serve only to limit the value PG&E can expect to receive in the Proposed Transaction.

A. The Sale Process And Related Transaction Documents Are Reasonable And Industry Standard

1. The Sale Process Is Reasonable And Industry Standard

The multi-phase auction being used to market the Minority Equity Interests, described in Part II.A.4 above, is a reasonable and industry-standard process that aligns with the typical steps to complete similar investments in the Power & Utility sector and more broadly.[333] A multi-phase auction is widely used to solicit interest in an investment or acquisition where there are more than one potential counterparties willing to engage in a structured sale process.[334]

The Applicants are pursuing the marketing process in parallel with the anticipated regulatory process for approval of the Proposed Transaction so as to increase investor engagement across the regulatory timeline and thereby maximize the value received by PG&E

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333 *See* PGE-05 at 5-1 to 5-2 (direct testimony of John Plaster).

334 *Id.* at 5-3.

for the equity sale. The proposed timeline for the marketing process is designed to align the final phase of the sale with the final phases of the regulatory approval process, which in turn is expected to, among other things, help maximize the value PG&E receives, by cutting down the time period between signing of the MSA(s) and closing of the transaction during which the capital of the winning bidder(s) will be constrained. Under the proposed timeline, investors would complete diligence following a proposed decision on the Application and sign the MSA(s) immediately following the Commission's decision. Meanwhile, the execution of the LLC Agreement (and Separation Agreement) would not occur until disposition of the advice letter process.

This parallel-track marketing and regulatory process aligns with the model used by the Commission to facilitate the sale of natural gas-fired power plants by the major California investor-owned utilities ("IOUs") in the late 1990s.[335] In those proceedings, the Commission approved the sale transactions before the auction process commenced, followed by a streamlined process to approve the purchaser and final transaction documents. Those transactions also featured multi-phase bidding; in each, the Commission issued several interim decisions authorizing various phases of the transaction prior to knowing the identity of the winning bidder(s). In addition, those transactions involved a compliance filing process for expedited review by the Commission of the outcome of the auction and the definitive transaction documents, similar to the advice letter process that Applicants propose to employ here following the Commission's decision on this Application.

2. The Transaction Documents Are Reasonable And Industry Standard

PG&E and Pacific Generation anticipate negotiating two primary agreements with the Minority Investor(s)—the MSA(s) and the LLC Agreement (together, the "Transaction Documents"). The Transaction Documents, forms of which were attached to PG&E's direct testimony, contain terms and conditions that PG&E considers reasonable and customary.

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335 *Id.* at 5-5 to 5-6.

Among other things, the LLC Agreement will set out the proposed structure of Pacific Generation, the provisions that govern its management and operation, including the limited set of consent, review, and consultation rights that will be granted to the Minority Investor(s), customary covenants requiring Pacific Generation to operate as a standalone business separate from PG&E, and Pacific Generation's proposed distribution policy. The MSA(s) will set out the terms of the proposed purchase and sale of the Minority Equity Interests between PG&E, Pacific Generation, and the Minority Investor(s), including standard closing conditions, representations and warranties, tax and regulatory matters, and indemnification provisions. As discussed below, there are sufficient safeguards built into the Transaction Documents to protect against any potential for the Minority Investor(s) to exert control over Pacific Generation, and to protect against any conflicts of interest with respect to Minority Investor market participation.

PG&E has asked the Commission to approve the Proposed Transaction under a "no harm" standard, and therefore does not object to a condition prohibiting rate recovery of any costs arising from a breach by either PG&E or the Minority Investor(s) of any covenant or agreement contained in any of the Transaction Documents.[336] This commitment should provide further assurance to the Commission and to interested parties that the approval of the Proposed Transaction and associated Transaction Documents is not adverse to the public interest.

B. There Is Adequate Protection Against Undue Control By The Minority Investor(s) [Scoping Memo #11]

Following the Proposed Transaction, PG&E will retain authority to control Pacific Generation's day-to-day operations. Authority over the management and policies of Pacific Generation will lie with its Board.[337] By virtue of its majority ownership position, PG&E will have the right to designate a majority of the members of Pacific Generation's Board of Managers and of the members of any Board committee,[338] and to select the Board chairperson from among

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336 *See* PGE-17-E at 5-14 (rebuttal testimony of Sienna Rogers, responding to CalCCA-01, direct testimony of Brian Dickman, Attachment B, proposed condition no. 2).

337 *See* PGE-05 at 5-AtchA-25 (LLC Agreement, Section 7.7(d)).

338 *Id.* at 5-AtchA-22 (LLC Agreement, Section 7.1(b)), 5-AtchA-26 (Section 7.8(a)).

the PG&E-designated Managers and the President of Pacific Generation.[339] Responsibility for the day-to-day operations of Pacific Generation will lie with its President, David Gabbard, a PG&E appointee.[340] PG&E's designees on the Board will have the power to elect additional officers of Pacific Generation and to remove officers, including the President.[341] PG&E will thus have sole authority to direct and oversee the management of the business and affairs of Pacific Generation, subject to the minority governance and corporate separateness provisions set out in the LLC Agreement.[342]

A limited set of consent, review, and consultation rights with respect to certain Pacific Generation actions will be granted to the Minority Investor(s), in keeping with the custom and practice of minority sale transactions in the utility sector.[343] Although subject to change based on negotiations with the winning bidders, the final form of these rights will not confer actual or potential managerial or operational control over Pacific Generation on the Minority Investor(s), nor interfere with Pacific Generation's ability to carry on operations as a regulated generation utility.[344] Furthermore, any negotiated changes to the terms of these consent rights will be identified through the post-signing advice letter process, and will thus be open to stakeholder review and comment and subject to disposition by Commission staff (or the Commission).[345]

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

340 *Id.* at 5-AtchA-26 to 27 (LLC Agreement, Section 7.9(a)).

341 *Id.*

342 *See id.* at 5-AtchA-28 (LLC Agreement, Article VIII (Certain Investor Protections)), 5-AtchA-9 (Section 2.9 (Corporate Separateness)).

343 *See id.* at 5-13 to 5-16, 5-AtchA-28 (LLC Agreement, Article VIII (Certain Investor Protections)).

344 *See* Aug. 22, 2023 Tr. at 252:6–9 (cross-examination testimony of Sienna Rogers) (emphasizing the importance of ensuring that PG&E maintains operational control in the Proposed Transaction).

345 *See id.* at 253–54 (cross-examination testimony of Sienna Rogers) (acknowledging that approval of the Transaction Documents via the advice letter process is required for the transaction to proceed). At the Evidentiary Hearing, TURN incorrectly suggested that the LLC Agreement would take effect prior to the disposition of the advice letter. *See id.* at 254–55. The parties will agree to the final form of LLC Agreement prior to submission in the advice letter, but the LLC Agreement will not become effective until after the advice letter is dispositioned.

As discussed below, neither these consent rights nor the ability of the Minority Investor(s) to contribute additional equity capital to Pacific Generation will interfere with PG&E's ability to manage Pacific Generation. Adequate safeguards are in place to protect against the exertion of control over Pacific Generation by the Minority Investor(s).

1. The Minority Consent Rights Will Not Hinder PG&E's Control

PG&E's interest in the Proposed Transaction is to seek out infrastructure investors who have deep financial capabilities and strong credit quality, but no interest in controlling the day-to-day operations of Pacific Generation—i.e., investors seeking long-term value through a regulated revenue stream.[346] As FERC has found in reviewing analogous transactions involving non-controlling interests in regulated utility assets, "it is reasonable for passive owners" of such assets "to expect protection of the integrity of their capital investment" by means of "a limited reservation of rights over certain fundamental business decisions."[347] The consent rights proposed in the draft LLC Agreement are expressly designed to function in this reasonable, customary manner, as "an Investor-protection mechanism[,] . . . and not to provide any Investor with any right to direct the operation of the business of the Company."[348]

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346 As PG&E Witness Rogers testified, "many of the investors that [PG&E is] expecting to be in negotiations with and will be talking to may not necessarily value operational control and may not be willing to pay more for consent rights of additional control." *Id.* at 251:5–9. A long-term investment outlook is built into the draft LLC Agreement, as the Minority Investor(s) would not be able to transfer their interests to anyone other than a wholly owned subsidiary for three years. PGE-05 at 5-AtchA-41 (LLC Agreement, Section 12.3).

347 *GridFlorida LLC*, 94 FERC ¶ 61,363, ¶ 62,332, 2001 WL 1842431 (2001). FERC has also recognized that "virtually all securities, including debt securities, confer on their owner rights to affect the issuer's conduct in some way . . . . For this reason [FERC] has distinguished between rights that give an investor the 'authority to manage, direct, or control the activities' of a company and rights that give investors 'only those limited rights necessary to protect their . . . investments.'" *AES Creative Resources*, 129 FERC ¶ 61,239, ¶ 62182, 2009 WL 4883980 (2009) (third alteration in original).

348 PGE-05 at 5-AtchA-28 (LLC Agreement, Section 8.1). Unless expressly stated otherwise, references to the Minority Equity Interests are references to voting interests and not passive economic interests.

Concern expressed by various parties that certain of these rights could potentially grant the Minority Investor(s) control over Pacific Generation or interfere with the safe and reliable operation of Pacific Generation's assets is unfounded, and not a basis for additional restrictions.

With respect to Pacific Generation's budget, as PG&E explained in rebuttal testimony, any consent right granted to the Minority Investor(s) is not expected to apply to the extent the annual budget reflects costs that are authorized, or reasonably expected to be authorized, for rate recovery.[349] The costs authorized for recovery in Pacific Generation's rates will be set by the Commission in GRC and other proceedings, based on applications prepared by Pacific Generation management. Minority Investors are expected to have the right to consult with management but are not expected to have any consent right regarding such filings, over which the Board will have final authority.[350] In practice, this means that Pacific Generation's annual budget will reflect the decisions of the Commission, in response to submissions of proposed costs prepared by PG&E-controlled management and authorized by the PG&E-controlled Board.

Under the draft LLC Agreement, even in the event a proposed Pacific Generation budget exceeds the applicable threshold for consent by certain investors—set at 105 percent of the costs authorized (or reasonably expected to be authorized) for rate recovery[351]—Pacific Generation could still operate under the increased budget, subject to a dispute resolution procedure whereby amounts above the threshold would be deemed approved if found in accordance with "good utility practice."[352] Amounts found not in accordance with this standard would be charged back

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349 *See* PGE-17-E at 5-5 (rebuttal testimony of Sienna Rogers).

350 Per the draft LLC Agreement, the Minority Investor(s) with at least a 20 percent interest in Pacific Generation will have the right to *consult* with management regarding GRC filings, but will have no consent right regarding such filings. *See* PGE-05 at 5-AtchA-28 (LLC Agreement, Section 7.12). As discussed above, PG&E and Pacific Generation propose to submit joint applications on behalf of both utilities in GRC proceedings.

351 *See* PGE-05 at 5-AtchA-31 (LLC Agreement, Section 8.1(q)).

352 *Id.* at 5-AtchA-32 to 5-AtchA-33 (LLC Agreement, Section 9.3(d)).

to PG&E and not passed on to customers.[353] Furthermore, the budget consent right would not apply with respect to expenditures "necessary for repairs due to breakdowns, casualty, or in response to an Emergency Situation or to comply with applicable Law,"[354] which provides an additional layer of protection to ensure the safe, efficient, and continuous provision of safe and reliable service.

Nor will the proposed consent right regarding capital expenditures prevent necessary or desirable spending. As contemplated in the draft LLC Agreement, Minority Investor consent would not be required for any capital expenditure included in the annual budget, nor any that Pacific Generation management reasonably expects to be included in rate base.[355] This means, for example, that there would be no consent right regarding proposed additions to or extensions of net plant that are expected to be found "used and useful" by the Commission in providing utility services.[356] While the draft LLC Agreement contemplates Minority Investors with a 20 percent interest receiving a consent right over other types of capital expenditures, this would not allow for a veto of expenditures ordered or approved by the Commission (e.g., regarding future infrastructure improvements).[357] To the contrary, Minority Investors(s) would be required to comply with Commission orders pursuant to both sections 4.2(a) (requiring members to make additional capital contributions "as required by applicable law")[358] and 9.3(d) (allowing Pacific Generation to incur amounts necessary "[t]o comply with applicable law") of the draft LLC Agreement.[359]

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353 *Id.* PG&E would not object to the imposition of a transaction condition to this effect. *See* PGE-13 at 1-AtchA-4 to A-7 (PG&E's proposed markup of CalCCA's recommended transaction conditions).

354 *See* PGE-05 at 5-AtchA-33 (LLC Agreement, Section 9.3(d)).

355 *See id.* at 5-AtchA-30 (LLC Agreement, Section 8.1(k)).

356 *See, e.g.*, § 454.8.

357 *See* Aug. 22, 2023 Tr. at 246 (cross-examination testimony of Sienna Rogers).

358 *See id.* at 272–73 (redirect examination testimony of Sienna Rogers).

359 *See id.* at 285–86.

More broadly, Intervenors who suggest that the Minority Investor(s) would be incentivized to reduce spending on O&M (or to divert necessary O&M spending toward investments in rate base assets) in an effort to cut costs and maximize profits[360] fail to appreciate that a key motivation of the type of infrastructure investor that seeks out minority investment positions in utilities is the opportunity to earn a regulated return, as determined by the Commission.[361] Particularly given the long-term outlook that is necessarily correlated with infrastructure investing—an outlook built into the draft LLC Agreement[362]—the Minority Investor(s) will be incentivized to "make sure that the utility is investing in safety and reliability to preserve the long-term profitability of the assets," in alignment with the incentives of investors in PG&E Corporation.[363] Thus, suggestions that the Commission should segregate a pool of funds or apply heightened review in connection with the resources devoted to operate and maintain the generation assets are misguided.[364] The Commission sets a revenue requirement in GRC proceedings for those purposes, leaving it to management to decide how best to allocate resources based on emergent needs.[365] Furthermore, to the extent potential opportunities arise to reduce O&M spending while maintaining long-term safety and reliability, any such efficiencies would be passed on to customers in the ensuing GRC, in the form of a reduction in the authorized revenue requirement associated with those activities.[366] In short, the cost-of-service

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360 *See, e.g.*, *id.* at 231–37 (cross-examination testimony of Sienna Rogers).

361 Of course, intervenors' insinuations about the incentives of the Minority Investor(s) also overlook the basic fact that it is PG&E—not the Minority Investor(s)—that "has control over the decisions about spending on operations and maintenance." *Id.* at 233:7–9.

362 *See* PGE-05 at 5-AtchA-41 (LLC Agreement, Section 12.3) (providing that no transfers by the Minority Investor(s) other than to their wholly owned related parties will be permitted for three years).

363 Aug. 22, 2023 Tr. at 270:1–4 (redirect examination testimony of Sienna Rogers).

364 *See* NID-01 at 14 (direct testimony of Jennifer Hanson); SVP-01 at 30 (direct testimony of Kevin Kolnowski).

365 *See* Aug. 22, 2023 Tr. at 311 (cross-examination testimony of Margaret K. Becker).

366 *See id.* at 270 (redirect examination testimony of Sienna Rogers) (stating that "there are some incentives to gain efficiencies that could potentially be passed on to customers in the next GRC as

principles under which Pacific Generation will operate are designed to align the incentives of investors and customers by ensuring that the utility recovers the expenses necessarily incurred in dedicating its output to effective and efficient public use.

For these reasons, intervenors are incorrect to argue that the proposed consent, review, and consultation rights would open the door for the Minority Investor(s) to exercise control over Pacific Generation's assets or starve them of needed resources. None of the proposed rights—regarding the budget, capital expenditures, or otherwise—will prevent PG&E from controlling Pacific Generation by virtue of its ability to control the Board and appoint and remove officers, or from expending the capital necessary to ensure the safe and reliable operation of Pacific Generation's assets, and none will upset the overriding incentive of all utility stakeholders to continue devoting the resources required to maintain Pacific Generation's business operations.

2. PG&E Is Not In Danger Of Losing Control Via Capital Calls

The Pacific Generation Board may from time to time request that members make additional capital contributions to Pacific Generation (a "Capital Call").[367] Any Capital Call will be calculated such that, in the event each member of Pacific Generation elects to contribute the full amount of its proportionate contribution, there would be no change to the percentage ownership interest of any single member. If any member declines to contribute to the Capital Call in the full amount of its proportionate contribution, however, that member's percentage ownership interest in Pacific Generation would be diluted. PG&E and Pacific Generation expect that this prospect of dilution, as well as the attractiveness of the stable, rate-regulated investment in Pacific Generation's equity, will incentivize minority investors to contribute their proportionate share in response to any future Capital Call—i.e., that the Minority Investor(s) will

long as they don't jeopardize safety and reliability of the assets in the long term," because "if the Commission sees that the utility has spent less than it authorized in the prior GRC, . . . it would likely set rates or authorize revenues lower, commensurate with that lower level of spend").

367 PGE-05 at 5-AtchA-14 (LLC Agreement, Section 4.2).

continue to invest for the same reasons that motivated their participation in the initial sale.[368] By providing an additional source of capital to help meet future equity needs of the generation business, future contributions by the Minority Investor(s) would reduce the capital that PG&E would need to devote to that business, which would in turn free up additional PG&E capital for investment in the safety and reliability of PG&E's transmission and distribution infrastructure.[369]

TURN's speculation that a Capital Call would result in PG&E losing its majority ownership interest in Pacific Generation and associated control rights, or that PG&E would feel compelled to invest capital in Pacific Generation in order to avoid dilution, are without merit.[370] The decision to make a Capital Call lies in the sole discretion of the Pacific Generation Board[371]—which, as discussed above, will be controlled by PG&E. The willingness and ability of PG&E to contribute additional capital to Pacific Generation will thus be a key consideration of the Board in determining whether to issue a Capital Call, and any such call would not be issued in the event PG&E is unwilling or unable to meet it.[372] Additionally, in the unlikely event that changed circumstances prevented PG&E from being willing or able to make an additional contribution during the period between issuance of a Capital Call and the deadline for members to notify the Board of their decision whether to meet it—set at 45 days in the draft LLC Agreement[373]—the Board would have the ability to cancel the Capital Call, thereby preserving the ownership status quo. TURN's argument, moreover, assumes that PG&E faces constraints in

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368 *See* Aug. 21, 2023 Tr. at 68:12–16 (cross-examination testimony of Stephanie Williams); *id.* at 117:4–9 (redirect examination testimony of Stephanie Williams).

369 *See* discussion in Part IV.A.2, above.

370 *See* Aug. 22, 2023 Tr. at 239 (cross-examination testimony of Sienna Rogers) (positing hypothetical whereby "PG&E somehow does not contribute at least 50.1 percent when there is a capital call or a need for capital").

371 *See* PGE-05 at 5-AtchA-14 (LLC Agreement, Sections 4.2(a)-(b)).

372 As stated by PG&E's witness for the draft LLC Agreement, Sienna Rogers, PG&E "wouldn't provide a capital plan [for Pacific Generation] that required a funding amount for PG&E that was in excess of what [PG&E] would be capable of investing." Aug. 22, 2023 Tr. at 241:12–14 (cross-examination testimony of Sienna Rogers).

373 *See* PGE-05 at 5-AtchA-15 (LLC Agreement, Section 4.2(d)).

its ability to raise equity capital. That is an argument *in favo*r of the Proposed Transaction, which will unlock another source of future equity contributions by Minority Investors, thereby leaving PG&E with greater flexibility to invest equity capital in transmission and distribution infrastructure. Finally, as a further protection against a change in control occurring *sub silentio* by means of a Capital Call, the draft LLC Agreement provides that any additional capital contribution would not be made by members until *after* "any and all required regulatory approvals."[374] Because regulatory approval under section 854 would be required in connection with a change in control of Pacific Generation, any hypothetical Capital Call that would lead to a change in control could not be effectuated until after the Commission's review.[375]

C. There Is Adequate Protection Against Conflicts Of Interest On The Part Of The Minority Investor(s) [Scoping Memo #11, #16]

Sufficient protections are in place to ensure that the Minority Investor(s) in Pacific Generation do not harm competition in the generation markets or otherwise threaten the interest of California consumers. These safeguards are present in existing law and regulation, are built into the draft LLC Agreement, and also flow from PG&E's incentives as controlling majority owner of a public utility. The Commission should therefore decline CalCCA's invitation to prohibit certain types of investors from purchasing the Minority Equity Interests and to otherwise restrict the ability of the Minority Investor(s) to pursue future transfers of their interests.

1. The Minority Investors Do Not Present A Risk To Wholesale Markets

CalCCA Witness Dickman argues that potential conflicts of interest could arise if Minority Equity Interests are sold or transferred to Minority Investor(s) who are (or are affiliated

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374 *See id.* at 5-AtchA-16 (LLC Agreement, Section 4.2(g)); *see also* Aug. 22, 2023 Tr. at 270:25–272:14 (redirect examination testimony of Sienna Rogers).

375 As noted by PG&E Witness Rogers at the Evidentiary Hearing, Applicants' proposal to extend the First Priority Condition to cover Pacific Generation, so that PG&E Corp. would be required to give priority to the capital needs of both PG&E and Pacific Generation, provides additional assurance that PG&E will not lose its majority interest in Pacific Generation, regardless of any need for additional capital that may arise. *See* Aug. 22, 2023 Tr. at 242:11–15 (cross-examination testimony of Sienna Rogers)*; see also* PGE-22 at 11-4 (rebuttal testimony of Deanna C. Toy) (explaining why TURN's recommendation to exempt Pacific Generation from the First Priority Condition should be rejected).

with) market participants, and proposes a transaction condition that would categorically prohibit any market participant[376] from being a Minority Investor, except to the extent that its market participation arises from the investment in Pacific Generation.[377] This concern regarding conflicts and market power is misplaced, and its proposed condition unduly restrictive. Sufficient protections are in place to prevent any conflicts of interest from arising among the Minority Investor(s) that would have the potential to negatively impact market power or otherwise harm customers.

As a threshold matter, in marketing the Minority Equity Interests, PG&E is interested in infrastructure investors with deep financial capabilities who are seeking a long-term regulated revenue stream, not market power. Applicants propose to file Tier 2 advice letters with the Commission to identify these Minority Investors and submit related documentation after executing a MSA with each winning bidder. Through the advice letter process, the identity of each Minority Investor participating in the Proposed Transaction, regardless of what percentage interest in Pacific Generation that investor seeks to purchase,[378] will be open to stakeholder review and comment and subject to disposition by Commission staff.[379]

As additional protection against market power concerns, FERC has jurisdiction under section 203 of the Federal Power Act to review whether a proposed transaction—including any future sale or transfer of at least 10 percent of Pacific Generation—will have an adverse effect on competition in wholesale energy markets.[380] In conducting this review with respect to the

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

377 CalCCA-01 (direct testimony of Brian Dickman, Attachment B, proposed condition no. 10).

378 *See* Aug. 22, 2023 Tr. at 264:20–24 (examination of Sienna Rogers by ALJ Park).

379 The Commission and its staff are of course free to review any aspect of the proposed sale of Minority Equity Interests through the advice letter process, including any characteristics of the potential Minority Investor(s). *See* CalCCA-11 (PG&E Response to CalCCA Data Request 6.02); CalCCA-13 (PG&E Response to CalCCA Data Request 6.05).

380 By noting that wholesale energy markets are FERC-jurisdictional and subject to FERC regulation in the first instance, Applicants do not purport to limit the Commission's jurisdiction or its ability to review any aspect of the Proposed Transaction, including the identity of the Minority Investor(s). *See* CalCCA-12 (PG&E Response to CalCCA Data Request 6.03).

proposed asset contribution, FERC noted that "the potential impact of future third-party minority ownership of Pacific Generation" would be addressed in due course, "when an application is submitted seeking authorization for that transaction."[381] FERC's section 203 review involves a review of horizontal market power, including the effects of the transaction on concentration in the wholesale generation markets and whether it creates an incentive or ability to engage in harmful behavior, such as withholding of generation capacity.[382] It also involves a review of whether a transaction enhances the ability of or incentives for the transacting parties to exercise vertical market power, including an assessment of whether the transaction will allow any party "to withhold inputs to production or limit or prevent entry of new generating resources into the region."[383] As a result, CalCCA's example of the acquisition of a minority interest in Pacific Generation by an investor with a separate ownership interest in a solar panel manufacturer[384] would be analyzed by FERC to assess whether that acquisition would lead to market power.[385]

To further mitigate any concerns regarding potential market participation of the Minority Investor(s), the draft LLC Agreement provides that Pacific Generation will establish and maintain a code of conduct with provisions typical or advisable for a regulated utility, including provisions preventing the Minority Investor(s) from disclosing confidential information related

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381 Section 203 Approval, Attachment A at 7–15, 19–25, 27–28.

382 *See, e.g.*, *Nev. Power Co.*, 149 FERC ¶ 61,079, ¶ 61,523, 2014 WL 5471189 (2014).

383 *Black Hills Corp.*, 108 FERC ¶ 62,247, ¶ 64,471, 2004 WL 2094907 (2004); *CPV Shore, LLC*, 153 FERC ¶ 62,188, 2015 WL 8731752, at *1 (2015) (assessing whether applicants "operate or control any other generation within the [relevant] market or own or control any other inputs to production, such as fuel supplies or fuel delivery systems, in the United States," in reviewing change in upstream ownership of jurisdictional facilities); *see also* Aug. 22, 2023 Tr. at 269 (redirect examination testimony of Sienna Rogers) (inputs to production part of FERC's section 203 analysis).

384 *See* Aug. 22, 2023 Tr. at 225 (cross-examination testimony of Sienna Rogers) (positing a hypothetical Minority Investor that also has "an ownership interest in a company that, for example, manufactures solar panels").

385 Additionally, FERC section 203 review encompasses whether a proposed transaction affects rates or the effectiveness of regulation, or creates enhanced opportunities for cross-subsidization by captive customers through affiliate contracts. *See, e.g.*, Section 203 Approval, at 7-15, 19-25. FERC continues to review and police market competitiveness after a transaction. *See* PGE-17-E at 5-11 n.37 (rebuttal testimony of Sienna Rogers).

to Pacific Generation to its affiliated market participants.[386] PG&E also expects the code of conduct to prohibit the use of such confidential information by a Minority Investor for any purpose other than Pacific Generation governance or in their capacity as a Pacific Generation investor.[387] Therefore, in the hypothetical scenario proposed by counsel for CalCCA of a Minority Investor with a separate business interest in solar panel manufacturing,[388] the code of conduct would prohibit that investor from passing any nonpublic market information to its affiliated solar panel business, or from using that information in any capacity other than as an investor in Pacific Generation. In short, the expected code of conduct will "prohibit the minority investor from using confidential PacGen information to benefit its own separate business interests," in satisfaction of CalCCA's concern regarding purported conflicts of interest and market power.[389]

2. A Future Transfer By A Minority Investor Does Not Threaten To Harm The Public Interest

CalCCA's concern regarding the unrestricted future transfer of the Minority Equity Interests to third parties "that do not share California's values and ideals," including sovereign wealth funds,[390] is also misplaced. The draft LLC Agreement contains numerous safeguards in connection with future transfers of the Minority Equity Interests. As an initial matter, the agreement contains a "lockup" provision that would bar any Minority Investor from transferring its interest in Pacific Generation to any entity other than a wholly owned related party for three

386 PGE-05 at 5-AtchA-33 (LLC Agreement, Section 9.4); *see also* Aug. 22, 2023 Tr. at 268:19–23 (redirect examination testimony of Sienna Rogers).

387 Aug. 22, 2023 Tr. at 275:19–25 (cross-examination testimony of Sienna Rogers).

388 *Id.* at 225–28.

389 *Id.* at 218:5–7; 220:13–15; 221:2–4. PG&E will provide the finalized version of the Pacific Generation code of conduct for stakeholder review through the advice letter process. *See* PGE-17-E at 5-12 n.38 (rebuttal testimony of Sienna Rogers); Aug. 22, 2023 Tr. at 276:20–24 (cross-examination testimony of Sienna Rogers).

390 CalCCA-01 at 31 (direct testimony of Brian Dickman); *see also* CalCCA-13 (PG&E response to CalCCA Data Request 6.05).

years.[391] Following this period, the draft LLC Agreement would provide PG&E and any other Minority Investor with a right of first offer in the event that any transferring Minority Investor seeks to transfer its interest in Pacific Generation to an unrelated third party.[392] Specifically regarding foreign investment, any transaction involving the Minority Equity Interests, including subsequent transfers, would be subject to review by the Committee on Foreign Investment in the United States ("CFIUS") to the extent it qualifies as a "covered transaction" under the CFIUS statute.[393] Additionally, the draft LLC Agreement prohibits any member from transferring any part of its interest in Pacific Generation to a "Prohibited Transferee," which includes persons (i) on any watch list[394] issued by any U.S., Canadian, or European Union governmental authority, the World Bank, or the United Nations; (ii) who in the last five years have been held liable for or settled claims related to bribery, money laundering, terrorism financing, drug trafficking, or criminal violations of economics or arms embargo laws, and (iii) whose beneficial ownership is unidentifiable and not reasonably apparent.[395] Finally, as a further safeguard, the draft LLC Agreement also includes a provision prohibiting any Minority Investor from transferring any part of its interest in Pacific Generation to a person included on a schedule to be provided by

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391 PGE-05 at 5-AtchA-41 (LLC Agreement, Section 12.3).

392 *Id.* at 5-AtchA-42 (LLC Agreement, Section 12.4).

393 *See* 50 U.S.C. § 4565.

394 Specifically, a person "that appears on any list issued by a United States, Canadian or European Union governmental authority, the World Bank or the United Nations with respect to money laundering, terrorism financing, drug trafficking, or economic or arms embargoes." PGE-05 at 5-AtchA-75 (LLC Agreement, definition of "Prohibited Transferee").

395 *Id.* at 5-AtchA-46 to 47 (LLC Agreement, Section 12.8(a)), 5-AtchA-75 (LLC Agreement, definition of "Prohibited Transferee"). The draft LLC Agreement also bars the transfer of any interest in Pacific Generation "to the extent such Transfer would result in a violation of any Law or contractual, governmental or regulatory arrangements or requirements . . . ." *Id.* at 5-AtchA-46 (LLC Agreement, Section 12.8(a)).

PG&E.[396] As proposed, PG&E will be able to update this "prohibited person" list each year, or more frequently if circumstances warrant.[397]

CalCCA Witness Dickman's conclusion that there are "no limitations on the type of entities that could become Minority Investor(s)"[398] is therefore incorrect. Furthermore, the transfer limitations in the draft LLC Agreement referenced above would apply regardless of the identity of the Minority Investor or the potential transferee. Moreover, any direct or indirect transfer of a 10 percent or more voting interest in Pacific Generation would require prior FERC approval and would be evaluated by FERC for potential effects on market competitiveness and on wholesale rates.[399]

The vague concerns sketched by CalCCA regarding the identity of potential Minority Investors are also entirely speculative, as no indication exists that any questionable buyers are likely to surface, either in connection with the Proposed Transaction or with any future transfers of the Minority Equity Interests that may occur. Such concerns thus provide no basis to withhold approval for the Proposed Transaction.[400] Furthermore, it is in both PG&E's current and long-term interest to avoid any such controversial investors. As controlling majority owner of Pacific Generation, PG&E has both an operational and financial incentive to ensure that any minority investors in its public utility subsidiary are infrastructure investors with strong credit quality, financial acumen, an understanding of California's energy market and regulatory environment,

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396 *See* PGE-05 at 5-AtchA-47 (LLC Agreement, Section 12.8(b)).

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

398 CalCCA-01 at 4 (direct testimony of Brian Dickman).

399 *See supra* Part VII.C.1.

400 FERC concluded as much when approving the asset transfer under section 203. In rejecting arguments that the asset transfer and sale of minority interests must be reviewed concurrently, and that PG&E should be required "to provide additional information regarding the identity and specific rights of the third-party investor(s)," FERC found it "inappropriate to expand th[e] proceeding . . . to seek information about, or address other issues associated with . . . the potential impact of future third-party minority ownership of Pacific Generation." Section 203 Approval, at 25–27. The appropriate time to address such issues, FERC found, "is when an application is submitted seeking authorization for that transaction." *Id.* at 27–28.

and a desire to own a non-operating interest in regulated utility assets—and not any sort of undesirable entity that would threaten the public interest or the state's long-term energy goals.

Requiring Commission approval for the subsequent sale or transfer of Minority Equity Interests, as CalCCA proposes,[401] would be unreasonable, unprecedented, and beyond the scope of section 854, which provides for review and authorization by the Commission in the event a transaction amounts to a change in control. Since the Proposed Transaction will result in the Minority Investor(s) holding a minority, non-controlling interest in Pacific Generation, the subsequent transfer of any portion of that interest would not lead to a change in control.

Besides being unnecessary, CalCCA's suggestion to impose a requirement of Commission approval for any subsequent transfer of the Minority Equity Interests would negatively affect the Proposed Transaction by impairing potential investors' ability to exit the investment.[402] Such an impairment of liquidity can be expected to deter potential investors from pursuing the Proposed Transaction or depress the amount they would be willing to pay.[403] This would harm PG&E's ability to carry out the various objectives it seeks to achieve through the transaction, which, in turn, will harm customers. Nevertheless, the Applicants are willing to agree to a condition requiring Pacific Generation to file a Tier 1 advice letter in the event any Minority Investor sells or transfers an equity interest in Pacific Generation of at least 10 percent.[404] PG&E and Pacific Generation believe that this proposal appropriately balances the need to preserve the value of the Minority Equity Interests by not eliminating customary transfer rights with the desire to provide transparency regarding Pacific Generation's ownership.

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401 CalCCA-01 at Appendix B (Proposed Transaction Condition No. 8).

402 PGE-17-E at 5-13 (rebuttal testimony of Sienna Rogers).

403 *Id.*

404 *See* PGE-13 at 1-AtchA-4 to 7 (PG&E's proposed markup of CalCCA's Recommended Transaction Conditions). As discussed in Part VII.C.1, above, FERC will also conduct a market power review of any transactions involving the transfer of at least 10 percent of Pacific Generation under FPA section 203.

VIII. OTHER LEGAL ISSUES [SCOPING MEMO #1]

A. The Sale Of Minority Equity Interests Is Not A Change In Control

While there is no "'bright line' test for determining when a transfer of control" within the meaning of section 854 has occurred,[405] the Commission has identified various factors typically considered in the case-by-case factual analysis of whether a particular activity falls under the jurisdiction of the statute.[406] As analyzed further below, each factor leads to the same conclusion here: no change in control will occur as a result of the sale of the Minority Equity Interests. No party has argued to the contrary. And as the Commission is reviewing whether the Proposed Transaction is adverse to the public interest under section 851, there is no argument that the public interest requires further review under a distinct and inapposite statutory provision.

Whether an entity acquires a 50 percent equity interest in the utility or its parent:

The Proposed Transaction will not involve a change in control because the Minority Investor(s) will not acquire a 50 percent or greater interest in Pacific Generation. While at various times "the Commission has asserted jurisdiction to review [a] transaction under Pub. Util. Code § 854 in cases where a 50% interest has been transferred,"[407] PG&E will retain ownership of at least 50.1 percent of Pacific Generation's equity, representing a majority interest.

Whether the acquiring entity has the power to appoint a majority of the utility's board:

No change in control will occur because the Minority Investor(s) will not have the power to appoint a majority of the Pacific Generation Board. By virtue of its ownership of a majority of Pacific Generation's equity, PG&E will have the right to designate a majority of the Board Managers and the members of any Board committee, as well as the right to select the Board

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405 D.08-12-021 (*Warburg Pincus*) at 11. Section 854(a) provides, in relevant part: "A person or corporation . . . shall not directly or indirectly merge, acquire, or control, including pursuant to a change in control . . . , any public utility organized and doing business in this state without first securing authorization to do so from the commission."

406 *Id.* at 7; D.10-11-012 (*Lodi Gas Storage, L.L.C.*) at 4–5.

407 D.13-03-007 at 8; *see Gale v. Teel*, 81 CPUC 817, 1977 WL 42838, at *4 (1977) (holding that "the acquisition of a 50-percent interest in a public utility constitutes 'control either directly or indirectly' for purposes of Section 854").

chairperson from among the PG&E-designated Managers and Pacific Generation President.[408] Board voting will be decided by percentage ownership, and since PG&E will own at least 50.1 percent of Pacific Generation, it will have a majority of the votes necessary for Board action.[409]

Whether the acquiring entity has actual or working control of the utility's day-to-day operations, or the power to direct or cause the direction of its management and policies:

Following the Proposed Transaction, PG&E will retain control of Pacific Generation's day-to-day operations, as well as the authority to direct Pacific Generation's management and policies. Responsibility for the day-to-day business operations of Pacific Generation will lie with its President, David Gabbard, a PG&E designee,[410] and PG&E's Board designees will have the power to elect additional officers of Pacific Generation and to remove officers, including the President.[411] Responsibility for the management and policies of Pacific Generation will lie with its Board, which PG&E will control through its majority ownership position. Further, under the Intercompany Agreements, PG&E personnel will continue to perform all operations and services required to run Pacific Generation's day-to-day business, including operating, maintaining, scheduling and dispatching its generation assets, such that there will be no change in working control of the utility.[412] As the Commission has noted, section 854 review is not required when "[e]xisting employees with working control over the utility will continue in their roles" following a corporate reorganization.[413]

With respect to the power to direct or cause the direction of utility policies, the LLC Agreement contemplates granting Minority Investor(s) only limited consent rights designed to

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408 *See* PGE-17-E at 5-4 to 5-5 (rebuttal testimony of Sienna Rogers). These rights are set out in the draft LLC Agreement. *See* PGE-05 at 5-AtchA-22 (LLC Agreement, Section 7.1(b)); 5-AtchA-24 (Section 7.5); 5-AtchA-26 (Section 7.8(a)).

409 *See* PGE-05 at 5-12 (direct testimony of Sienna Rogers).

410 *See* PGE-23 at DG-1 (Statement of Qualifications of David Gabbard).

411 *See* PGE-05 at 5-AtchA-22 (LLC Agreement, Section 7.1(b)).

412 *See* PGE-04-A at 4-2 (amended and restated testimony of Andrew K. Williams); PGE-16-E at 4-2 (rebuttal testimony of Andrew K. Williams).

413 D.12-04-035 (*ConocoPhillips*) at 4.

provide reasonable protections for their economic interest, which are customary and industry-standard. None of these rights will confer actual or potential managerial or operational control over Pacific Generation, nor interfere with PG&E's working control over Pacific Generation's day-to-day business operation, as exercised through the Intercompany Agreements.

The impact of the transaction on the public interest:

Finally, the public interest is not negatively impacted by the sale of Minority Equity Interests, as system operations, safety, and reliability will remain unchanged, and rates will not be increased. Indeed, for the reasons discussed in Part IV.A, above, the Proposed Transaction has the potential to advance the public interest, including through additional capital that the Minority Investor(s) may elect to contribute to Pacific Generation on an ongoing basis.

B. The Contribution Of Assets Does Not Implicate Section 854

Under established Commission precedent, the creation of Pacific Generation as a wholly owned subsidiary of PG&E is not an "acquisition" within the meaning of section 854. In evaluating the 1990s corporate reorganizations of the major California IOUs, the Commission held that a corporate transaction involving the conversion of a utility to a subsidiary of a newly formed holding company is not an acquisition activity subject to section 854. The Commission reasoned that "the change in legal control (ownership by existing shareholders to ownership by Parent) is not a change in actual control," and noted it had other bases of jurisdiction to ensure that the transaction was in the public interest.[414] While the Proposed Transaction involves an existing utility contributing assets to a newly-formed subsidiary, the same analysis applies: the change in legal control of PG&E's non-nuclear generation business is not a change in actual control, and the Commission has other paths to review the transaction, as evidenced by the current proceeding. Thus, like the reorganization of the IOUs under a holding company

[414] D.95-05-021 (*In re San Diego Gas & Elec. Co.*), 59 CPUC 2d 697, 1995 WL 335084 (1995); *accord* D.96-11-017 (*In Matter of Pacific Gas & Elec. Co.*), 69 CPUC 2d 167, 1996 WL 752962 (1996); D.12-04-035 (*ConocoPhillips*).

structure, the corporate reorganization involved in this transaction is not an acquisition activity requiring evaluation under section 854.

C. No Section 854.2 Concerns Are Implicated

Section 854.2 is designed to address potential concerns that "a change in the ownership or control of an electrical corporation or gas corporation" might result in "[m]ass displacement of electrical corporation or gas corporation workers" or otherwise result in a new employer failing to "maintain[] a qualified and knowledgeable workforce with the ability to ensure safe, efficient, reliable, and continuous service."[415] The Proposed Transaction implicates none of these concerns, and no party has argued to the contrary. Pacific Generation should therefore not be required to comply with the substantive employee-related requirements of section 854.2.

The operative provisions of section 854.2 address steps related to employee protection—specifically, the conduct of a "predecessor employer" and a "successor employer" in relation to "covered employees"—in connection with certain transactions.[416] Pacific Generation, however, will have no "covered employees."[417] Rather, pursuant to the Intercompany Agreements, the experienced electric utility employees that currently maintain, service, schedule, and dispatch the generation assets being transferred, and otherwise carry out the day-to-day operations of PG&E's non-nuclear generation business, will remain employed in their current roles by PG&E following the Proposed Transaction. The successor and predecessor employer in connection with the Proposed Transaction are thus one and the same—PG&E. As such, the Proposed Transaction does not create any concern as to whether a successor employer will treat employees differently following a change of control, or fail to maintain a qualified and knowledgeable workforce.

Because PG&E as contracted operator will continue to operate Pacific Generation's business after the Proposed Transaction in the same manner as today, by maintaining the same

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415 § 854.2(a)(3), (4) and (5).

416 *See* § 854.2(b)(2), (4), (6) (defining these terms).

417 Pacific Generation currently contemplates that its sole employees will be various officers, all of whom would be excluded from the statutory definition of "covered employee." *See* § 854.2(b)(2)(B)(i).

qualified and knowledgeable workforce, there is also no potential for the Proposed Transaction to create uncertainty regarding the safe, efficient, and continuous provision of safe and reliable electrical service, or to cause the "mass displacement" of workers or a "significant burden" on unemployment.[418] Moreover, the collective bargaining agreements with PG&E's employees will remain unaffected by the Proposed Transaction, leaving in place those protections for represented employees.[419]

Because the Proposed Transaction implicates none of the employee-related concerns that animate section 854.2, the Commission should find that section to be inapplicable.

D. The Tribal Lands Transfer Policy Is Inapplicable [Scoping Memo #18]

The Commission's policy relating to "Investor-Owned Utility [IOU] Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes," issued December 5, 2019 ("Tribal Land Transfer Policy") is inapplicable to the Proposed Transaction for several reasons. Alternatively, as set forth in the Application, Applicants request that the Commission waive application of that policy to the Proposed Transaction,[420] which does not implicate the policy objectives of that policy.

Transfer of a fee interest is a precondition for triggering the Tribal Land Transfer Policy requirements.[421] Here, the only transfer of fee interests is to PG&E's own newly formed subsidiary, and thus is in the nature of an internal corporate reorganization rather than a sale to a third party. The second stage of the Proposed Transaction, the subsequent sale of Minority Equity Interests to Minority Investor(s), does not involve the transfer of any "fee interest" whatsoever. Rather, it is merely a transfer of a minority of the equity in Pacific Generation,

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418 *See* § 854.2(a)(3), (4), and (5).

419 *See* CUE Response to Application at 3 & n.6 (noting that agreement between PG&E and IBEW Local 1245 renders § 854.2 inapplicable under § 854.2(k)).

420 *See* Application at 42.

421 "Disposition" means "the transfer, sale, donation, or disposition by other means of a fee simple interest or easement in real property." Tribal Land Transfer Policy at 1 n.2.

which continues to own the fee interests. PG&E will control the decisions of the Pacific Generation Board, subject to the limited minority governance rights, and will continue to maintain financial and operational control of Pacific Generation (and thus of the fee interests).[422] As a result, the Tribal Land Transfer Policy is inapplicable to the Proposed Transaction.

In the alternative to a Commission determination that the Tribal Land Transfer Policy is inapplicable to the Proposed Transaction, PG&E and Pacific Generation request a waiver of that policy with respect to the Proposed Transaction, on the grounds that application of the policy (a) would not be consistent with the intent of that policy under the circumstances, and (b) would be impractical and overly burdensome to implement at this scale. Critically, the Proposed Transaction would not take any land out of the purview of the Tribal Land Transfer Policy with respect to future transfers. Pacific Generation will be an IOU subject to the Tribal Land Transfer Policy,[423] such that any future transfers of fee interests by Pacific Generation to third parties would be subject to the policy to the same extent as a current transfer by PG&E to any unaffiliated entity.

Notwithstanding the foregoing, on the date of the Application PG&E provided notice of this proceeding and the Proposed Transaction to all tribes whose ancestral territories fall within PG&E's service territory.[424] PG&E copied the Commission Tribal Liaison and the Governor's Tribal Advisor to the Commission. Three tribes requested additional information, which PG&E provided.[425] More recently, in connection with the beginning of the marketing phase for potential minority investors, two tribes requested further information about potential opportunities to be minority investors, and PG&E has provided them with information.[426]

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422 *See supra*, Parts VII.B, VII.C, and VIII.A.

423 Tribal Lands Policy Guidelines, § 1.3(f) and (g) (definitions of IOU and of property subject to the policy).

424 Aug. 22, 2023 Tr. at 266:4–19 (examination of Sienna Rogers by ALJ Park); CHRC-40.

425 *Id*.

426 Aug. 22, 2023 Tr. at 266:23–267:8 (examination of Sienna Rogers by ALJ Park).

E. The Proposed Transaction Is Exempt From CEQA

CEQA requires any California government agency approving a discretionary project to consider the environmental impacts of its decisions. A "project" is an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and either (a) is directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from a public agency, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.[427]

The Proposed Transaction does not constitute a "project"—and thus is exempt from CEQA review—because it does not involve any physical change in the environment. The generation assets being transferred will be managed, scheduled, and dispatched in the same manner as they would be in the absence of this transfer. The Commission has repeatedly held that transactions transferring ownership of water utility assets with no change in operations are not "projects" under CEQA,[428] and the Proposed Transaction falls squarely under this same logic.

In addition, the Commission has repeatedly recognized that issuance of a CPCN that does not entail the construction of new facilities is exempt from CEQA under California Code of Regulations section 15061(b)(3), which exempts projects from CEQA when there is "no

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427 Cal. Pub. Res. Code § 21065.

428 *See, e.g.,* D. 22-04-010 at 31 ("Once sold and transferred, there will be no change in the operation of the assets. They will be used and operated in the same manner and for the same purposes for which they are currently being used. The Commission has consistently held such a transfer of control and operation of existing water system facilities does not result in any changes to the environment, and thus, an application seeking authorization for such a transaction is not subject to CEQA."); Res.W-5136 at 4 ("Pursuant to our review, we have determined that CEQA does not apply as this advice letter filing involves only a transfer of ownership of the existing water facilities and no new construction or changes in the source of water supply are being proposed. There is no evidence of any other changes in the operation of DOWCWR. Accordingly, approval of this advice letter is not a CEQA project and there is no possibility that the transaction may have any significant effect on the environment.").

possibility that the activity in question may have a significant effect on the environment."[429] Here, the Pacific Generation CPCN would not entail the construction of new facilities, and any future Pacific Generation projects would be subject to CEQA to the same extent as they would be if pursued by PG&E. Accordingly, the Proposed Transaction is exempt from CEQA.

F. The Commission's ESJ Policy Is Not Implicated [Scoping Memo #19]

The Scoping Memo calls for discussion of "[w]hether the requests impact environmental and social justice communities and achievement of any of the nine goals of the Commission's Environmental and Social Justice [('ESJ')] Action Plan."[430] The Proposed Transaction does not impact the environment of ESJ communities or implicate the ESJ considerations.[431] As noted with respect to CEQA inapplicability, the Proposed Transaction does not entail any physical impact on the environment or on operation of any facilities. Pacific Generation will continue to operate the same non-nuclear generation facilities that PG&E does today, in the same manner that PG&E does today. Because Pacific Generation will contract with PG&E to perform all of its O&M functions, there will not be any changes in labor force, economic opportunities, or safety, with respect to ESJ communities, arising from the Proposed Transaction.

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429 *See* D.15-12-009 at 10 (approving CPCN for telecommunications) ("Since Dynalink states that it will not be constructing any facilities for the purpose of providing services under this CPCN, it can be said with certainty that there is little likelihood that granting this application will have an adverse impact upon the environment. CEQA review is not required for this type of non-facilities-based project."); D.14-04-012 at 4 (similar).

430 Scoping Memo at 4 ¶ 19.

431 The nine ESJ plan goals are: (1) consistently integrate ESJ considerations throughout CPUC proceedings; (2) increase investment in clean energy resources to benefit ESJ communities; (3) improve access to high-quality water, communications and transportation for ESJ communities; (4) increase climate resiliency in ESJ communities; (5) enhance public participation opportunities for ESJ communities in CPUC processes and programs; (6) enhance safety and consumer protection for ESJ communities; (7) promote economic and workforce opportunities in ESJ communities; (8) improve training related to ESJ issues; and (9) Monitor the Commission's ESJ efforts. Environmental and Social Justice Action Plan (Feb. 21, 2019).

IX. THE PROPOSED POST-SIGNING ADVICE LETTER PROCESS IS REASONABLE [SCOPING MEMO #17]

The proposed post-signing advice letter process is a reasonable approach to seeking approval of the final transaction documents and implementing the Proposed Transaction, because: (1) in previous proceedings, the Commission has adopted such a process, (2) all stakeholders will have the opportunity to review and comment on the transaction documents prior to disposition, and (3) no party has raised material objections to the proposed process.

As previously explained, the process has historical precedent: the 1990s natural gas-fired power plant divestitures by certain California IOUs involved multi-phased regulatory review and interim Commission decisions. In those proceedings, after the Commission approved the sales, the utilities then sought approval of the final transaction documents via compliance filings.[432]

In this case, following the Commission's decision, Applicants propose to sign the MSA(s) with the winning bidders. Post-signing, Applicants would submit Tier 2 advice letters to identify the Minority Investor(s) and submit the principal transaction documents—the signed MSA(s), and final forms of the Separation Agreement and LLC Agreement—for review by Commission staff. Based on its review of the content of the advice letters, the extent of the changes to the transaction documents, and any protests, the Commission can determine whether to elevate the submission to Tier 3 advice letters.[433] The Separation Agreement and LLC Agreement would then be executed following the Commission's disposition of the advice letters.

No party in this proceeding has raised objections to the basic approach proposed by the Applicants for post-signing advice letters. TURN's questioning of the timing of when certain signed transaction documents will be submitted vis-à-vis the timing of Commission approval of

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[432] PGE-05 at 5-5, lines 18–23 ("In those proceedings, the Commission approved the sale transactions before the auction process commenced, followed by a streamlined process to approve the purchase and final transaction documents.").

[433] PGE-17-E at 5-10 n.30 (rebuttal testimony of John Plaster and Sienna Rogers) ("Or by the Commission itself [could review], should the Commission instead require a Tier 3 Advice Letter.").

such documents[434] reflects confusion regarding the proposed process. PG&E's witness clarified that the Minority Investor(s) will sign the MSA(s)—which will include as exhibits the final forms of both the Separation Agreement and the LLC Agreement—prior to submission of the advice letters, so that they are contractually bound subject to disposition of the advice letters by Commission staff (or the Commission).[435] PG&E's witness further clarified that should the advice letter process lead to any required revisions to the transaction documents, the Applicants and the Minority Investor(s) would of course need to address those revisions prior to any closing.[436]

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[434] Aug. 22, 2023 Tr. at 254:24–255:3 (cross-examination testimony of Sienna Rogers) ("Q. So why not seek Commission approval of the final terms before entering into agreement? A. Because you'd like to get folks to sign on the dotted line with an actual agreement so that you can [] file with the Commission the final agreement.").

[435] *See id.* at 255:18–20 ("[I]t's important for all of us to be committed to the transaction terms before the Commission signs off on them.").

[436] *Id.* at 254:19–23, 256:13–18, 257:5–9.

X. CONCLUSION

Based upon the foregoing, and the evidence presented at the evidentiary hearing, Applicants request that the Commission make each of the determinations and authorizations requested in Part II.D.

Respectfully Submitted,

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