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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

REPLY BRIEF OF THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION

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On behalf of
California Community Choice Association

October 5, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FERC Decisions and Orders

California Public Utilities Commission Proceedings

California Public Utilities Code

California Public Utilities Commission Decisions

California Public Utilities Commission Rules of Practice and Procedure

SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should reject the Application in its entirety on the grounds the Proposed Transaction is not in the public interest under Public Utilities Code sections 854 and 851 because it would result in net harm to customers and would subject customers to incremental and unforeseeable risks.

- In rejecting the Application in its entirety, the Commission should specifically deny the Applicants' requests that:
    - The Commission authorize the contribution of assets from PG&E to Pacific Generation LLC (PacGen).
    - The Commission grant PacGen a Certificate of Public Convenience and Necessity.
    - The Commission grant the requested financing authorizations.
    - The Commission approve the contemplated minority sale process.
    - The Commission approve the contemplated minority governance rights.
    - The Commission approve the contemplated post-signing Advice Letter process.

- In rejecting the Application in its entirety, the Commission should deny each specific requested determination and authorization set forth in Section XIV of the Application.

- If, in the alternative, the Commission grants all or some of the requests in the Application, the Commission should adopt CalCCA's Transaction conditions set forth in Section IV.B.3 of its Opening Brief to mitigate the ratepayer harms and other risks of the Transaction.

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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

REPLY BRIEF OF THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION

Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Community Choice Association[1] (CalCCA) submits this Reply Brief within the above-captioned *Application of Pacific Gas and Electric Company (U 39 E)* (PG&E) *and Pacific Generation LLC* (PacGen) *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*[2] (collectively, along with the contemplated Minority Sale, the "Transaction" or "Proposed Transaction").[3]

[1] California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy For Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

[2] Application (A.) 22-09-018, *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* (Sept. 28, 2022) (Application).

[3] All capitalized terms herein have the meanings assigned in PG&E's Application and Testimony, unless otherwise noted.

PG&E's Opening Brief makes repeated attempts to recharacterize the novel Proposed Transaction as a relatively straightforward and "industry standard" corporate reorganization to reassure the Commission the many concerns stakeholders raised in this proceeding are without merit.[4] But the record tells a different story: in a first-of-its-kind transaction, PG&E seeks a Certificate of Public Convenience and Necessity (CPCN) to create a new public utility that will own most of PG&E's current generation assets and then sell off a substantial portion of that utility to a yet-to-be-determined Minority Investor. It requests such authorization now, despite the fact it has not:

- Investigated the associated increase in ongoing costs to ratepayers;
- Compared the transaction costs of the Proposed Transaction to those of other funding options;
- Put forth any proposal for how the Commission should split or otherwise manage the enforcement of PG&E's current compliance obligations as between PG&E and the new entity;
- Selected the Minority Investor(s) that will acquire the interest in PacGen;
- Negotiated and finalized the terms of the Transaction Documents that will govern, among other things, the sale and the ongoing management of PacGen; or
- Even begun to draft the code of conduct that would serve as the *sole guardrail* to protect against market impacts that may arise from the Investor's potential conflicts of interest.

PG&E's overriding message continues to be that, while many of these implementation mechanics and details are unknown at this time, the Commission and ratepayers should simply trust that PG&E has the incentives and the capability to ensure parties' concerns will be adequately handled at some point in the future.[5] But intervenors have made clear this approach is inadequate. "Throughout the testimony and at the hearing, the Administrative Law Judge and participants

[4] *See, e.g.*, A.22-09-018, *Pacific Gas and Electric Company and Pacific Generation LLC's Opening Brief*, at 3-4, 78-80, 96-97 (Sept. 18, 2023) (PG&E Opening Brief).

[5] *See, e.g.*, PG&E Opening Brief at 37-40, 55-56, 65-73, and 88-94.

heard how the Application relies on documents that are not in final form, raise operational questions that are left unanswered, or are subject to PG&E's 'assurances' that are subject to change."[6] Time and time again, PG&E has responded to stakeholder concerns with the refrain "that while not all of the details of the Proposed Transfer will be figured out by the time the Commission makes a decision, parties should trust PG&E to ensure that their concerns are met."[7]

Not only does the "trust us" approach fail to meet PG&E's burden in this case, it also rings hollow in the context of PG&E's track record of prioritizing shareholder interests over those of its customers.[8] Viewed through this lens, the Application is "not fully thought out and lacks finality and clarity on fundamental issues."[9] It should not be acceptable to the Commission.

Instead of presenting new information or commitments in its Opening Brief to assuage the concerns a diverse set of stakeholders have raised, PG&E repeatedly characterizes these concerns as arising from "misunderstandings" of the Application's proposals.[10] But parties articulated clearly in opening briefs that they *do* understand the Proposed Transaction: it is designed to benefit PG&E and its shareholders at the risk and expense of ratepayers.[11]

PG&E has failed to demonstrate any tangible customer benefits of the Proposed Transaction and has conceded it will result in increased, and unknown, customer costs. Further, PG&E has not meaningfully addressed various other risks—including risks of competitive

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6 A.22-09-018, *Opening Brief of the City of Santa Clara, California, Doing Business as Silicon Valley Power*, at 37 (Sept. 18, 2023) (SVP Opening Brief).

7 A.22-09-018, *Opening Brief of the Placer County Water Agency*, at 16 (Sept. 18, 2023) (PCWA Opening Brief).

8 *See id*. at 16.

9 SVP Opening Brief at 37.

10 *See, e.g.*, PG&E Opening Brief at 51, 53-54, 62, 69, 70, and 72.

11 A.22-09-018, *Opening Brief of the Energy Producers and Users Coalition*, at 12 (Sept. 18, 2023) (EPUC Opening Brief) ("the only stakeholders for which [the Proposed Transaction] would be a 'less costly' and 'advantageous' alternative are PG&E's shareholders"); A.22-09-018, *Opening Brief of The Utility Reform Network*, at 2-8 (Sept. 18, 2023) (TURN Opening Brief); A.22-09-018, *Opening Brief of the California Community Choice Association*, at 19-21 and 61-62 (Sept. 18, 2023) (CalCCA Opening Brief).

impacts, added administrative burdens, and jurisdictional gaps—likely to result. The Commission should deny the Application under Public Utilities Code sections 854 and 851 as inconsistent with the public interest.

I. LEGAL STANDARD

PG&E highlights throughout its Opening Brief that the Proposed Transaction follows the "industry standard" for corporate reorganizations and similar minority sales in the utility industry.[12] Putting aside the veracity of these claims,[13] they do not support PG&E's case even if they are true. What is typical or standard for corporate transactions is not relevant to the Commission's standard of review in this proceeding.

The Commission must determine whether the Application is consistent with the public interest under Public Utilities Code sections 854 and 851. When making that determination, the Commission should recognize that PG&E has both improperly rejected the applicability of section 854 and put forward an interpretation of the section 851 standard of review that is the least customer-centric articulation of this standard possible under Commission precedent. To dismiss the applicability of section 854, PG&E quite literally redrafts the relevant statutory language in its Opening Brief. The Commission should recognize that section 854 and 851 are both applicable to this Proposed Transaction; and under both standards, the Commission should deny the Application because it is not affirmatively in the public interest.

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12 *See, e.g.*, PG&E Opening Brief at 3-4, 78-80, and 96-97.

13 CalCCA has demonstrated that none of the "precedent transactions" cited by PG&E are analogous to the Proposed Transaction. *See* Exh. CALCCA-01 at 10:11 to 12:10. The two additional transactions cited in PG&E's Rebuttal Testimony are also distinguishable, like the transactions cited in PG&E's Opening Testimony. *See* Exh. PGE-17-E at 5-2:26 to 5-4:5.

A. The Proposed Transaction Constitutes a Control Activity Under Section 854 and Fails to Meet the Affirmative "Ratepayer Benefit" Standard of This Section

PG&E argues Public Utilities Code section 854 does not apply to this Transaction, asserting that section 854 only applies to "*changes* in control" rather than a broader set of "control activities."[14] To make this claim, PG&E inserts bracketed language into its quoted excerpt of the relevant statutory language, making "control" read "change in control".[15] But PG&E cannot redraft statutory language to suit its purposes.

The full language of section 854(a) is as follows:

> A person or corporation, whether or not organized under the laws of this state, *shall not directly or indirectly merge, acquire, or control*, including pursuant to a change in control as described in subparagraphs (D) or (E) of paragraph (1) of subdivision (b) of Section 854.2, *any public utility organized and doing business in this state without first securing authorization to do so from the commission*. *The commission may establish, by order or rule, the definitions of what constitutes a merger, acquisition, or control activity that is subject to this section*. Any merger, acquisition, or control without that prior authorization is void. A public utility organized and doing business under the laws of this state, and a subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall not aid or abet any violation of this section.[16]

The plain language of this statute is clear: establishing control over a public utility could certainly occur pursuant to a "change in control," but it need not. The Commission itself has articulated this understanding, finding that "PU Code § 854 prohibits any person or corporation from *acquiring or controlling* any utility without prior Commission Approval. The Commission has authority to establish by order or rule the definitions of what constitute acquisition or control

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[14] PG&E Opening Brief at 25 and 95-98 (emphasis added).

[15] *Id*. at 25 (stating that: "A 'merger, acquisition, or [change in] control' of a public utility requires prior authorization from the Commission").

[16] Cal. Pub. Util. Code § 854(a) (emphasis added).

activities that are subject to § 854. We analyze control on a case-by-case basis."[17] The Commission has "consistently noted that . . . the degree to which issues of ownership and control have registered concern[] all turn on the specific facts at issue."[18]

Indeed, the Commission explicitly held in the 1990s corporate reorganization cases cited by PG&E[19] that it will *not only* look to the extent to which there has been a change in control to determine whether section 854 applies. The Commission instead found: "we can imagine acquisitions not involving any change in control in which we well might wish to apply PU Code § 854 . . . If the degree to which a change in control was the only criterion that we used to determine whether an acquisition should be subject to PU Code § 854, we might preclude ourselves in situations where we should scrutinize a transaction more closely. *We will not, therefore, apply only a control-based test to this acquisition*."[20]

It is true that in these corporate reorganization cases cited by PG&E,[21] the Commission undertook a fact-specific review of the reorganizations at issue and ultimately declined to apply section 854. But the facts of those cases differ significantly from those at issue here. Those cases did not involve the creation of a new public utility with an overlapping service territory with a pre-existing utility, or the sale of a significant equity interest in a public utility and its regulated assets to an unknown third-party investor.[22] Instead, they were straightforward internal reorganizations

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17 Decision ("D.") 95-05-021, *In the Matter of the Application of SDG&E for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding Company Structure*, A.94-11-013, 1995 Cal. PUC LEXIS 440 (May 10, 1995) (D.95-05-021), at *2 (emphasis added).

18 D.08-12-021, *Decision Granting Motion to Dismiss Application for Approval of Indirect Transfer of Control*, A.07-09-012 (Dec. 4, 2008) (D.08-12-021), at 12.

19 PG&E Opening Brief at 97 and n. 414.

20 D.95-05-021 at **3-4 (emphasis added).

21 PG&E Opening Brief at 95-99 and n. 414.

22 D.95-05-021 at *1 (SDG&E proposed to become a wholly owned subsidiary of a holding company to be formed for that purpose by SDG&E); D.96-11-017, *In the Matter of the Application of PG&E for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding*

involving changes to the companies' corporate parents that involved few, if any, of the risks this first-of-its-kind transaction presents. These cases therefore do not support an argument that the Commission should similarly decline to apply section 854 here.

As explained in CalCCA's Opening Brief, the Commission should find that PG&E creating and then establishing control of PacGen, a public utility, via the Proposed Transaction is a "control activity" subject to this Public Utilities Code section.[23] This reorganization is unprecedented and raises novel issues, including the potential for detrimental market impacts, increased administrative burdens to regulate the two utilities serving the same service territory, and jurisdictional gaps.[24] Given the novelty of this transaction structure, the Commission should undergo a full section 854 review examining these public interest impacts before authorizing any aspect of this Proposed Transaction.

Consistent with section 854(b), the Commission should not grant this Application unless it, among other requirements, will provide economic benefits to ratepayers and will not adversely affect competition.[25] As discussed further in Sections II-IV herein, PG&E has failed to meet this standard.

B. The Proposed Transaction Is Not Consistent With the Public Interest Under Any Section 851 Review Standard

PG&E argues the Commission should evaluate its Application under a "no harm" standard, interpreting Public Utilities Code section 851 such that it need not demonstrate any tangible customer benefits from the Application.[26] This is the least customer-centric view of section 851

Company Structure, A.95-10-024, 1996 Cal. PUC LEXIS 1141 (Nov. 6, 1996), at **13-15 (PG&E proposed to become a wholly owned subsidiary of a holding company to be formed for that purpose by PG&E); D.12-04-035, *Decision Granting Application*, A.12-02-015 (Apr. 19, 2012), at 1.

23 CalCCA Opening Brief at 7-11.

24 *See id*. at Section IV.B.2.

25 Cal. Pub. Util. Code § 854(b).

26 PG&E Opening Brief at 2 and 24.

that Commission precedent can possibly support. PG&E's framing here, while inaccurate, is not surprising. As discussed in Section II herein, PG&E has not demonstrated any concrete customer benefits flowing from the Transaction. Thus, the only viable path forward for the utility's Application is an evaluation under the most lenient section 851 review standard the Commission has articulated.

However, even PG&E acknowledges—though only in footnotes[27]—that this is just *one reading* of section 851. The Commission has frequently articulated a higher "public interest" review standard for section 851 cases, requiring a showing of "tangible ratepayer benefits."[28] The Commission is especially likely to adopt this higher review standard in the context of novel transactions.[29] This case, involving novel risks and numerous policy questions, calls for the application of the higher review standard.

Importantly, regardless of the section 851 standard adopted in this case, the Commission should find that the Application fails to meet it. As demonstrated in Sections III and IV herein, the Transaction will result in net harm to ratepayers and is therefore adverse to the public interest.

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[27] *Id*. at n. 45.

[28] D.19-12-038, *Decision Authorizing the Purchase of Water Utility Assets by California-American Water Company*, A.17-10-016 (Dec. 19, 2019), at 7-10 ("In evaluating whether an acquisition is in the public interest, the Commission will consider whether there is a tangible benefit to the ratepayer by determining whether the transaction will improve the financial condition of the public utility, will maintain or improve the management of the utility and the quality of service to the utility's ratepayers, will be fair to employees of the utility, and will be generally beneficial to the community served by the public utility."); D.21-08-027, *Decision Authorizing PG&E's Sale of its San Francisco General Office Complex and Related Matters*, A.20-09-018 (Aug. 19, 2021), at 11-13 (approving the sale of PG&E's headquarters building as consistent with the public interest under Section 851 because, among other showings, PG&E demonstrated the sale would be cost-effective for ratepayers in that it would result in a net benefit of $752 million as compared to the status quo).

[29] D.22-12-032, *Decision Denying Joint Application for a Change of Control of the Crimson Pipeline, L.P. and the San Pablo Bay Pipeline Company, LLC*, A.21-02-013 (Dec. 15, 2022) (D.22-12-032), at 33 (emphasis added).

II. ALL THE PUBLIC INTEREST BENEFITS IDENTIFIED BY PG&E ARE EITHER SPECULATIVE OR ACTUALLY SHAREHOLDER BENEFITS

Stakeholders representing ratepayer interests agreed in opening briefs that the potential for ratepayer benefits from the Proposed Transaction is "uncertain at best."[30] While PG&E points to several reasons why PG&E views this as a favorable funding option,[31] it has continuously failed to identify how any of these potential advantages of the Transaction will translate to tangible benefits *for customers*.

A. The Proposed Transaction Is Designed Such That Almost All Resulting Benefits Will Flow to PG&E and its Shareholders

PG&E structured this Proposed Transaction to avoid sharing any resulting economic benefits with customers.[32] Still, PG&E points to the advantages it associates with this funding source and argues that these constitute "customer benefits."[33] The Commission should not accept this attempt to recast these advantages as benefits that will flow to customers. Almost all the benefits PG&E identifies as specific to this proposed source of equity capital are benefits that would flow to PG&E and its shareholders, not ratepayers.

For instance, in its discussion of "customer benefits" in its Opening Brief, PG&E asserts the Transaction would generate equity proceeds at a better valuation than an issuance of stock[34] and would avoid a common stock issuance that would be potentially dilutive.[35] But since PG&E does not intend to share any sale proceeds with customers, these are both shareholder benefits, not customer benefits. PG&E also suggests its recent share price increases reflect the market's

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30 TURN Opening Brief at 3. *See also* CalCCA Opening Brief at 17-26.
31 PG&E Opening Brief at 27-37.
32 *See* CalCCA Opening Brief at 21-23.
33 *See* PG&E Opening Brief at 27-37.
34 *Id*. at 29.
35 *Id*.

expectation of the benefits of this Transaction.[36] This claim is speculative and unsupported,[37] and even if true, reflects a shareholder rather than a customer benefit. Similarly, PG&E asserts approval of the Transaction would avoid a negative impact on PG&E's stock price.[38] No record evidence bolsters this claim—it just reflects the unsupported statements of a PG&E witness;[39] and regardless, avoiding harm to PG&E's stock price is, once again, just a shareholder benefit.

Finally, PG&E continues to point to the positive impact of a higher PG&E share price on the Fire Victim Trust (FVT).[40] CalCCA's Opening Brief demonstrates that any such benefit would be a shareholder benefit.[41] Further, this shareholder benefit is unlikely to materialize, as the FVT intends to complete sales of PG&E stock by the end of 2023, before the anticipated closing of the Proposed Transaction.[42] Even PG&E does not refute that, given the anticipated timing of the sales of the remaining FVT shares relative to the Commission's decision in this case, approval of the Transaction is unlikely to impact the FVT.[43]

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36 *Id*. at 29-30.

37 To support this statement, PG&E cites to Witness Williams' testimony. Witness Williams has stated her opinion that PG&E's current stock price reflects the market's expectation of the benefits of the Transaction, but that opinion has not been supported by any record evidence. *See id*. (citing Exh. PGE-13 at 1-14 (rebuttal testimony of Stephanie Williams); Aug. 21, 2023 Tr. at 27:2–13 (cross-examination testimony of Stephanie Williams)).

38 PG&E Opening Brief at 30.

39 *See id*. at 30 and n. 71.

40 *Id*. at 30.

41 CalCCA Opening Brief at 19-21.

42 Exh. CalCCA-01 at 14:18 to 15:8.

43 *See* CalCCA Opening Brief at 21 (explaining that if the FVT completes its sales of stock by the end of 2023 as expected, the Commission's decision to approve or deny the Transaction—a decision which is likely to occur in 2024—will not impact the FVT). In its Opening Brief, PG&E responded to CalCCA's arguments surrounding the timing of sales of the FVT shares as follows: "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*." PG&E Opening Brief at 30 (emphasis added).

B. Any Customer Benefits Are Entirely Speculative and Immaterial

PG&E has identified a few other potential benefits of the Transaction but makes clear in its Opening Brief that it is uncertain whether they will ever materialize. The Commission should not base its decision on PG&E's speculations. The utility has not put forward any kind of analysis or other supporting evidence to show these benefits are likely to occur, or if they do occur, that they are likely to result in a material ratepayer impact.

For instance, PG&E posits in its Opening Brief that it "expects" the incentives of the yet-to-be determined Minority Investor will be such that the Investor will want to provide additional funding for future capital investments in PacGen's generation business.[44] This conclusion seems to be drawn solely based on an opinion of one PG&E witness. However, this witness has not pointed to any analysis, evaluation, or outside expert opinion informing their viewpoint.[45] The Commission should not base its decision on an unsupported opinion from an internal PG&E witness.

PG&E also contends in its Opening Brief that the Transaction "may yield customer savings" via a lower cost of debt.[46] PG&E does not actually assert it believes these savings will materialize—its position is simply that it expects PacGen to receive credit ratings on its debt that "are either equivalent to or better than PG&E's."[47] Likewise, it has not estimated the likelihood of any such savings materializing or the potential magnitude of such savings. The Commission therefore has no basis to conclude these savings are likely to be material. Additionally, if such savings were to materialize, PG&E does not appear eager to share those savings with customers;

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44 PG&E Opening Brief at 32.
45 *Id*. at 32 and nn. 80 and 81.
46 *Id*. at 34.
47 *Id*.

it has instead recommended the savings not flow through to customers until after the next cost of capital proceeding.[48]

Finally, PG&E maintains there are two benefits associated with accelerating the timing of contributions to the Customer Credit Trust (CCT),[49] but these benefits are similarly uncertain and unlikely to be significant. First, PG&E claims that the more valuable the Trust's assets are, the lower the risk that the Trust will be unable to fully fund offsetting credits. This attempt to frame as an affirmative customer benefit the fact that the Transaction may help PG&E avoid default on its pre-existing obligations to customers should not sway the Commission. The Commission already has an established mechanism to protect against this result: it will have an opportunity to ensure there is no default during its 2040 evaluation.[50] The Transaction adds zero incremental benefit to ratepayers in this regard.

Second, the fact that accelerated contributions to the CCT *could potentially* result in a higher remaining balance in the Trust which could, *in 2040*, result in additional funds going to ratepayers should not be considered a significant customer benefit. While PG&E admits the total contribution to the Trust is fixed, it still suggests the Transaction gives the Trust greater opportunity to generate investment returns. However, customers will only receive 25 percent of any remaining balance in the Trust at that time and, as The Utility Reform Network (TURN) points

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[48] *Id*. at 34-35 (PG&E's testimony recommended that any savings flow through to customers as part of the next cost of capital proceeding in 2026 (and not before that). As a concession in response to CalCCA's proposed Transaction conditions, PG&E agreed to revise its proposal such that, "to the extent the embedded cost achieved by Pacific Generation on the long-term debt issued for its initial capitalization is lower than PG&E's *authorized* cost of debt set in D.22-04-008, that would be reflected in Pacific Generation's initial revenue requirement").

[49] *Id*. at 33.

[50] TURN Opening Brief at 3 ("In the case that the CCT is underfunded by 2040, the Commission will require PG&E to contribute a supplemental shareholder contribution up to $775 million"); CalCCA Opening Brief at 19.

out, "accelerating contributions to the CCT would benefit shareholders *three times* as much as ratepayers in the event that there is a surplus by 2040."[51]

PG&E has not put forward any estimate of the expected value of this "customer benefit," and the Commission has no basis to conclude it will be material. PG&E's focus during evidentiary hearings on whether CalCCA Witness Dickman has put forward an estimate of the amount that could accrue to customers as a result of accelerated contributions to the CCT misses the point.[52] PG&E, as the Applicant claiming these accelerated contributions constitute one of the few customer benefits of the Transaction, did not *itself* put forward an estimate on the record of what amount it expects will accrue to customers as a result of accelerated contributions to the Trust. PG&E—not CalCCA—has the burden of proof in this proceeding to establish that the Transaction is in the public interest under Public Utilities Code sections 854 and 851.[53] PG&E has not put forward any estimate or other evidence to suggest this will be a significant customer benefit, and therefore the Commission should not treat it as such in its evaluation of the Proposed Transaction.

III. PG&E DECLINED TO INVESTIGATE WHETHER THE TRANSACTION WILL RESULT IN CUSTOMER HARM AND THEN CONCLUDED IT WILL NOT

Throughout this proceeding, PG&E has offered only high-level, conclusory statements concerning the potential customer harms associated with the Transaction.[54] To reach its ultimate conclusion that no such harms exist, PG&E identified various reasons why it need not conduct any evaluation or analysis of these potential negative impacts, and then offered its opinion that it does not expect these impacts to materialize. This barely-scratches-the-surface analysis fails to support

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51 TURN Opening Brief at 3-4 (emphasis added).
52 2 Tr. 181:23 to 182:18 (Aug. 22, 2023 – Dickman).
53 Cal. Pub. Util. Code § 854(f).
54 *See, e.g.*, PG&E Opening Brief at 37-41.

PG&E's claims that the Transaction will not harm customers, and thus fails to carry the utility's burden to establish the Transaction is consistent with the public interest.[55]

One such impact PG&E has failed to analyze is the resulting increase in ongoing administrative costs for ratepayers. The record reflects that, according to PG&E's own discovery responses, the Proposed Transaction will raise ongoing administrative costs for customers.[56] While PG&E does not dispute these incremental costs will exist, it has declined to estimate their magnitude. It nevertheless opines in its Opening Brief these added costs will be "negligible."[57] The Commission must not rely on conclusions, such as this one, that do not have a basis in any record evidence.

PG&E's references to CalCCA Witness Dickman's testimony misrepresent his statements on the stand. PG&E states Witness Dickman "concedes" these incremental costs could be outweighed by Transaction benefits.[58] But Witness Dickman was not speaking to the likelihood of this occurring—he was responding to a question of whether it was theoretically *possible* the rate impact of PacGen having a lower cost of debt could outweigh the increase in administrative costs CalCCA identified.[59] Witness Dickman confirmed the hypothetical offered was theoretically possible, and importantly, that it would *depend on a future unknown factor*: the change in the cost of debt.[60] The only thing Witness Dickman "conceded" is that neither he nor PG&E knows the future; the utility cannot insert its unrealized goal for cross examination as a witness's conclusion.

Further, there is a key difference between the evidentiary weight of these two countervailing items: CalCCA provided a reasonable estimate of the likely increase in ongoing

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55 *See* Cal. Pub. Util. Code § 854(f).
56 CalCCA Opening Brief at 27.
57 PG&E Opening Brief at 38.
58 *Id*. at 38-39.
59 2 Tr. 185:15-20 (Aug. 22, 2023 – Dickman).
60 *Id*. at 185:15 to 186:11.

administrative costs resulting from the Transaction;[61] PG&E has provided no estimate of the likely rate impact of any change in PacGen's cost of debt (or even taken the position it expects *any* change in PacGen's cost of debt).[62] The bottom line is PG&E has not demonstrated any Transaction benefits will outweigh the costs Witness Dickman identified.

Deferring consideration of these incremental costs to the next general rate case (GRC), as PG&E suggests,[63] is also inappropriate. The Commission is tasked in this proceeding with assessing whether the Proposed Transaction is in the public interest. It cannot do so without a reasonable understanding of both the benefits and the costs of this proposal. Just because this category of costs will not be recovered from ratepayers *immediately* does not mean these are not costs of the proposal relevant to the Commission's determination. And, even if the Commission were to accept being kept completely in the dark about these customer costs until the next GRC, it should at least have the assurance that PG&E has established a procedure for tracking these costs to facilitate the disallowance of these incremental costs in the future. But PG&E has offered no such proposal in this case.

Along similar lines, PG&E does not dispute that Power Charge Indifference Adjustment (PCIA) rates are likely to increase in the next GRC as a result of the Transaction.[64] Instead, PG&E argues that because the change would be effectuated in the next GRC as opposed to in this proceeding, the concerns are "premature."[65] This is yet another category of customer rate impacts PG&E has failed to meaningfully evaluate as part of this proceeding. It is unreasonable to dismiss these identified increases in ratepayer costs and rates as irrelevant to the Commission's evaluation

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61 CalCCA Opening Brief at 28 (estimating an increase of approximately $3 million in annual labor costs).
62 Exh. CalCCA-01 at 15:9-16.
63 PG&E Opening Brief at 39.
64 *Id*. at 66.
65 *Id*. at 66-67.

simply because they will not take effect immediately. The Commission must have a reasonable understanding of the likely rate impacts of this Proposed Transaction to assess whether it is consistent with the public interest.

Finally, PG&E's contention the Transaction will not harm customers also relies on the conclusion the Transaction will have no negative impact on PG&E's financial condition.[66] Here, again, PG&E draws conclusions without undertaking any in-depth investigation or analysis. PG&E admitted it could have employed, at this stage in the Transaction process, an expert to forecast the likely impact of the Transaction on PG&E's credit rating, but it declined to do so.[67] PG&E's argument that its credit rating will not be negatively impacted is instead based solely on the "expectations" of PG&E witnesses that have put forth no concrete bases for their conclusions.[68] Again, these unsupported conclusions should not factor into the Commission's determination in this proceeding.

PG&E has failed to engage in a meaningful evaluation of the customer harms likely to result from this Transaction, while CalCCA has demonstrated—and in certain cases, specifically quantified—such harms. On this record, and because PG&E has failed to show any tangible customer benefits, the Commission should conclude that the Transaction will result in net harm to ratepayers.

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66 *Id*. at 39-40.

67 CalCCA Opening Brief at 62-64.

68 *See id*. at 63 ("Instead of relying on a credit rating agency, PG&E's Rebuttal Testimony explained PG&E's conclusion that there will be no negative impact on PG&E's credit rating in two brief bullet points, without supporting citations or further explanation: (1) the transferred assets represent only seven percent of PG&E's overall rate base, and (2) PG&E does 'not anticipate that the Proposed Transaction will have a material impact on the credit metrics the rating agencies will use to evaluate PG&E and so [it] expects no negative change to PG&E's credit ratings as a result.'").

IV. THE PROPOSED TRANSACTION OPENS THE DOOR TO MARKET IMPACTS THAT WOULD HARM RATEPAYERS

Certain customer harms associated with the Transaction, like cost and rate increases, can be quantified. Others, like the harm resulting from detrimental market impacts, are harder to measure, but no less critical to the Commission's evaluation under Public Utilities Code sections 854 and 851.[69] CalCCA demonstrated in Section IV.B.2 of its Opening Brief that the Transaction presents many material risks that cannot be precisely quantified but that should weigh heavily in the Commission's determination of whether the Application is consistent with the public interest.[70] While PG&E largely did not address these identified risks in its Opening Brief, it did speak to market impacts, arguing the Transaction Documents are "industry standard", and the Commission need not be concerned that the Minority Investor(s) will harm competition in the generation markets.[71] But PG&E failed to carry its burden to show that the Transaction structure adequately protects against detrimental market impacts.

A. The Commission's Primary Concern Should Not Be Whether Transaction Safeguards Would Depress the Value of the Minority Sale But Rather Whether They Would Protect Against Detrimental Market Impacts

PG&E's primary argument against imposing restrictions on the entity that can serve as the Minority Investor is that doing so would limit the value PG&E can expect to receive in executing the Transaction.[72] This may very well be the case. PG&E may be correct that market participants would be willing to pay a higher premium for these minority interests than similar investors who are not active in the California wholesale markets or other upstream industries. Indeed, such

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69 *See id*. at 32-34.

70 *See id*. at 32-64.

71 PG&E Opening Brief at 79 and 88-94.

72 *Id*. at 78 ("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.").

entities would have more to gain from the Transaction because, as market participants, they could use their access to PacGen information to inform their business decisions in other ventures, and to exert their influence over management decisions in a way that is aligned with those separate interests.[73] That is precisely the issue CalCCA identified.

The Commission's concern should not be that imposing restrictions to prevent this from occurring would depress the value of the Minority Sale. Rather, the Commission's focus should be on whether such restrictions would serve the public interest and help ensure these detrimental market impacts are avoided. The Commission must determine whether the Application is in the public interest.[74] Public Utilities Code section 854 explicitly requires this evaluation to include a review of the competitive impacts of the Transaction, and section 851 implicitly requires this review, as well, since these market impacts would harm the public interest.[75] PG&E's rejection of any limitation on the identity or affiliations of the Minority Investor[76] is contrary to the public interest. Achieving the highest possible value on the Minority Sale—primarily for the benefit of PG&E and its shareholders—should not be prioritized over a Transaction structure that imposes appropriate restrictions to protect against conflicts of interest.

PG&E's repeated assurances in its Opening Brief that the sale process and Transaction Documents are "industry standard"[77] are irrelevant to the Commission's review of this issue. CalCCA does not take issue with the rights or duties the Minority Investor would have in the new corporate structure. Rather, CalCCA is pointing out that, if such a Transaction were to go forward,

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[73] *See* CalCCA Opening Brief at 33-49.

[74] A.22-09-018, *Assigned Commissioner's Scoping Memo and Ruling*, at 2-4 (Jan. 20, 2023).

[75] *See* CalCCA Opening Brief at 33-34.

[76] *See* Exh. PGE-13, Attach. A (deleting, in its entirety, CalCCA's proposed Transaction condition 10 that would prohibit the Minority Investor and its Related Parties and Affiliates from being Market Participants (and declining to provide any revised or alternate condition on this issue)).

[77] PG&E Opening Brief at 78-80.

there would need to be adequate safeguards on the identity and business dealings of the Minority Investors that have those rights and duties.

B. None of the "Protections" Identified by PG&E Will Adequately Protect Against Detrimental Market Impacts

CalCCA's Opening Brief illustrates a few types of conflicts that may arise under the proposed Transaction structure. As one example, the Minority Investor—including various types of Representatives[78] of the Minority Investor—could use their access to confidential PacGen information[79] to benefit the Minority Investor's separate business interests. Another conflict could arise in the event that actions of PacGen requiring the consent of a percentage of the Minority Investors depend on the votes of Minority Investors with interests in other upstream market inputs.[80] These kinds of conflicts could give a market player an undue advantage via access to confidential information, or undermine the integrity of PacGen's operations.

PG&E offers a few reasons why such conflicts should not be of concern to the Commission: (1) PG&E's incentives will guide it to select unproblematic investors, (2) the Federal Energy Regulatory Commission (FERC) will conduct its own review of competitive impacts under section 203 of the Federal Power Act (FPA), and (3) PacGen will establish a code of conduct "with provisions typical or advisable for a regulated utility."[81] These counterarguments are not new, and CalCCA addressed each one in detail in its Opening Brief.[82]

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78 The LLC Agreement defines Representatives as follows: "'Representatives' means, with respect to any Person, such Person's shareholders or members, and its and their respective officers, directors, managers, employees, accountants, consultants, legal counsel, financial advisors, current and prospective financing sources and other representatives and agents." Exh. PGE-05 at 5-AtchA-76.

79 2 Tr. 213:3 to 216:2 (Aug. 22, 2023 – Rogers).

80 *Id*. at 225:18 to 228:14.

81 PG&E Opening Brief at 89-91 and 93.

82 *See* CalCCA Opening Brief at 42-49.

1. FERC's Review Process Is Necessary But Not Sufficient

The Commission should not neglect to protect against harmful market impacts just because FERC also has a separate regulatory process that will review some such impacts.[83] FERC's section 203 FPA review is necessary but not sufficient for analyzing market impacts of this Application for a few reasons. First, FERC's horizontal market impact review is generally focused primarily on the change in market concentration as a result of the transaction,[84] and an initial assessment of this change is used to identify transactions that are unlikely to present competitive problems significant to FERC's analysis under the FPA.[85] The primary type of horizontal competitive impact identified by CalCCA in this case is unrelated to market concentration issues, and instead arises out of the Minority Investor's use of PacGen confidential information to serve its own business interests. Thus, the Commission should not defer consideration of these issues under the assumption that FERC's review process will address them.

This type of FERC review also will not be triggered by all potential future transfers of the Minority Interests, as it only is applicable to transfers of a 10 percent or more voting interest.[86] Given that the LLC Agreement's restrictions on future transfers of interests are extremely limited,[87] virtually any entity providing the right price could acquire a percentage of the Minority

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83 *See id*. at 47-49.

84 *Id*. at 47-49 and nn. 176-180.

85 *Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109, at P 35 (Feb. 16, 2012). *See also Panda Stonewall LLC*, 177 FERC ¶ 61,048, at P 20, n. 22 (Oct. 21, 2021) ("In the Merger Policy Statement, the Commission adopted the 1992 Federal Trade Commission/Department of Justice Horizontal Merger Guidelines, which state that in a horizontal merger, an increase of more than 50 HHI points in a highly concentrated market or an increase of 100 HHI points in a moderately concentrated market fails its screen and warrants further review. *See also Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012) (affirming the Commission's use of the thresholds adopted in the Merger Policy Statement).").

86 Exh. PGE-17-E at 5-11 n. 36; PG&E Opening Brief at 93 ("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").

87 CalCCA Opening Brief at 39-41.

Interests under 10 percent without undergoing any FERC review. It is therefore incumbent on the Commission to recognize the limits of this FERC process and take on, in this proceeding, an analysis of how the proposed Transaction structure—including the treatment of transfers of interest—will or will not protect against detrimental market impacts.

2. The PacGen Code of Conduct Is Undeveloped and Fails to Address CalCCA's Concerns

With respect to the PacGen code of conduct, PG&E confirms in its Opening Brief that at this point, it is only speculating as to what this code will include.[88] The one-sentence description of this code of conduct on the record does not clarify if or how it might address or mitigate conflicts of interest for the Minority Investors that may arise due to their other business interests.[89] PG&E's Opening Brief does not offer further detail on how this yet-to-be drafted document will address the concerns raised by CalCCA, aside from referencing the one additional provision PG&E now "expects" the code to include.[90]

As discussed in CalCCA's Opening Brief, while Witness Rogers initially admitted during hearings that the code of conduct would not prohibit the Minority Investor from using confidential PacGen information to benefit its own separate business interests,[91] she went back on this

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[88] PG&E Opening Brief at 90-91 (mentioning an additional provision PG&E "expects" the code of conduct to include based on the hearing testimony of PG&E Witness Rogers, who was re-directed by PG&E's counsel to testify that she was able to "look into the status" of the code of conduct during the break that day and learn that PG&E now expects to include a provision that would require the Minority Investor to only use PacGen confidential information in its governance of PacGen and in its capacity as an investor in PacGen).

[89] Exh. PGE-05, Attach. A at 5-AtchA-33 (Section 9.4 of the LLC Agreement) ("The Company shall establish and maintain a code of conduct that incorporates elements typical or advisable for a regulated utility, which elements shall include, among other things, provisions preventing a Member from disclosing confidential information to its Related Parties who are market participants.").

[90] PG&E Opening Brief at 90-91.

[91] 2 Tr. 220:12 to 221:20 (Aug. 22, 2023 – Rogers) (confirming that, while PG&E cannot speculate at this time about what would ultimately be included in the yet to be drafted code of conduct, PG&E has not indicated anywhere on the record that the code of conduct will prohibit *the Representatives* of the Minority Investor from using confidential PacGen information to benefit their own separate business interests).

testimony in re-direct examination. Specifically, she stated that she was able to "look into the status" of the code of conduct during the break that day and learn that PG&E now expects to include a provision that would require the Minority Investor to only use PacGen confidential information in its governance of PacGen and in its capacity as an investor in PacGen.[92]

Subsequent questioning of Witness Rogers on this "expected" provision revealed that: (1) the Commission and stakeholders have no way of verifying how that term would operate or how it would be enforced since it has not been described on the record or provided for stakeholder review,[93] (2) PG&E has not considered how it would enforce this provision,[94] and (3) PG&E has not decided on the "specific wording" for the applicability of this provision.[95] This conversation during hearings revealed PG&E has no concrete plan for limiting the use of PacGen confidential information by the Minority Investor Representatives and has no established timeline for when the PacGen code of conduct will be made available.[96] And while it referenced this new expected provision briefly, PG&E's Opening Brief provided no additional information or explanation that countered these conclusions.

The Commission should decline PG&E's invitation to essentially defer all consideration of competitive impacts to a later regulatory review process. The Commission cannot find that this Transaction is in the public interest without assessing the potential for market impacts and the measures PG&E proposes to mitigate them. The record reflects that PG&E has failed to propose adequate safeguards to protect against detrimental market impacts, and that such safeguards are unlikely to materialize at a later review stage unless ordered by the Commission.

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92 *Id*. at 268:2-18.
93 *Id*. at 276:9-24.
94 *Id*. at 277:4-16.
95 *Id*. at 278:14-25.
96 *Id*. at 276:25 to 277:3.

V. PG&E MISREPRESENTS THE RECORD ON MANY CRITICAL ISSUES

In service of its argument that the Proposed Transaction is not adverse to the public interest, PG&E makes many assertions that are either misleading or do not accurately reflect the record. CalCCA clarifies many of those statements here:

- PG&E misrepresents the record in claiming CalCCA has offered "no specific examples" on how the complexity for regulatory proceedings will increase.[97] CalCCA has demonstrated that:
  (1) The complexity of Energy Resource Recovery Account (ERRA) proceedings will likely double given that, in a post-Transaction setup, these proceedings will include double the relevant balancing accounts, double the cost tracking, and double the rate calculations;[98] and
  (2) The approach to implementing certain regulatory proceedings post-Transaction is unclear (for example, implementation of a double ERRA trigger process).[99]
- PG&E's claim its ratemaking proposal is akin to the creation of a new subaccount[100] is a significant reach and another example of PG&E downplaying the effect of its Proposed Transaction. CalCCA's members have extensive experience intervening in the ERRA cases referenced here. Duplicating all associated balancing accounts, tracking, and rate calculations requires ongoing verification that the costs and revenue related to each transferred resource are properly segregated from PG&E's resource portfolio and, in turn, assigned to the appropriate account. Each new balancing account must be tracked, monitored, and audited, and customers must be able to interpret two separate calculations for PCIA, Cost Allocation Mechanism (CAM), and generation rates.[101] These are just the known changes for *one* of the many proceedings to be impacted.

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97 PG&E Opening Brief at 56.
98 CalCCA Opening Brief at 51.
99 *Id*. at 51-52.
100 PG&E Opening Brief at 68.
101 CalCCA Opening Brief at 51.

- PG&E claims the Transaction "does not change existing compliance assessments and proceedings" and compliance is "the same" because it will be achieved by the same personnel and the same assets.[102] This summary is inaccurate for a few reasons:
    (1) Compliance pre- and post-Transaction is only "the same" in the sense that PG&E has failed to put forward any proposal for how the Commission should allocate and enforce PG&E's current compliance obligations as between two entities in the new post-Transaction world.[103] But CalCCA has demonstrated on the record that this compliance framework will necessarily change. Each of PG&E's current 100-plus annual compliance filings will need to be identified as either a PG&E, PacGen, or joint compliance obligation. This is not just a low-stakes, administrative matter of filing submissions appropriately; the Commission will need to determine against which entity penalties will be assessed and enforced.[104]
    (2) The fact the same personnel will be working on achieving the two entities' compliance obligations, with the same set of assets, is not relevant to the Commission's enforcement framework for this separate public utility.
- PG&E misrepresented the record in its discussion of CalCCA Witness Dickman's "concessions" regarding the Forecast Realization Adjustment Agreement (FRAA). PG&E states Witness Dickman "conceded" the FRAA benefits both PG&E and PacGen because, absent the FRAA, both companies would experience greater cash flow fluctuations than with the agreement in place.[105] This summary omits essential context: PG&E asked Witness Dickman if, assuming the Transaction occurs, both PacGen and PG&E would have less volatility in cash flow in a scenario with the FRAA as compared to one without.[106] This is not the relevant comparison for purposes of assessing how the FRAA allocates risk as between PG&E and PacGen, and Witness Dickman made that clear during hearings.[107]

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102 PG&E Opening Brief at 69.
103 CalCCA Opening Brief at 52-55.
104 *Id*. at 52-54.
105 PG&E Opening Brief at 62-63.
106 2 Tr. 195:19 to 197:19 (Aug. 22, 2023 – Dickman).
107 *Id*. (explaining that "it [the FRAA] functions to preserve more like the status quo for PG&E, and it . . . decreases the risk to Pacific Generation. I believe PG&E stated that itself in its testimony of the purpose of the FRAA is to reduce the risk that – that accrues to Pacific Generation.").

Again, PG&E cannot insert an unrealized goal for cross examination as a witness's conclusion.

- PG&E's argument that CalCCA only articulated vague concerns regarding potential impacts on the Commission's jurisdiction[108] reflects a misunderstanding of the purpose of expert testimony versus legal briefing. CalCCA demonstrated in its Opening Brief that PacGen would not constitute a "public utility" under California's statutory definition, and that therefore it may be able to evade regulation as a public utility in the future.[109] CalCCA's expert witness did not opine on this legal question in his testimony because he is not a legal expert.
- PG&E's claim that no party objects to its proposed Advice Letter process[110] is inaccurate. CalCCA detailed many objections to this process, which is a legal issue, in its Opening Brief.[111]
- PG&E's claims that the Commission need not worry about this after-the-fact Advice Letter review process because, essentially, "this has been done before"[112] are misleading. Having a multi-phased regulatory review for an outright asset sale is not at all analogous to the instant case.[113] In this case, PG&E is asking for this kind of after-the-fact review of:
    (1) The identity of a new third-party investor that will have ownership interests in—and in certain situations, management/oversight rights and obligations over—most of PG&E's regulated generation assets; and
    (2) The final negotiated transaction terms governing this new ownership structure of a new regulated public utility in California.

  CalCCA does not object to the use of a multi-phased regulatory review, *per se*, but rather to PG&E's proposal to leave several major issues highly relevant to the Commission's public interest review in this proceeding to an after-the-fact Tier 2 Advice Letter

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108 PG&E Opening Brief at 56.
109 CalCCA Opening Brief at 55-58.
110 PG&E Opening Brief at 103 ("No party in this proceeding has raised objections to the basic approach proposed by the Applicants for post-signing advice letters.").
111 *See* CalCCA Opening Brief at 47 and 59-61.
112 PG&E Opening Brief at 79 and 103.
113 PG&E points to how the 1990s natural gas-fired power plant divestitures by certain utilities involved multi-phased regulatory reviews through which the utilities sought approval of final transaction documents via compliance filings *after* receiving Commission approval of the sales. Id. at 103.

process. There is no precedent for leaving such major legal, policy, and factual issues to such review, especially when an ongoing Application can consider them.

VI. CONCLUSION

CalCCA appreciates the opportunity to submit this Reply Brief and requests adoption of the recommendations proposed herein and in CalCCA's Opening Brief:

- The Commission should reject the Application in its entirety on the grounds the Proposed Transaction is not in the public interest under Public Utilities Code sections 854 and 851 because it would result in net harm to customers and would subject customers to incremental and unforeseeable risks.

- In rejecting the Application in its entirety, the Commission should specifically deny the Applicants' requests that:
  - The Commission authorize the contribution of assets from PG&E to PacGen.
  - The Commission grant PacGen a CPCN.
  - The Commission grant the requested financing authorizations.
  - The Commission approve the contemplated minority sale process.
  - The Commission approve the contemplated minority governance rights.
  - The Commission approve the contemplated post-signing Advice Letter process.

- In rejecting the Application in its entirety, the Commission should deny each specific requested determination and authorization set forth in Section XIV of the Application.

- If, in the alternative, the Commission grants all or some of the requests in the Application, the Commission should adopt CalCCA's Transaction conditions set forth in Section IV.B.3 of its Opening Brief to mitigate the ratepayer harms and other risks of the Transaction as much as possible.

Respectfully submitted,

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On behalf of
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