BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas & Electric Company (PG&E) Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation And Pacific Gas and Electric Company, Case No. 19-30088	)	I.19-09-016 (Filed September 26, 2019)

ALLIANCE FOR NUCLEAR RESPONSIBILITY'S
OPENING BRIEF AND OPENING COMMENTS ON
ASSIGNED COMMISSIONER RULING'S PROPOSALS

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SUMMARY OF RECOMMENDATIONS

1. The Commission should reject the PG&E Plan of Reorganization due to its failure to satisfy the requirements of Cal. Pub. Util. Code §§ 3292(b)(1)(C), 3292(b)(1)(D), and 3292(b)(1)(E).

2. The Commission should remove from rate base that portion of the net book value of the Diablo Canyon Nuclear Power Plant that does not meet the Commission's used-and-useful standard – about 74%, according to PG&E's earlier assessment of departed load.

I. INTRODUCTION.

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC"), and the procedural schedule confirmed by the March 6, 2020 ruling by Administrative Law Judge Peter V. Allen, the Alliance for Nuclear Responsibility ("A4NR") files its Opening Brief and Opening Comments on the Assigned Commissioner Ruling's Proposals in the Commission's Investigation of the ratemaking and other implications of the Pacific Gas and Electric Company ("PG&E") Plan of Reorganization ("PoR") proposed by PG&E to resolve its Chapter 11 voluntary bankruptcy, Case No. 19-30088 filed in the United States Bankruptcy Court, Northern District of California, San Francisco Division.

The PG&E PoR and its related documents fail to meet the "neutral, on average, to the ratepayers of the electrical corporation" requirement established by Cal. Pub. Util. Code § 3292(b)(1)(D); the requirement to "recognize the contributions of ratepayers, if any, and compensate them accordingly" established by Cal. Pub. Util. Code § 3292(b)(1)(E); and cannot be considered "acceptable in light of the electrical corporation's safety history, criminal probation, recent financial condition, and other factors" that should be deemed relevant by the Commission, as required by Cal. Pub. Util. Code § 3292(b)(1)(C). Without substantial revision by PG&E, the PoR and its related documents are unfit for approval by the Commission.

PG&E's PoR represents the consummation of a heavily leveraged buyout by the group of speculative shareholders that installed a new board of directors and hired new management in

2019,[1] after initiation of the Chapter 11 proceeding. Consistent with the typical 90% debt/10% equity structure of most leveraged buyouts (PG&E reported a 20.4% equity ratio as of December 31, 2019[2] and the metric has declined since then), the PG&E PoR will leave an over-leveraged utility dependent upon transferring shareholder liabilities to ratepayers through off-balance sheet securitization or extended deviation from PG&E's Commission-authorized capital structure of 52% common equity, 47.5% long-term debt, 0.5% preferred stock.

In addition to the statutory tests of Cal. Pub. Util. Code §§ 3292(b)(1)(C), (D), and (E), A4NR urges the Commission to unflinchingly apply the Newsom Principle ("To achieve safe and reliable service and make critical safety and infrastructure investments, the emerging company's capital structure must be stable, flexible, and position the company to attract long-term capital."[3]) in its evaluation of the PG&E PoR.

II. $7 BILLION SECURITIZED RATEPAYER BAILOUT BOND ISSUANCE.

A. THE LINCHPIN OF PG&E's POST-EMERGENCE BALANCE SHEET.

While PG&E's prepared testimony insisted "the plan is not dependent on the approval of the post emergence securitization,"[4] PG&E Corporation CEO William Johnson explained that

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[1] As PG&E Corporation President and Chief Executive Officer ("CEO") William D. Johnson acknowledged under cross-examination, "… in the moment our largest investors are not the typical utility investors. These tend to be distressed asset investors, hedge funds that are in this space. And I would expect, after we exit and refinance, that most of them would exit the stock and we would get back to the regular way utility shareholders are looking for something different than the current shareholders. So, I don't know what the exit program is and I don't know how many of them intend to exit, but that would be the general way this evolves." Transcript (PG&E – Johnson), p. 211, lines 9 – 23.

[2] A.19-02-016, February 27, 2019 PG&E Notification of Change in Equity Ratio Pursuant to Administrative Law Judge Ruling Issued November 20, 2019, p. 4.

[3] Abrams-X-05, December 13, 2019 letter from Governor Gavin Newsom to PG&E Corporation CEO William D. Johnson.

[4] PG&E-1, p. 2-15, lines 28 – 33.

the only reason the utility is seeking a variance from the Commission's approved capital structure is to gain time to perform the securitization financing,[5] thereby removing the liability for financing PG&E's payments to victims of the 2017 and 2018 wildfires from the utility's balance sheet.[6] Mr. Johnson further explained that the need for the waiver would terminate after the completion of the securitization financing.[7] In fact, Mr. Johnson testified that if the securitization financing is approved by the Commission as requested, PG&E will not later seek recovery in rates for 2017 and 2018 wildfire claims costs.[8] The essential nature of the securitization to PG&E's PoR was made clear in Commission President Batjer's exchange with Mr. Johnson:

> We have talked, you have been cross-examined yesterday and today, regarding securitization. If, for whatever reason, we were not able to grant securitization, what is -- what is your plan?
>
> A The next step would be to ask for a permanent waiver in the capital structure.
>
> Q I'm sorry. Say that again.
>
> A A permanent waiver in the capital structure.
>
> Q A permanent waiver?
>
> A Yeah.[9]

B. AN UNDISGUISED RATEPAYER BAILOUT OF SHAREHOLDERS.

The financial precursors to the securitization transaction are $6 billion of "Temporary Utility debt" used to pay wildfire claims at exit from bankruptcy and $1.35 billion owed to the Fire Victim Trust in 2021 and 2022.[10] PG&E's testimony characterized the $6 billion of

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[5] Transcript (PG&E – Johnson), p. 226, lines 13 – 16, 19.
[6] PG&E has indicated that these amounts include "a few hundred million" for the 2015 Butte fire. Transcript (PG&E-Wells), p. 631, lines 23 – 24, 28.
[7] *Id.*, lines 24 – 25.
[8] Transcript (PG&E – Johnson), p. 236, lines 3 – 7.
[9] *Id.*, p. 267, line 18 – p. 268, line 1.
[10] PG&E-1, p. 2-33, lines 17 – 19.

"Temporary Utility debt" as "the financial responsibility of shareholders, not customers,"[11] and the deferred obligation to the Fire Victim Trust as funded pursuant to the Tax Benefits Payment Agreement.[12] The PG&E PoR identifies the source of the post-exit payments to the Fire Victim Trust as "the difference between the income taxes actually paid by the Reorganized Utility and the income taxes that the Reorganized Utility would have paid to the taxing authorities for such taxable year absent the net operating losses of the Utility and any deductions arising from the payment of Fire Victim Claims and Subrogation Claims,"[13] but also requires the Utility to deliver an unconditional standby letter of credit and, potentially, consent to stipulated judgment to address any payment shortfalls.[14] Neither payment of the "Temporary Utility debt" nor the deferred obligation to the Fire Victim Trust is described in the PG&E testimony as a responsibility of ratepayers.

That is because the Commission has made no determination that any of the costs of PG&E's payment of claims to victims of the 2017 and 2018 wildfires should be borne by ratepayers, and PG&E has not sought such a determination. Yet, both the $6 billion "Temporary Utility debt" and the deferred obligation to the Fire Victim Trust will be subsumed by the $7 billion securitization financing. Unless and until the Commission determines otherwise, the claims payments to victims of the 2017 and 2018 wildfires are shareholder liabilities – and the proposed securitization intended to finance those claims payments is an unmistakable ratepayer bailout of shareholder liabilities.

[11] *Id.*, p. 2-15, lines 19 – 20.
[12] *Id.*, p. 2-6, lines 14 – 15.
[13] January 31, 2020 PG&E Amended Plan of Reorganization, ¶ 1.201.
[14] *Id.,* ¶ 1.202.

C. WHOSE NOLs ARE THEY?

PG&E proposes to redress the $7 billion securitization's debit entry on the "neutral, on average" ledger by pledging to "use the proceeds from the realization of the shareholder certain tax benefits, including Net Operating Losses (NOLs), and other credits to provide rate reductions so customers, on average, will not pay the associated cost of the securitization charges."[15] Notwithstanding PG&E's assertion that shareholders "retain the benefit of NOLs that are generated by shareholder-paid costs,"[16] the Commission determined precisely the opposite regarding wildfire-related liabilities in D.19-06-027. "Our intent is that a utility should not capture any tax benefit,"[17] the Commission observed in modifying the staff-proposed stress test contemplated by Cal. Pub. Util. Code § 451.2.[18] While PG&E has criticized this aspect (among others) of D.19-06-027 as "arbitrary and capricious,"[19] the Commission to date has not chosen to modify its decision.

PG&E's expropriation of tax benefits the Commission has indicated should be preserved for ratepayers, in order to pay a deferred obligation to the Fire Victim Trust and offset debt service (for securitization bonds or "Temporary Utility debt"[20]) that finances what PG&E admits are shareholder obligations, is arguably a collateral attack on D.19-06-027—and indisputably a display of the *chutzpah* for which the utility has become notorious. Cal. Pub. Util. Code §

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[15] PG&E-1, p. 2-15, lines 24 – 27.
[16] *Id.,* p. 2-17, lines 4 – 5.
[17] D.19-06-027, p. 34.
[18] As noted in D.19-06-027's Conclusion of Law #4: "The Commission maintains appropriate remedies to address and preserve for ratepayers (without duplication) any tax benefits associated with losses from events that give rise to the Stress Test application."
[19] R.19-01-006, August 7, 2019 PG&E Application for Rehearing of D.19-06-027, p. 17.
[20] PG&E Corporation Chief Financial Officer ("CFO") Jason Wells acknowledged on cross-examination that the utility has not yet received approval to apply the NOLs to the $6 billion utility debt. Transcript, PG&E-Wells, p. 582, lines 25 – 26.

3292(b)(1)(D) requires that this ratepayer absorption of shareholder liability – whether implemented by the $6 billion "Temporary Utility debt" plus $1.35 billion Tax Benefits Payment Agreement, or the $7 billion securitization – be accurately identified in the "neutral, on average" calculation.

D. CREDIT ENHANCEMENT REQUIRES COMPENSATION.

In a scenario where PG&E utilized bonafide shareholder resources, rather than tax benefits purloined from ratepayers, to offset securitization debt service, Cal. Pub. Util. Code § 3292(b)(1)(E) would compel recognition of and compensation for the credit enhancement provided by ratepayers to finance what is otherwise a shareholder obligation. The creation of a bankruptcy-remote, dedicated rate component from PG&E's ratepayers is essential to any securitization financing. As the PG&E testimony explains, "The securitization structure isolates a discrete revenue stream that is dedicated to debt service for the securitized debt."[21] Regardless of PG&E assurances about the availability of incremental cash flow from shareholder resources to fully support the securitization debt,[22] it is the dedicated rate component and the accompanying ability (enforceable through PG&E's customary service shutoff procedures) to adjust rates to pay debt service that will secure the bonds.

That is what the credit ratings, which enable the lower securitized borrowing rate, are based upon. In the words of PG&E's capital markets expert witness, John C. Plaster from Barclays Bank, "What I would say is the securitization, we would expect it to have a Triple A rating and that in general that market would price tighter [when measured as a spread to U.S.

[21] PG&E-1, p. 3-4, lines 14 – 16.
[22] *Id.*, p. 2-18, footnote 45.

Treasury bonds] than, you know, the first mortgage bond, first mortgage bonds for PG&E."[23] And, as PG&E Corporation CFO Jason Wells admitted in cross-examination,[24] ratepayers would be expected to continue paying the non-bypassable charge even in the event of a third PG&E bankruptcy.

Notwithstanding Mr. Plaster's optimism about the pricing level to be anticipated for Triple A securitization bonds, A4NR-2's evaluation used the 90-basis point credit spread to Treasuries Mr. Plaster's prepared testimony cited for the Investment Grade United States Credit Index[25] (comprised of A-rated bonds) and the 1.89% Treasury rate embedded in his spread assumption. This would produce a 2.79% securitized borrowing rate and offers an ultra-conservative estimate of the value of the uncompensated ratepayer credit enhancement provided by securitization. Assuming a ten-year final maturity with amortization, typical for the taxable securitization market, and compared to the 4.55% rate PG&E negotiated for 2030 secured debt in the Noteholder RSA,[26] the securitization would provide $75 million in annual debt service savings.[27] The net present value of this stream of savings, discounted at the 2.79% borrowing rate, is $643.9 million.[28] Were the same 90-basis point spread assumption to be applied to the weighted average maturity of "just under 20 years"[29] for the securitization bonds envisioned by Mr. Wells, the credit enhancement valuation would be substantially higher

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[23] Transcript (PG&E-Plaster), p. 285, lines 10 – 15.
[24] Transcript (PG&E-Wells), p. 626, lines 23 – 24.
[25] PG&E-1, p. 3-10, lines 2 – 3.
[26] *Id.*, p. 2-28, lines 16 – 20.
[27] A4NR-2-E, p. 13, line 14.
[28] *Id.,* p. 13, line 15.
[29] Transcript (PG&E-Wells), p. 571, lines 15 – 16.

because of the additional interest associated with the longer weighted average maturity assumption.

III. MAKING DIABLO CANYON BANKRUPTCY COURT JURISDICTIONAL.

A. PG&E's PoR NOW INCLUDES A COMMITMENT TO IBEW 1245.

The January 31, 2020 amendments to PG&E's PoR saddle both bundled and unbundled electricity ratepayers with continued exposure to the metastasizing above-market costs of the Diablo Canyon Nuclear Power Plant ($410 million in 2018, $1.168 billion in 2019, and $1.258 billion in 2020, based on PG&E data responses in the pending General Rate Case, A.18-12-009) by contractually obligating PG&E to "continue to operate" the plant "through the term of the current operating licenses."[30] The IBEW Agreement added to the PoR is a cunning attempt to immunize the massive annual subsidies propping up an uneconomic plant from redirection to higher priorities by PG&E management or the Commission. The apparent premise is that embedding a covenant to operate Diablo Canyon in a PoR confirmed by the U.S. Bankruptcy Court will legally remove these expenditures from Commission oversight. By including this covenant in the January 31, 2020 PG&E Plan, however, the potential ratepayer savings attributable to an early shutdown (which A4NR-2 estimates at roughly $535 million in nominal dollars per year through 2024, and $179 million for 2025[31]) are foregone and must be reflected in the "neutral, on average" calculation required by Cal. Pub. Util. Code § 3292(b)(1)(D).

B. CAN PG&E DIVEST THE COMMISSION OF JURISDICTION?

After A4NR served its testimony, PG&E offered the following clarification: "PG&E

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[30] January 31, 2020 PG&E Amended Plan of Reorganization, Exhibit B "IBEW Agreement," ¶ 7.

[31] A4NR-2, p. 7, lines 9 – 10.

through the Plan did not purport or intend to limit the Commission's authority to review the planned retirement of Diablo Canyon or the reasonableness of Diablo Canyon costs in a General Rate Case or other appropriate proceeding."[32] This disclaimer is disingenuous, and PG&E's professed intent is less relevant (except for evaluating compliance with Rule 1.1) than the legal effect of inserting its "continue to operate" commitment into the PoR. As made clear by the express provisions of "Article 11.1 Retention of Jurisdiction" in the PoR, questions about the interpretation and enforcement of the "continue to operate" commitment will fall within the exclusive jurisdiction of the U.S. Bankruptcy Court or U.S. District Court if the PoR becomes effective.

Even the Ninth Circuit's use of the narrow "close nexus" test—limiting the scope of a bankruptcy court's post-confirmation "related to" subject matter jurisdiction—encompasses matters "affecting the 'interpretation, implementation, consummation, execution, or administration of the confirmed plan.' " *In re Pegasus Gold Corp.,* 394 F.3d 1189, 1194 (9th Cir.2005), (quoting *Binder v. Price Waterhouse & Co. (In re Resorts Int'l, Inc.),* 372 F.3d 154, 166–67 (3d Cir.2004)). The Ninth Circuit has been more expansive in defining ancillary or pendent jurisdiction, understanding "interpretation" to include the Confirmation Order as well as the Plan, based on the logic of ancillary jurisdiction—a close cousin to "related to" jurisdiction—because it is well recognized that a bankruptcy court has the power to interpret and enforce its own orders. *In re Wilshire Courtyard*, 729 F.3d 1279, 1289 (9th Cir.2013)

Certainly PG&E, with its small army of outside counsel, knows this. When asked to reconcile the "continue to operate" commitment with PG&E's "did not purport or intend to

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[32] PG&E-8, p. 4, ¶ 4.

limit the Commission's authority" disclaimer, PG&E Corporation CEO Johnson's response was oblique: "And all we're saying in that that [sic] language is that we intend to honor our [2016] agreement. If someone who has the authority to change the agreement changes it, we will, of course, abide by that."[33] Asked whether the IBEW agreed with PG&E-8's characterization that PG&E did not intend to limit the Commission's authority to review the planned retirement of Diablo Canyon or the reasonableness of Diablo Canyon's costs, Mr. Johnson was slightly more direct: "Yes. Certainly, they understood that -- at least in my discussions with them -- that we were living up to the agreement we had made, that all the stakeholders had made, but weren't the final arbiters of the closing date."[34]

What is the IBEW stake in continued operation of Diablo Canyon? According to the testimony of Tom Dalzell, the Business Manager and highest ranking officer of IBEW Local 1245, of the "nearly 25,000 workers"[35] represented by Local 1245 (including "more than 12,000 employees of PG&E, 5,000 employees of contractors performing work for PG&E, and employees of nearly all the publicly owned electric utilities in Northern and Central California"[36]), "around 500"[37] work at Diablo Canyon. Mr. Dalzell is an individual of considerable influence, having since 2011 chaired the California Citizens Compensation Commission, which sets wages for members of the Legislature, the Governor, and other constitutional officers.[38] On cross-examination, he was uncertain whether the majority of Local

[33] Transcript (PG&E-Johnson), p. 230, lines 3 – 7.
[34] Transcript (PG&E-Johnson), p. 229, lines 17 – 22.
[35] CUE-01, p. 1, line 12.
[36] *Id.*, p. 1, lines 13 – 15.
[37] Transcript (CUE-Dalzell), p. 1258, line 19.
[38] Transcript (CUE-Dalzell), p. 1257, lines 5 – 20.

1245’s PG&E members fell above or below the $177,765 total compensation of the median PG&E employee disclosed in PG&E’s 2019 proxy statement[39] (“That might be true, but I'm not comfortable saying it's probably true.”[40]). Asked if his strategy in dealing with the PG&E bankruptcy has been to prioritize the common interests of Local 1245’s entire 12,000 PG&E membership, he responded, “I think so.”[41]

Irrespective of the significance it may attach to “around 500” positions at Diablo Canyon, the Commission should see through the clumsy PG&E-IBEW machination to throw “interpretation, implementation, consummation, execution, or administration”[42] of the Diablo Canyon “continue to operate” provision into the briar patch of the bankruptcy court, and instead focus on pre-PoR Confirmation implementation of the financial remedies (which need not prescribe a plant closing date) its ratemaking authority bestows.

C. THE ECONOMIC DEMISE OF DIABLO CANYON.

Rapid evolution in market conditions since PG&E’s 2016 announcement that it would abandon its effort to extend Diablo Canyon’s operating licenses have accelerated the plant’s economic obsolescence. Indeed, Diablo Canyon’s current financial value to PG&E customers has descended to levels that A.16-08-006 anticipated would not occur until well past 2025. PG&E bundled load represented 82% of the total load within its service territory in 2017, but suffered a decline to 59% in 2018, 47% in 2019, and is projected to erode to 43% in 2020.[43] In 2016, PG&E identified an anticipated loss of customers to Community Choice Aggregation and Direct

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[39] A4NR-X-8.
[40] Transcript (CUE-Dalzell), p. 1262, lines 6 – 7.
[41] Transcript (CUE-Dalzell), p. 1259, line 27.
[42] *In re Pegasus Gold Corp*., 394 F.3d at 1194.
[43] A4NR-2, p. 7, line 18.

Access as the primary reason to retire Diablo Canyon in 2025, but PG&E's present market share estimate for 2020 represents a collapse below even the utility's previous worst case scenario for 2025. As PG&E acknowledged in 2017, a "Low Load" scenario where PG&E retained only 44% of service territory load would reduce the need for Diablo Canyon to only 26% of the plant's output.[44]

In the meantime, the plant's above-market costs have soared. PG&E's application of the Commission's Power Charge Indifference Adjustment ("PCIA") methodology assigned above-market costs of $410 million to Diablo Canyon for 2018, $1.168 billion for 2019, and $1.258 billion for 2020.[45] Without PG&E's ability to recover these above-market costs from its dwindling number of bundled customers and the growing exit fees charged to departed load, generally accepted accounting principles would require PG&E to characterize Diablo Canyon as an impaired asset and reduce the plant's balance sheet carrying value accordingly.

ECONOMIC OBSOLESCENCE FACTORS:	2017	2018	2019	2020
PG&E bundled customer share of total PG&E service territory load	82%	59%	47%	43%
Diablo Canyon above-market costs calculated by PCIA methodology (in millions of nominal dollars)	--	$410	$1,168	$1,258

These staggering above-market costs cannot be rationalized as a defensible carbon surcharge, since purchasing $1.258 billion in allowances at the most recent cap-and-trade auction

[44] *Id.*, p. 8, lines 1 – 3.
[45] *Id.*, p. 8, lines 6 – 7.

price would acquire more than eight times the annual greenhouse gas emissions savings PG&E claims for Diablo Canyon. The plant's inability to be flexibly dispatched in response to steep daily load ramps up and down has made grid operations more difficult, and causes increased renewable curtailments as more intermittent solar and wind resources come online. And, as PG&E informed the Commission last October, physical transmission constraints on Path 26 severely restrict the contribution from plants like Diablo Canyon to incremental system reliability needs in Southern California, and the procurement ordered by D.19-11-016 will compound PG&E's expected surplus in system reliability resources.[46] PG&E's recent Form 10-K reported that Diablo Canyon output supplied 45.0% of PG&E bundled retail sales in 2019, but that the Utility also sold surplus electricity from its supply portfolio amounting to 44.6% of its bundled retail sales.[47]

PG&E Corporation Board Chair Nora Mead Brownell agreed, under cross-examination, that selling 44.6% of PG&E's electricity generation output represents "a lot of churn,"[48] adding when asked whether an electricity supply portfolio that much in excess of customer needs is consistent with PG&E's affordability objective, "I think that we need to carefully balance that. I certainly understand the nature of your question. I do believe it would be responsible to look at that."[49] PG&E Corporation CEO Johnson acknowledged in cross-examination that PG&E in 2019 sold off a sizable proportion of the output from its electricity generation and procurement portfolio,[50] because "we were long energy, as this [Form 10-K] number shows."[51]

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[46] A4NR-2, p. 9, lines 1 – 5.
[47] February 18, 2020 PG&E Corporation Form 10-K, p. 21.
[48] Transcript (PG&E-Brownell), p. 700, line 2.
[49] Transcript (PG&E-Brownell), p. 700, lines 7 – 10.
[50] Transcript (PG&E-Johnson), p. 228, line 1.
[51] Transcript (PG&E-Johnson), p. 228, lines 3 – 4.

In light of Diablo Canyon's dominant, 45% share of the electricity PG&E provided its remaining bundled customers in 2019, Mr. Johnson was asked at what percentage customer dependence on a single resource would represent too much risk. His response: "I think it depends on the system. But no more than 60 percent would be a problem, I think, somewhere in that range."[52] While outside the record of this proceeding, the California Energy Commission's current mid-case electricity demand forecast projects PG&E's bundled load to drop to 29,073 GWh in 2020, 26,555 GWh in 2021, and 25,593 GWh in 2022[53]—which would mean Diablo Canyon's anticipated annual output of 18,000 GWh will comprise 61.9%, 67.8%, and 70.3%, respectively, during the current three-year General Rate Case cycle.

Under such circumstances, does it make any sense to incur substantial new, avoidable expenses for an increasingly uneconomic plant that – because of PG&E's loss of bundled customers – can only justify about one-quarter (and perhaps even less, according to the Form 10-K disclosures for 2019 bundled load and the Energy Commission forecast for 2020 -- 2022) of its output? As described in its pending General Rate Case, PG&E is forecasting O&M expenses for Diablo Canyon of $1,039,874,000 and new capital expenditures of $84,402,000 in nominal dollars during the 2020 – 2022 General Rate Case cycle. Applying the approach taken in D.14-11-040, which limited return on rate base after the premature retirement of SONGS 2&3 to the utility cost of debt, would characterize the equity increment of return and nuclear fuel costs as avoidable. These two Diablo Canyon items would add some $160 million annually to the going-forward O&M and capital expenses. Extending the current run rate of avoidable costs to license expiration in 2025, and

[52] Transcript (PG&E-Johnson), p. 228, lines 16 – 18.

[53] January 22, 2020 California Energy Commission Electricity and Natural Gas Forecast, 19-IEPR-03 Item 231633, "CED 2019 Managed Forecast - LSE and BA Tables Mid Demand - Mid AAEE Case - CORRECTED 11c"., https://efiling.energy.ca.gov/GetDocument.aspx?tn=231633&DocumentContentId=63453

discounting at the same 3.15% rate PG&E negotiated for 66-month secured debt in the Noteholder Restructuring Support Agreement ("Noteholder RSA"[54]), these but-for-the-IBEW-Agreement avoidable costs sum to a net present value of $2.663 billion, which must be included in the "neutral, on average" ledger.

PG&E's PoR makes no attempt to reconfigure its assets and redeploy its capital (and IBEW members) to better meet the transformed needs of its electricity customers going forward. Even in the mathematically improbable scenario where PG&E's newly promised revised cost of debt calculation[55] produced sufficient ratepayer savings to neutralize the $2.663 billion in avoidable costs, the Commission should not regard the IBEW Agreement as nullifying its statutory authority or enabling avoidance of its legal duties. That portion of Diablo Canyon's net book value that does not meet the Commission's used-and-useful standard – about 74% according to PG&E's earlier assessment of departed load – must be removed from rate base, even if the plant is operating. Based upon Diablo Canyon's 2020 weighted average rate base of $2.05 billion,[56] such removal (roughly $1.52 billion) would be well within the $2.4 billion forecast variance allowed by PG&E's equity backstop commitment providers.[57]

IV. APPLYING THE NEWSOM PRINCIPLE.

The Newsom Principle specifies: "To achieve safe and reliable service and make critical safety and infrastructure investments, the emerging company's capital structure must be stable, flexible, and position the company to attract long-term capital."[58] As made clear by

[54] PG&E-1, p. 2-28, lines 5 – 7.
[55] A4NR-2, p. 10, lines 10 – 11.
[56] *Id*. p. 10, lines 16 – 17.
[57] Chapter 11 Plan Backstop Commitment Letter, ¶ 4.f.
[58] Abrams-X-05, December 13, 2019 letter from Governor Gavin Newsom to PG&E Corporation CEO William D. Johnson.

PG&E's February 18, 2020 financial disclosures, the financial underpinning of the PoR is an amalgam of overleverage (including speculative grade debt incurred by the holding company – "infused into the Utility, and accounted for as equity for Utility accounting and ratemaking purposes"[59]); insufficient new equity; excessive off-balance sheet securitizations; and extended deviation from the Commission-approved capital structure. The PoR's dependence on NOLs that Commission precedent would allocate to ratepayers (discussed above) is indispensable to the trick photography required for PG&E's Effective Date snapshot but, after the snapshot is taken, the PG&E Plan is neither stable nor flexible.

The $1.35 billion deferred obligation to the Fire Victim Trust, as well as the purloined ratepayer tax benefits from which it is to be paid, are excised entirely from PG&E's sources and uses table.[60] The need to pay debt service on the $6 billion in "Temporary Utility debt" from revenues otherwise allocable to shareholders, rather than from NOLs the Commission will apportion to ratepayers, goes wholly unrecognized. Rolling the "Temporary Utility debt" and the deferred obligation to the Fire Victim Trust into a $7 billion off-balance sheet securitization, before the approved capital structure begins to bind, would still depend on sequestering the tax benefits from ratepayers. And the music would stop, requiring a "permanent waiver in the capital structure,"[61] if the Commission does not approve the securitization – which PG&E insists is not part of the PoR currently being reviewed, anyway.

In fact, the Commission should closely scrutinize the effect of PG&E's variance from the approved capital structure. Based on the PG&E presentation slides associated with its February

[59] A4NR-2, p. 14, lines 3 -- 5.
[60] PG&E-1, p. 2-2, Table 2.1.
[61] Transcript (PG&E-Johnson), p. 267, line 18 – p. 268, line 1.

18, 2020 Form 10-K filing, PG&E's current rate base is ~$44.5 billion.[62] The approved capital structure would contemplate that rate base would be funded with $23.140 billion in common equity (52%), $21.138 billion in debt (47.5%), and $.223 billion in preferred equity (.5%). But the PoR plans to utilize $38.1 billion in debt[63] (85.6%)—$39.45 billion (88.7%) if the deferred obligation to the Fire Victim Trust is included—and, by simple subtraction (44.5 minus 38.1 minus .223), only $6.177 billion in actual equity (13.9%) and only $4.827 in actual equity (10.8%) if the deferred obligation to the Fire Victim Trust is appropriately characterized as debt. These ratios corroborate the leveraged buyout theme underlying the PoR.

But ratepayers are paying for a much more conservatively capitalized utility (or "stable, flexible, and position(ed) … to attract long-term capital" in the phrasing of the Newsom Principle). Based on the cost of capital authorized for PG&E by the Commission in D.19-12-056, PG&E is authorized to earn $3.475 billion annually on a rate base of $44.5 billion. By substituting considerably more debt for equity, the PG&E PoR is able to free up some $864 million per year at the D.19-12-056 authorized cost of capital. Although D.19-12-056's assumed cost of debt may be trued up to reflect actual experience, the PoR makes no suggestion of reducing rates to reflect the diminished role of equity in the PG&E capital structure. If current rates were recalculated to reflect the PoR capitalization, they would be $864 million lower. Instead, this money is needed to flow up to the holding company, pay down its $4.75 billion in speculative grade debt, and eventually reinstate the dividend on common stock that will enable return to a more conventional utility capitalization.

[62] PG&E-12, slide 33.
[63] PG&E-1, p. 2-2, Table 2.1.

The Commission has previously resisted the fool's gold quality of debt-is-cheaper-than-equity nostrums. Prophetically, D.19-12-056 voiced a sober grasp of the consequences flowing from overleverage: "Financial risk is tied to the utility's capital structure. The proportion of its debt to permanent capital determines the level of financial risk that a utility faces. As a utility's debt ratio increases, a higher ROE may be needed to compensate for that increased risk."[64] After noting that the applicable standard – set by *Bluefield Water Works & Improvement Company v. Public Service Commission of the State of Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944) – "is that investor owned utilities should not be rewarded with an ROE that is inflated due to imprudent actions."[65] Adopting an ROE for PG&E "at the upper end of the just and reasonable range,"[66] the Commission added, "We further observe that the 10.25% authorized ROE is significantly higher than the 9.60% average ROEs granted to United States electric utilities during 2018."[67]

PG&E's PoR substitutes $4.75 billion of sub-investment grade borrowing by the holding company for $3 billion in unused equity commitments[68] (and arguably more, as suggested by the demand in the Noteholder RSA for inclusion in $2 billion of the Backstop Commitment[69]) to avoid dilution of existing shareholders. This holding company liability will consume earnings from the Utility until it is substantially paid down, postponing the reinstatement of the holding company's common dividend that is a likely prerequisite for successful access to the

[64] D.19-12-056, pp. 25 – 26.
[65] *Id.*, p. 36.
[66] *Id.*, p. 41.
[67] *Id.*, p. 42.
[68] PG&E-1, p. 2-24, lines 11 – 14.
[69] A4NR-2, p. 14, lines 13 -- 14.

institutional equity markets after the Effective Date. The muddled status of dividend reinstatement is highlighted by PG&E's public disclosures last month:

• From the February 18, 2020 Form 10-K:

> Under the Utility's Articles of Incorporation, the Utility cannot pay common stock dividends unless all cumulative preferred dividends on the Utility's preferred stock have been paid. **Under their respective pre-petition credit agreements, PG&E Corporation and the Utility were each required to maintain a ratio of consolidated total debt to consolidated capitalization of at most 65%.** As of the Petition Date, these obligations were automatically stayed and are subject to the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court. **The DIP Facilities have no such restriction**. Additionally, **the Utility's net assets, and therefore its ability to pay dividends, are restricted by the CPUC-authorized capital structure**, which requires the Utility to maintain, on average, at least 52% equity. Due to the net charges recorded in connection with the 2018 Camp fire and the 2017 Northern California wildfires as of December 31, 2018, the Utility submitted to the CPUC an application for a waiver of the capital structure condition on February 28, 2019. The waiver is subject to CPUC approval. **The Utility is not considered to be in violation of these conditions during the period the waiver application is pending resolution**. Beginning in 2020, the Utility expects to resume payment of preferred dividends on the Utility's preferred stock, subject to the Utility's Board of Directors' approval. **PG&E Corporation does not expect to pay any cash for common stock dividends for at least the next two years**, subject to PG&E Corporation's Board of Directors' approval.[70] (emphases added)

• From the Consolidated Financial Projections filed "to assist the Bankruptcy Court in determining whether the Plan meets the feasibility test of section 1129(a)(11) of the Bankruptcy Code":[71]

> • Common dividends are assumed to be restored **once Utility equity ratio achieves 52% on a regulatory basis and are moderated to allow Holding Company debt reduction throughout the [2020 – 2024] forecast period**. This assumption does not reflect a commitment on the Board or management's part to a specific future dividend policy.

[70] February 18, 2020 PG&E Corporation Form 10-K, p. 156.
[71] PG&E-13, p. 1.

> • The Consolidated Financial Projections assume that **additional equity is raised in 2021**. This financing need may either be met **through equity issuance or maintaining Holding Company debt levels.**[72] (emphases added)

PG&E's PoR places heavy reliance on one-off accounting adjustments to obscure its anemic level of new equity and its substantial variance from the CPUC's approved capital structure:

> First, any debt used to finance the initial and annual contributions to the Wildfire Fund is to be excluded from measurement of the authorized capital structure. This debt is not used to finance assets in the Utility's rate base and should be excluded from the calculation of the capital structure. PG&E's Plan funding contemplates that the Utility would issue $2.5 billion in long-term debt to fund its contributions to the Wildfire Fund. Accordingly, per § 3292(g) that amount will be excluded from the calculation of the regulatory capital structure. Also, any after-tax charges to earnings reflecting the amortization of the initial or ongoing contributions to the Wildfire Fund that are not financed with equity must be added back to the common equity balance.
>
> Second, PG&E anticipates issuing Temporary Utility debt of $6 billion to pay wildfire claims. This debt would also not be used to finance assets in the Utility's rate base and would be excluded from the calculation of the capital structure. PG&E is not requesting that the wildfire claims be recovered from customers, and those amounts would ultimately be paid by shareholders, even if initially financed with debt in whole or in part. Accordingly, debt issued to pay claims should be excluded from the calculation of the debt portion of the capital structure. Also, the amount of the book value of equity must be increased by the after-tax amount of the claims paid that are not financed with equity, which is also equal to the after-tax amount of the debt issued to pay the claims.[73]

Although obscure about how long any borrowing under a requested $11.925 billion short-term debt authorization would be outstanding,[74] PG&E's PoR seems intent on keeping any such amounts excluded from the authorized capital calculation until refinanced with long-term debt.

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[72] *Id.*, p. 6.
[73] PG&E-1, p. 2-22, lines 7 – 28.
[74] PG&E-1, p. 2-33, lines 19 – 22, 26 – 30.

The hyperbolized nature of PG&E's recent business projections raises additional concern over the PoR's ability to attract the long-term capital required by the Newsom Principle. A common feature of over-leverage is excess reliance on super-robust growth projections to overcome a heavy burden of debt. PG&E calculates that its rate base growth has compounded annually at 6.5% over the five years from 2014 – 2018,[75] but forecasts a 38.5% increase in this compound annual growth rate to 9% during the years 2019 – 2024.[76] This includes growth in non-equity earning rate base, primarily the wildfire-related investments that have been a focus of public attention, which makes up 40% of the incremental increase between the two periods (9 – 8 = 1; 9 – 6.5 = 2.5; 1 ÷ 2.5 = .4, or 40%). This projected hyper-growth in rate base will come at a time when PG&E's sales of electricity and natural gas, measured in commodity units (and nowhere mentioned in the slide presentation) are expected to be either flat or declining, locking in a corresponding upward pressure on rates and customer dissatisfaction.

PG&E Corporation CEO Johnson acknowledged, "our largest investors are not the typical utility investors," but instead "tend to be distressed asset investors, hedge funds that are in this space."[77] As he said, "I would expect, after we exit and refinance, that most of them would exit the stock."[78] Anyone familiar with fiduciary duties to shareholders can recognize the challenge created for Mr. Johnson and the holding company and utility boards in the face of this planned exodus. As Mr. Johnson indicated, "In the first year they [current shareholders] would exit and we would be heavily looking for the traditional utility investor."[79] It does not seem impertinent

[75] PG&E-12, slide 29.
[76] *Id.*, slide 32, footnote 2.
[77] Transcript (PG&E – Johnson), p. 211, lines 9 – 14.
[78] Transcript (PG&E – Johnson), p. 211, lines 14 – 16.
[79] Transcript (PG&E – Johnson), p. 212, lines 13 – 15.

to ask, who is “we”? The potential dichotomy in interests between the two separated-by-time cohorts of equity investors, as well as the secondary priority the current PG&E boards may attach to the Newsom Principle, could not be more clear. The Commission should be particularly wary of the pump-and-dump aura of the PoR.

V. ONGOING GOVERNANCE ISSUES OF CONCERN TO A4NR.

The low priority attached to the following Diablo Canyon-related issues by PG&E’s current boards and senior management should be weighed heavily by the Commission in its Cal. Pub. Util. Code §§ 3292(b)(1)(C) determination of whether PG&E’s proposed governance structure is acceptable in light of the company’s safety history, criminal probation, recent financial condition, and other factors that the Commission should deem relevant. Low probability, high consequence events have bedeviled PG&E since at least the 2010 San Bruno explosion. The maturation of PG&E’s safety/governance culture should be judged on whether acceptable progress has been made in replacing subjective recitals of conventional wisdom with empirically-driven analytic rigor, and the degree to which PG&E has demonstrated the capability to execute on the knowledge derived from such analyses.

A. MR. JOHNSON’s PAST NUCLEAR SAFETY PERFORMANCE.

A4NR sponsored the expert testimony of David Lochbaum, the retired former director of the Union of Concerned Scientists’ reactor safety project and an author of widely acclaimed books on spent fuel storage and the Fukushima disaster. Midway through his more than two decades with the Union of Concerned Scientists, Mr. Lochbaum was invited to serve a year as a reactor technology instructor for the U.S. Nuclear Regulatory Commission (“NRC”). His testimony for A4NR analyzed NRC quarterly ratings since 2000 of all operating reactors, using nearly two dozen performance indicators coupled with findings by NRC inspectors. Mr. Lochbaum evaluated the safety performance of the reactors under Mr. Johnson's tutelage during his 18 quarters tenure as CEO of Progress Energy and his 25 quarters as CEO of the Tennessee Valley Authority ("TVA").

Mr. Lochbaum's review identified facets of Mr. Johnson's past performance that should concern the Commission as it considers the post-bankruptcy budget pressures likely to be faced during the last years of Diablo Canyon's operating licenses:

> The safety performance ranking of Progress Energy's reactor fleet (1.32) essentially matched that of the average U.S. reactor (1.33) during the 18 quarters prior to Johnson becoming Progress Energy's CEO. The safety performance ranking of Progress Energy's reactor fleet improved (1.28 from 1.32) during Johnson's tenure as CEO, but lagged the safety performance improvement achieved by the average U.S. reactor (1.21 from 1.33) during that period. The safety performance ranking of Progress Energy's reactor fleet (1.07) significantly out-performed the average U.S. reactor (1.23) during the 18 quarters after Johnson left Progress Energy. The safety performance ranking of Progress Energy's reactor fleet significantly improved over the 18 quarters after Johnson departed (1.07 from 1.28) whereas the safety performance ranking of the average U.S. reactor declined (1.21 to 1.23) during these two 18-quarter periods.[80]
>
> ***
>
> The safety performance ranking of TVA's reactor fleet (1.35) underperformed that of the average U.S. reactor (1.24) during the 25 quarters prior to Mr. Johnson becoming TVA's CEO. The safety performance ranking of TVA's reactor fleet (1.42) underperformed that of the average U.S. reactor (1.19) during the 25 quarters that Mr. Johnson was TVA's CEO. The safety performance ranking of TVA's reactor fleet worsened during Mr. Johnson's 25-quarter reign as CEO from the 25-quarter period pre-Johnson (1.42 from 1.35). The safety performance of the average U.S. reactor improved during these two 25-quarter periods (1.24 to 1.19). The safety performance ranking of PG&E's reactors (1.19) matched that of the average U.S. reactor (1.19) while Mr. Johnson was TVA's CEO and outperformed the TVA reactor fleet (1.42).[81]
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> ***

[80] A4NR-1, p. 8, line 14 – p. 9, line 8.
[81] *Id.*, p. 11, lines 9 – 14.

> While Mr. Johnson was Progress Energy's CEO, the company's nuclear reactors achieved slightly better performance ratings than they received in the comparable time period before he became CEO. But the performance rating of the average U.S. nuclear reactor improved significantly more over the two periods. In other words, while the safety performance of the Progress Energy reactors improved, it lagged or underperformed the nuclear industry's progress. After Mr. Johnson departed from Progress Energy, the company's reactors achieved and sustained top performance ratings while the performance rating for the average U.S. reactor declined slightly. While Mr. Johnson was TVA's CEO, the agency's nuclear reactors received lowered performance rating than they received in the comparable time period before he became CEO. And the performance rating of the average U.S. nuclear reactor showed marked improvement over the two periods. While Mr. Johnson was CEO of Progress Energy and then TVA, the nuclear reactors under his helm received the lowest safety performance ratings from the NRC they ever received over the two-decade history of the NRC issuing quarterly ratings.[82]

Mr. Lochbaum's testimony attributed the subpar performance at the Johnson-era Progress Energy, based upon communication with former NRC staff, to budget constraints that he characterized as similar to those confronting PG&E.[83] His testimony about the poor record during Mr. Johnson's leadership at TVA cited failures to maintain required minimum staffing levels and receipt of a Chilled Work Environment letter from the NRC suggesting workers were not free to raise safety concerns due to fear of retaliation and/or harassment.[84]

B. RISK ANALYSIS DEFICIENCIES REGARDING SPENT FUEL.

In Mr. Lochbaum's judgment, compounding the challenge faced by Mr. Johnson and PG&E is the lack of a quantitative tool to aid decision-making about interim spent fuel storage at Diablo Canyon.

> The two reactors at Diablo Canyon are supported by extensive safety studies and formal risk analyses that define the hazards as well as the design features and administrative controls intended to manage the risks — providing a solid foundation for sound decisions about allocating resources to ensure the risks continue to be properly

[82] *Id.*, p. 14, line 21 – p. 15, line 12.
[83] *Id.*, p. 25, lines 11 – 17.
[84] *Id.*, p. 12, line 6 – p. 13, line 2.

> managed. But when nuclear fuel is removed from the reactor vessels into spent fuel pools and later into dry storage systems, this interim spent fuel storage is not backed by comparable safety studies and risk analyses. Thus, there is a weaker foundation available for the decision-making needed to manage the inherent risks, and to protect workers and the public. In addition, safeguards against sabotage of nuclear fuel in storage after a nuclear plant permanently shuts down are significantly lessened or eliminated, despite the hazard. [85]

The severity of this analytic gap was on full display in the testimony of Andrew Vesey, President and CEO of the utility. Extolling the ostensibly increasing rigor of PG&E's risk analyses, Mr. Vesey explained, "risks exist in various portions of the business. If you don't have a consistent way of identifying and measuring them, then you get into a challenge when you start to allocate resources to mitigate those and so you want it all being done the same way."[86] Mr. Vesey agreed that core damage frequency was the basic metric by which PG&E evaluates risks at Diablo Canyon, but acknowledged that such calculations provide no insight into potential releases of radiation from spent fuel pools ("I don't believe so."[87]). When asked how PG&E could "quantitatively and systematically" identify (the virtue his testimony attributed to the utility's Enterprise and Operational Risk Management program[88]) spent fuel risk in the absence of a metric like core damage frequency, the methodology he described had an undeniably shoot-from-the-hip quality: "Well, I'm assuming in the process of interrogating the chief nuclear officer and going through the risks, that's evaluated. And whether that makes the ultimate risk registry or not, I'm not sure. But I assume that is the process."[89] Mr. Vesey

[85] *Id.*, p. 3, line 21 – p. 4, line 8.
[86] Transcript (PG&E-Vesey), p. 350, line 26 – p. 351, line 3.
[87] Transcript (PG&E-Vesey), p. 360, line 19.
[88] PG&E-1, p. 5-1, lines 23 – 25.
[89] Transcript (PG&E-Vesey), p. 360, line 25 – p. 361, line 2.

admitted that he didn't know if PG&E's assessment of spent fuel pool risk is primarily qualitative or primarily quantitative.[90]

Although outside the record of this proceeding, PG&E's pending application to increase its Diablo Canyon decommissioning cost estimate, A.18-12-008, indicates that the utility cancelled its 2020 offload of the spent fuel pools and has deferred further transfers of spent fuel to dry casks until 2030.[91] The Commission has been directing PG&E to accelerate such transfers since 2014[92] in order to implement a recommendation originally made by the California Energy Commission in 2008.[93]

C. FAILURE TO COMPLY WITH D.19-06-008.

To gain insight into how PG&E's new board members assess the safety risks posed by the two spent fuel pools at the Diablo Canyon, A4NR hoped to consult the minutes of the PG&E board-level Safety and Nuclear Operations ("SNO") committees (one committee exists at the holding company, one at the utility, but both have the same members[94]). D.19-06-008 requires PG&E to quarterly submit to the Commission "non-confidential versions of the minutes of all board meetings and safety committee meetings."[95] Although describing in very general terms the July 16, 2019; August 20, 2019; and September 10, 2019 meetings of the SNO Committee, PG&E's first post-D.19-06-008 filing, AL 5700-E, explained that minutes could not be provided because, "Meeting minutes for the BODs [Board of Directors] and SNO Committees

[90] Transcript (PG&E-Vesey), p. 362, line 2.
[91] A.18-12-008, PG&E-1, p. 6-1, lines 18 – 22.
[92] D.14-08-032, Ordering Paragraph 29.b.
[93] November 20, 2008, California Energy Commission, "An Assessment of California's Nuclear Power Plants: AB 1632 Report," p. 15.
[94] Transcript (PG&E-Brownell), p. 702, lines 22 – 24.
[95] D.19-06-008, Ordering Paragraph 2.

must be formally reviewed and approved by the relevant governance body prior to finalization. The timing for this process varies, and in many cases the minutes will be finalized in a different quarter than the quarter in which the meeting was held."[96]

Given PG&E's past, well-publicized history of lax safety-recordkeeping, it strains credulity that not even the new board SNO committees were sufficiently motivated to "finalize" minutes within 78, 99, and 134 days, respectively, after the September 10, 2019; August 20, 2019; and July 16, 2019 SNO meetings. Such dereliction casts doubt on the level of conviction underlying the "general guidance and direction" provided to PG&E management by the SNO members:

> • The Committee emphasized that management should work to continue to strengthen accountability and transparency in how risks inherent in the business are being managed.
>
> • The Committee reiterated the Board's expectations for creating visibility into the status of high-risk audits, endorsed use of standard methods for evaluating risks and communicating key drivers and controls, and requested that management continue to make improvements in the quality of data used for making risk mitigation decisions.[97]

Under cross-examination, PG&E Corporation Board Chair Brownell was appropriately contrite.

> I am aware of it and I can certainly comment. That has been a huge issue. Since we came to the company, we have had probably, I don't know, four or five times as many meetings. They completely overwhelmed the corporate secretary's office. So we've done a number of things. First, I outsourced the committee meeting minutes and the Board minutes to our outside counsel. It's an expensive solution but needed to be done because we can't afford to get behind. We have chosen a new corporate secretary who is restructuring the department so that we can be more timely. It's an embarrassment, frankly to me personally, as well as the company, and we respect the

[96] A4NR-X-4.
[97] A4NR-X-5, p. 2.

> Commission and our obligations. We also, frankly, respect good corporate governance and that is not a demonstration.[98]

Rather than simply viewing the compliance lapse as an indicator of poor corporate hygiene, the Commission should reflect on Mr. Lochbaum's testimony and recognize the likely skew of PG&E's blinkered approach to Diablo Canyon risk assessment. The AL 5700-E summation reported that a Diablo Canyon-safety discussion took place at the September 10, 2019 meeting:

> "Ms. Zawalick then presented a report on risk management activities associated with a potential nuclear core-damaging event, a key enterprise risk addressed in the Companies' EORM [Enterprise and Operational Risk Management] program. She described the risk, and discussed, among other things, risk controls and mitigations, and independent oversight and monitoring of risk controls. Among other matters, the Committee members discussed risk drivers, and risk controls and mitigations."[99]

But there is no indication in AL 5700-E of whether Ms. Zawalick's report explained that most of the radiation source term at Diablo Canyon is concentrated in the spent fuel pools, and that the core damage frequency methodology used to evaluate the plant in PG&E's EORM program is inapplicable to spent fuel pool risk. Meeting minutes, with written briefing materials attached, would allow the Commission and the public better insight into the thoroughness of the information provided to the PG&E directors serving on the SNO Committee. Sunlight is the best disinfectant, as Lewis Brandeis memorably pointed out more than a century ago. Timely sunlight is best of all.

D. LACKLUSTER COMMITMENT TO COST CONTROL.

With credibility-erasing guile, PG&E has put forward a detail-less promise of $4.9 billion

[98] Transcript (PG&E-Brownell), p. 703, lines 10 -- 28.
[99] A4NR-X-5, pp. 1 – 2.

of "Process Redesign" savings through 2025, to which it adds $1.6 billion in monetization of excess renewable energy, surplus property disposition, and headquarters redesign to arrive at an average annual reduction of $1 billion in operational costs through 2025.[100] Notably, this claim is not made in the PoR or any regulatory filing (where it might be enforceable) but in a slide presentation to investors, who are presumably accustomed to hearing such puffery from bankrupts. The Commission should not be fooled, however, and the admissions made by PG&E's senior management in cross-examination (amidst specious dissembling about affordability) confirm the presence of bounteous quantities of low-hanging, unpicked, cost-reduction fruit.

PG&E's witnesses were well-schooled in the rhetorical benefit of repeating variations on the word affordable as a corporate mantra, 34 times in the span of 275 pages of prepared testimony. Yet none was willing to characterize PG&E rates as "affordable" in comparison to other electric utilities in the United States, and most were steeped in the perspective that PG&E rates may be high but bills are low—implicitly claiming credit for a temperate climate (a non-factor for industrial customers) as a managerial accomplishment. PG&E Corporation CFO Wells professed to be proud that "the company's total bills are about 30 percent less than the national average,"[101] but when asked about rates, acknowledged, "They're about a third higher on a rate basis."[102] Pressed on whether his customers consider PG&E rates affordable, he admitted, "I think many have expressed concerns around it."[103]

[100] PG&E-12, slide 35.
[101] Transcript (PG&E-Wells), p. 561, lines 10 – 11.
[102] Transcript (PG&E-Wells), p. 561, lines 14 – 15.
[103] Transcript (PG&E-Wells), p. 562, lines 7 – 8.

PG&E Corporation CEO Johnson testified, “Affordability is a particular interest of mine. Particularly given where I come from, Appalachia.”[104] He said, “There are certain things that are going to affect your price, your rate, your cost. But quantitatively, we can do everything we can to make sure that that price is reasonable.”[105] Asked how PG&E tracks whether the rates it charges its customers are reasonable, Mr. Johnson replied, “Well, we do look at the rates of other utilities. But we also look at our own spending and our own costs to make sure that we're doing the right things for customers … Do we have a program to make sure that we're being as reasonable as we can in our spending? Yes, every day.”[106]

Mr. Johnson testified that the PG&E that emerges from bankruptcy “will be a changed company with an enhanced focus on safety improvement, customer welfare, and operational excellence.”[107] He explained that cost is certainly one of the criteria the utility industry uses to measure the “operational excellence” of electricity generation,[108] that he is sure PG&E does so,[109] and that he has personally looked at the cost of production from nuclear assets.[110] Utility CEO Vesey noted, “Typically, within the utility organization, the driver for affordability comes down to effectiveness and productivity.”[111] He added that within the utility, affordability “has to do with making sure that we're operating as efficiently as possible and not incurring costs that then have to be translated into recovery with our customers.”[112]

[104] Transcript (PG&E-Johnson), p. 192, lines 6 – 8.
[105] Transcript (PG&E-Johnson), p. 219, line 28 – p. 220, line 3.
[106] Transcript (PG&E-Johnson), p. 219, lines 7 – 10, 19 – 21.
[107] PG&E-1, p. 1-1, lines 23 – 26.
[108] Transcript (PG&E-Johnson), p. 223, lines 26 – 27.
[109] Transcript (PG&E-Johnson), p. 224, line 1.
[110] Transcript (PG&E-Johnson), p. 224, lines 8 – 10, 14.
[111] Transcript (PG&E-Vesey), p. 370, lines 13 – 16.
[112] Transcript (PG&E-Vesey), p. 373, lines 19 – 23.

As Mr. Vesey elaborated:

> So I think the fact that the prices are high is one element. The way we translate that into our tariffs, the way we continue to prosecute our work, the way we're much more cautious about how we pursue the remedies knowing that our cost level is high, that impacts the way we think about the way we make decisions and how we have to find more effective ways of doing it whether that's process improvements or technology improvements.[113]

Mr. Vesey was asked whether the cost reduction steps that he has initiated to achieve greater efficiencies have extended to reviewing utility-owned generation for cost-related retirement. His answer was revealing:

> In a sense we haven't started that review yet. Because, as I said, one of my major focuses in coming was not to cause disruption but to get through fire season safely and then start to develop hypothesis about the changes coming.
>
> But I would say that a very rigorous cost review would be part of everybody's responsibility of all my direct reports on the operating side of the business. Nobody would be excluded from that.[114]

He indicated he has not been involved in any review of the cost-effectiveness for PG&E customers of continuing to operate Diablo Canyon, and is not aware of any such effort having been undertaken.[115]

VI. ASSIGNED COMMISSIONER RULING'S PROPOSALS.

A4NR has no comments at this time on the Assigned Commissioner Ruling's Proposals.

VII. CONCLUSION.

PG&E has squandered the exclusivity opportunity afforded it in bankruptcy to assemble a responsible PoR. Instead—by prioritizing the non-dilution and early exit of existing

[113] Transcript (PG&E-Vesey), p. 374, lines 18 – 28.
[114] Transcript (PG&E-Vesey), p. 375, lines 6 – 17.
[115] Transcript (PG&E-Vesey), p. 375, lines 22 – 24.

shareholders—the PG&E PoR is nothing more than a textbook, junk-financed, leveraged buyout that makes a mockery of the Newsom Principle. PG&E's contrived snapshot of Effective Date rate neutrality relies upon filched tax benefits and other uncompensated ratepayer subsidies. No consideration has been given to reorganization of the company into a viable, cost-efficient business structure capable of providing (and financing) essential utility services going forward. By cynically using wildfire victims as human shields, PG&E expects its brinkmanship can lever a June 30, 2020 statutory deadline into yet another regulatory capitulation. The Commission cannot lawfully make the findings required by Cal. Pub. Util. Code §§ 3292(b)(1)(C), (D), and (E), and is left with no recourse other than rejection of the PoR.

Respectfully submitted,

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Date: March 13, 2020

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ALLIANCE FOR NUCLEAR RESPONSIBILITY