

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

Petition of the City and County of San Francisco for a Valuation of Certain Pacific Gas & Electric Company Property Pursuant to Public Utilities Code Sections 1401-1421.

Petition 21-07-012  
(Filed July 27, 2021)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) BRIEF ADDRESSING THE  
COMMISSION REVIEW REQUIRED BY PUBLIC UTILITIES CODE SECTION 851**

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## **SUMMARY OF PG&E'S RECOMMENDATIONS**

Pursuant to Rule 13.2 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") provides this Summary of Recommendations in support of its Brief Addressing The Commission Review Required By Public Utilities Code Section 851:

1. The Commission should determine that the City and County of San Francisco ("CCSF") cannot take PG&E's assets providing electric service to customers in San Francisco unless and until CCSF obtains Commission review and approval under Public Utilities Code Section 851.
2. The scope of Commission review under Section 851 of a proposed taking by CCSF of PG&E's assets will include consideration of all aspects of the general "public interest" standard, including consideration of the factors identified in Section 854 and Section 854.2 and whether the proposed taking would be fair and reasonable to affected PG&E employees.
3. The appropriate timing and process is: (1) CCSF must certify a final Environmental Impact Report ("EIR"), as the California Environmental Quality Act ("CEQA") requires; (2) if the EIR endorses a project to condemn specified PG&E assets, the Commission should determine the just compensation due for CCSF's taking; (3) if CCSF is willing to pay said amount, CCSF should initiate a judicial condemnation proceeding; and (4) if the Superior Court enters a judgment of condemnation, the Commission should evaluate whether the taking would be in the public interest.

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**I. INTRODUCTION**

Pursuant to Ordering Paragraph 6 of the California Public Utilities Commission’s (“CPUC” or “Commission”) June 24, 2022 Scoping Memo, Pacific Gas and Electric Company (“PG&E”) respectfully submits this brief.<sup>1</sup> The Scoping Memo identifies as Issue 6: “The scope of Commission review required by Pub. Util. Code § 851, including” (1) whether the Commission has jurisdiction to require a Section 851 application in relation to CCSF’s proposed condemnation; (2) the timing and process to complete the section 851 review; and (3) whether such review includes review of wildfire mitigation costs or other additional costs.<sup>2</sup>

**II. SUMMARY OF PG&E’S POSITION**

1. Pursuant to Public Utilities Code Section 851,<sup>3</sup> the Commission has jurisdiction to, and indeed *must*, review any potential transfer to the City and County of San Francisco (“CCSF”) of PG&E’s electric service assets in San Francisco, including a transfer pursuant to a

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<sup>1</sup> P.21-07-012, Assigned Commissioner’s Scoping Memo and Ruling (June 24, 2022) (“Scoping Memo”) at 9 (Ordering Paragraph 6).

<sup>2</sup> Scoping Memo at 4 (Issue 6).

<sup>3</sup> Statutory references are to the Public Utilities Code unless otherwise indicated.

Superior Court judgment of condemnation. As amended by Senate Bill (SB) 550 in 2019, Section 851 unambiguously requires Commission approval prior to a transfer of assets to a municipality, including an involuntary transfer pursuant to a judgment of condemnation. In evaluating whether to approve such a transfer, the Commission must consider whether CCSF's taking of PG&E's electric assets would be in the public interest.

2. The scope of the Commission's public interest review under Section 851 encompasses consideration of PG&E's and CCSF's potential future management and operations of the assets CCSF proposes to take. The Commission traditionally has evaluated all potential public interest impacts of an asset transfer under Section 851, and there is even more reason to do so in this setting. Section 854, subsections (c) and (d), identify a number of public interest factors in change-in-control transactions that should inform the scope of the Commission's public interest review here.

CCSF has the burden of demonstrating that its condemnation of PG&E's assets would be in the public interest, considering the impacts both on San Francisco residents and on the remainder of PG&E's customers. The Commission's public interest review should include analysis of CCSF's ability to reliably operate the assets and the potential negative impacts of condemnation on customers both within CCSF and in the remainder of PG&E's system. The condemnation would entail not only significant one-time costs and disruptions, but also ongoing increased costs, such as from lost efficiencies and economies of scale. The Section 851 review should also address the effect of condemnation on the Commission's ability to pursue public policy objectives, and the ability to spread costs, including wildfire mitigation costs, across the broader customer base. Consideration of the impact of the condemnation on PG&E employees is part of the scope of the required review, but far from the only consideration.



3. The appropriate timing and process is as follows: first, CCSF must certify a final Environmental Impact Report (“EIR”), as the California Environmental Quality Act (“CEQA”) mandates; second, if the EIR endorses a project to condemn specified PG&E assets, the Commission should determine the just compensation due to PG&E for CCSF’s taking; third, if CCSF is willing to pay said amount, CCSF should initiate a judicial condemnation proceeding; and fourth, if the Superior Court enters a judgment of condemnation, the Commission should evaluate whether the taking would be in the public interest. As discussed in PG&E’s motion to dismiss or stay, filed concurrently, the Commission should not proceed with a valuation proceeding unless and until CCSF certifies a final EIR, because CCSF cannot define the assets it will take—or even whether it will pursue the taking at all—until the process under CEQA is complete. If and when the fourth step of the process is reached, various procedures are available to initiate a Commission review under Section 851, potentially including an application by CCSF or an Order Instituting Investigation by the Commission.

### **III. BACKGROUND**

On July 27, 2021, CCSF filed the pending Petition pursuant to Sections 1401-1421, requesting that the Commission determine just compensation for CCSF’s potential taking from PG&E of electric transmission and distribution assets PG&E uses to provide service to its customers in San Francisco.<sup>4</sup>

On September 14, 2021, PG&E filed a motion requesting that the Commission exercise its discretion to decline to hear the Petition on three grounds.<sup>5</sup> First, the Commission should not

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<sup>4</sup> See P.21-07-012, Petition of the City and County of San Francisco for a Valuation of Certain Pacific Gas & Electric Company Property Pursuant to Public Utilities Code Sections 1401-1421 (July 27, 2021) (“Petition”), ¶¶ 89-90.

<sup>5</sup> P.21-07-012, PG&E’s Motion for the Commission to Exercise Discretion to Decline to Entertain the Petition (Sept. 14, 2021) (“PG&E’s Motion”).

waste resources on a valuation proceeding if CCSF ultimately will be unable to obtain the Commission's approval of CCSF's proposed acquisition pursuant to Section 851. Second, CCSF has not expressed a firm commitment to take and pay for the assets pursuant to any Commission valuation. Third, a valuation proceeding will be a time-consuming and resource-intensive distraction from the Commission's and PG&E's key priorities, including safety and affordability.

On June 24, 2022, the Assigned Commissioner issued a Scoping Memo and Ruling in this proceeding. The Scoping Memo sets forth the issues that the parties should address and the schedule of the proceeding.<sup>6</sup> Issue 6, quoted above, addresses Section 851 review and identifies sub-topics relating to that review.<sup>7</sup> The Scoping Memo orders the parties to file briefs addressing Issue 6.<sup>8</sup> The Scoping Memo also notes that at the Prehearing Conference, PG&E proposed to address Section 851 issues prior to valuation. The Scoping Memo, however, rules that "the scope of this proceeding should only consider the specific issues included relating to a Section 851 review," and "resolution of the Section 851 review need not occur prior to resolution of the valuation issues."<sup>9</sup> The Scoping Memo states that PG&E's motion for the Commission to exercise discretion to decline to entertain the Petition is pending review.<sup>10</sup>

Concurrently herewith, PG&E is filing a motion to dismiss without prejudice, or alternatively stay, CCSF's petition as premature and improvident. The motion explains that shortly after the Commission issued the Scoping Memo, the San Francisco Planning Department

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<sup>6</sup> Scoping Memo at 3.

<sup>7</sup> *See supra* at 1.

<sup>8</sup> Scoping Memo at 5, 6, 9-10.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 2.

informed CCSF that CEQA mandates an EIR for CCSF's proposed condemnation.<sup>11</sup> In PG&E's motion, PG&E contends that the Commission should not proceed with valuation until CCSF certifies a final EIR. First, CCSF cannot specify the assets it will take until the EIR process is complete, because CEQA requires consideration and potential adoption of alternatives and mitigation measures associated with the proposed taking. This process likely will result in changes to the scope of assets that CCSF seeks to take and associated severance costs. As a result, the valuation proceeding should be deferred because before an accurate valuation can be performed, the exact assets in question should be identified with sufficient specificity. Second, because CEQA requires CCSF to evaluate the "no project" alternative, it bars CCSF from committing to taking PG&E's assets. Third, the CEQA process is likely to continue well into 2024 or beyond. Even if the Commission determined the valuation of the assets CCSF might tentatively identify (which the Commission should not do), CCSF will not be able to pursue condemnation of PG&E's assets within 60 days of the Commission's valuation decision, which the Scoping Memo schedules for the fourth quarter of 2023. As a result, the valuation proceeding will become moot despite the enormous expenditure of resources it will require.

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<sup>11</sup> P.21-07-012, PG&E's Motion to Dismiss or Stay the Petition as Premature (Aug. 23, 2022) ("PG&E's Motion to Dismiss or Stay").

IV. **ANALYSIS OF THE SCOPE OF COMMISSION REVIEW UNDER SECTION 851**

A. **Under Section 851, The Commission Has Jurisdiction To, And Must, Approve Any Transfer To CCSF Of PG&E's Electric Service Assets In San Francisco**

1. **The Language Of Section 851 Requires Commission Approval**

The Commission's jurisdiction and duty to approve any CCSF taking of PG&E's assets under Section 851 is clear from the plain text of the statute. Subdivision (a) of Section 851 states:

A public utility ... shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder ... without first having ... secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000) ... .<sup>12</sup>

Section 851(b)(1) further states that “[s]ubdivision (a) shall apply to any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2.”<sup>13</sup> Section 854.2(b)(1)(F), in turn, describes “[a] voluntary or involuntary change in ownership of assets from an electrical or gas corporation to ownership by a public entity.”<sup>14</sup> The plain meaning of an “involuntary change ... to ownership by a public entity” includes any condemnation of utility assets by a government entity, such as CCSF, that (as here) is opposed by the utility.

Together, the language of these provisions dictates that the Commission *must* review under Section 851 any proposed transfer of utility assets to CCSF.

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<sup>12</sup> Pub. Util. Code § 851(a).

<sup>13</sup> Pub. Util. Code § 851(b)(1).

<sup>14</sup> Pub. Util. Code § 854.2(b)(1)(F).

## 2. Legislative Background And Context Support That Commission Approval Is Required

The legislative background and context of Section 851(b) confirm the plain meaning of the statutory text. The Legislature enacted Section 851(b) in 2019 as part of SB 550. The Legislative Counsel’s Digest for SB 550, which is “a primary indication of legislative intent,”<sup>15</sup> explained that pre-existing law limited Section 851 so that it applied only to transfers from a public utility to “any other public utility” and excluded transfers of assets to a non-utility government entity from Commission review.<sup>16</sup> The Digest stated that SB 550 would change the law because it “would explicitly require the commission to approve or reject any voluntary or involuntary change in ownership of assets from an electrical or gas corporation to ownership by a public entity.”<sup>17</sup>

Other legislative materials also confirm that the statute directs the Commission to review condemnations. Assembly Floor Analysis states that the bill “[s]pecifically require[s] that the CPUC review the sale of an asset by a public utility to a public entity, which is intended to include locally owned public utilities (POUs), whether the asset is being sold voluntarily *or involuntarily (eminent domain)*.”<sup>18</sup> Senate Floor Analysis likewise explains that “[t]he growing interest of municipalities to purchase the distribution infrastructure of electrical corporations was

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<sup>15</sup> *Souvannarath v. Hadden*, 95 Cal. App. 4th 1115, 1126 n.9 (2002).

<sup>16</sup> SB 550, Legislative Counsel’s Digest (Oct. 2, 2019), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB550](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB550). The pre-existing law was expressed in *People ex rel Public Utilities Commission v. City of Fresno*, 254 Cal. App. 2d 76 (1967), which held that the Commission did not have authority to review a municipal condemnation.

<sup>17</sup> *Id.*

<sup>18</sup> SB 550, Assembly Floor Analysis (Sept. 6, 2019), [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200SB550](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB550), at 1 (emphasis added).

the primary transaction of concern” motivating the bill.<sup>19</sup> While the plain language of the statute is clear standing alone, this legislative history underscores that Section 851(b) mandates Commission review of a municipal condemnation like that proposed by CCSF here for consistency with the public interest.

**B. The Wide-Ranging Scope Of Section 851 Review**

The Commission’s review under Section 851 must evaluate whether CCSF’s proposed taking of PG&E’s assets would serve the broader public interest. It is well-established that “[t]he primary standard used by the Commission to determine if a transaction should be authorized under Section 851 is whether the transaction will serve the broader public interest.”<sup>20</sup>

In conducting this review, the Commission must evaluate the effects of the condemnation on both CCSF and PG&E customers, including the adequacy of service, rates, and other impacts on ratepayers. Importantly, this Commission has already determined that “[t]he design of PU Code § 851 is to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result.”<sup>21</sup> “The obvious purpose

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<sup>19</sup> SB 550, Senate Floor Analyses (Sept. 12, 2019), [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200SB550](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB550), at 5; *id.* (CPUC review “include[s] any transfer that may be entailed in a transaction to municipalize a portion of an IOU’s service territory”).

<sup>20</sup> D.04-07-023. Importantly, Commission decisions like this one refer to the standard for review under Section 851 (without specifying Section 851, *subdivision (a)*) because the language that is currently located in 851(a) was previously the whole of Section 851. SB 550 (2019), which added the requirement for the Commission to review condemnations, also introduced subdivisions to Section 851 for the first time.

<sup>21</sup> D.95-10-045, 62 CPUC 2d 160 (quoting D.94-01-041, 53 CPUC 2d 116); *see also* D.03-04-032 (to determine whether proposed transaction will adversely affect public interest, Commission evaluates “whether a proposed sale would transfer utility property to persons incapable of delivering adequate service at reasonable rates and whether the utility could continue to deliver adequate service at reasonable rates with only the remaining property”).

of [section 851] is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action as a condition to the transfer as the public interest may require.”<sup>22</sup> In applying that standard, the CPUC has considered, among other factors, “whether [the utility’s] ratepayers would be put at undue risk” and whether its customers would be harmed by the transaction under review.<sup>23</sup>

As the party seeking Commission approval, CCSF will bear the burden to prove that the condemnation would be in the public interest,<sup>24</sup> including that the transaction would not “interfer[e] with the utility’s operation or affect[] service to utility customers.”<sup>25</sup>

Section 851(b)(2) adds a further element to the Commission’s review of the acquisition of assets by a municipality. Section 851(b)(2) states: “For any transaction described in [section 854.2(b)(1)(F)], as part of its review under subdivision (a), the commission shall determine whether the transaction is fair and reasonable to affected public utility employees, including both union and nonunion employees.”<sup>26</sup> This provision imposes an additional obligation on the Commission. It does not supplant or limit the broader review required by Section 851(a), but instead makes an evaluation of employee fairness “part of” the Commission’s standard public interest review under subdivision (a). Indeed, the Legislative Counsel’s Digest notes that SB 550 would “require the commission to determine whether [a condemnation] is fair and reasonable to

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<sup>22</sup> D.95-10-045, 62 CPUC 2d 160.

<sup>23</sup> D.00-06-005, at 2, 4.

<sup>24</sup> See D.04-03-036 (COL 1) (stating that the transaction proponent, there the public utility, “bears the overall burden of proof that the proposed transaction is in the public interest and will not interfere with the right of the public to adequate service at reasonable rates.”); cf. D.03-04-032 (COL 11).

<sup>25</sup> D.02-01-058.

<sup>26</sup> Pub. Util. Code § 851(b)(2).

the affected public utility employees *as part of* that review,” ensuring that such impacts would be considered *in addition to* the broad public interest review required by Section 851.<sup>27</sup>

In conducting a public interest review under Section 851 in this proceeding, the Commission should be guided by the factors identified by the Legislature in Section 854. CCSF proposes to condemn the entirety of PG&E’s electric transmission and distribution assets that PG&E uses to provide service to its customers in San Francisco. As such, CCSF’s plan is tantamount to a change in control of PG&E’s electric system in San Francisco. Section 854 identifies the factors relevant to the meaning of the “public interest” standard. Those factors are relevant to the Commission’s 851 review and should be considered in evaluating whether CCSF’s takeover of PG&E’s assets would be in the public interest.

Section 854 sets forth a series of factors the Commission should consider in determining whether a change in control is in the public interest:

- (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
- (2) Maintain or improve the quality of service to public utility ratepayers in the state.
- (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.
- (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
- (5) Be fair and reasonable to the majority of all affected public utility shareholders.
- (6) Be beneficial on an overall basis to state and local economies and to the communities in the area served by the resulting public utility.
- (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.

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<sup>27</sup> SB 550, Legislative Counsel’s Digest (Oct. 2, 2019), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB550](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB550) (emphasis added).



- (8) Provide mitigation measures to prevent significant adverse consequences that may result.<sup>28</sup>

Effective July 1, 2021, Section 854 further directs the Commission, in evaluating certain change in control transactions, to consider:

- (A) A safety management system;
- (B) A comprehensive safety plan that includes systemwide strategic approach for the safety of both employees and the public;
- (C) Plans to maintain or improve the records of the electrical corporation's electric plant or gas corporation's gas plant, including necessary audits to update incorrect or incomplete records of the electrical or gas corporation;
- (D) Metrics to measure safety that are complete and drive appropriate behavior;
- (E) An appropriate evaluation of safety expertise in the list of qualifications used in selecting corporate leadership;
- (F) Active audits for safety controls;
- (G) A nonpunitive system for reporting potential safety incidents to the Commission.<sup>29</sup>

The Commission also should consider the factors set forth in Section 854(b), which requires the Commission to find, before authorizing a change in control of certain utilities, that the transaction would:

- (1) Provide short-term and long-term economic benefits to ratepayers.
- (2) Equitably allocate, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders

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<sup>28</sup> Pub. Util. Code § 854(c). Section 854(c) requires the Commission to consider these factors before authorizing a change involving a party with more than \$500 million in gross annual California revenues. The statute codifies factors the Commission had considered in conducting public interest reviews (*see* D.01-06-007; *cf.* D.02-12-068), and the Commission has discretion to consider these factors even when the statute does not apply (*e.g.*, D.05-11-029 (Conclusion of Law ("COL") at 8); D.06-04-074).

<sup>29</sup> Pub. Util. Code § 854(d)(1). Section 854(d)(1) applies to any change in control transaction involving a party with California revenues exceeding \$400 million. The Commission has discretion to consider the safety impacts of all its decisions. *E.g.*, D.18-10-029.

and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.

- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.
- (4) For an electrical or gas corporation, ensure the corporation will have an adequate workforce to maintain the safe and reliable operation of the utility assets.<sup>30</sup>

The Commission must consider the need to “attach conditions to a transaction in order to protect and promote the public interest,” “[w]here necessary and appropriate.”<sup>31</sup>

The Commission has “broad discretion” when performing the Section 851 review and imposing appropriate conditions on any approval.<sup>32</sup> As a result, the scope of its review is typically broad and all-encompassing. In D.01-06-007, for example, the Commission evaluated a telecommunications company’s sale of 32 telephone exchanges to another telecommunications company. Its decision—over 100 pages in length—identified ten discrete considerations that informed its review, including the proposed sale’s effects on quality of service, quality of management, utility employees, utility shareholders, local economies and communities, the jurisdiction and regulatory authority of the Commission, competition, and the environment, as well as whether the proposed transaction provided for mitigation measures to prevent significant

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<sup>30</sup> Pub. Util. Code § 854(b).

<sup>31</sup> D.04-07-023.

<sup>32</sup> D.05-01-008, at 2.

adverse consequences that might otherwise result.<sup>33</sup> The Commission also attached seven specific conditions to its approval, which it set forth in a separate appendix.<sup>34</sup>

The Commission's public interest review here will likely be far more comprehensive and resource-intensive than its review in D.01-06-007 because of the momentous nature of the transaction at issue. If CCSF pursued condemnation, it would represent the largest eminent domain action in California history. The gravity of the responsibility that CCSF would purport to assume demands the Commission's close and careful scrutiny. The wide range of actual and potential negative impacts on PG&E's system and customers outside of San Francisco will also be a critical part of the public interest determination, entailing extensive Commission analysis.

To determine whether CCSF can carry its burden of demonstrating that it is capable of providing adequate, reliable, affordable, and safe service to the 870,000 residents of San Francisco that PG&E currently serves, and preventing harm to other California residents, the Commission will need to address every aspect of CCSF's purported plan to manage, operate, and maintain the assets currently belonging to PG&E. PG&E will raise serious concerns about CCSF's qualifications to operate an electrical system in San Francisco and about the potential impacts on reliability, safety, employees, rates and financial considerations, and policy

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<sup>33</sup> D.01-06-007. The Commission noted that the specified criteria resembled the criteria in Section 854(c). The Commission stated that although it was not required to apply the Section 854(c) criteria, they "provide[d] a useful framework."

<sup>34</sup> *Id.*

objectives.<sup>35</sup> PG&E previewed some of these considerations in its motion asking the Commission to exercise discretion to decline to entertain the petition,<sup>36</sup> and recaps them here.

Workforce considerations. The Commission’s review must address the effect on PG&E’s employees, both as part of the overarching public interest standard and as specifically required by the employee-fairness provision of Section 851(b)(2). Commission decisions addressing Section 854(c), which identifies employee fairness as a criterion for approval of certain mergers and acquisitions, are instructive: Those decisions have considered “how the proposed transfer will affect jobs, pay, and benefits,”<sup>37</sup> including the effect on overall staffing needs and the number of employment opportunities.<sup>38</sup>

Unions representing PG&E’s workers oppose the proposed acquisition because of concerns about potential disruptions to employee pensions and other contractual rights.<sup>39</sup> PG&E and its unions (notably, IBEW Local 1245, which is PG&E’s largest union) will demonstrate that CCSF’s acquisition of PG&E’s electrical system in San Francisco would not be in the best interests of PG&E’s current employees because it could jeopardize their expectations about future employment and terms of employment over the medium and long term. CCSF will bear

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<sup>35</sup> A separate and equally important consideration that must be addressed by the Commission relates to the likely impact of the proposed asset transfer on remaining PG&E customers, both those impacted locally and directly by the severance of PG&E’s system and the remainder, who will see rate and other service and operational impacts.

<sup>36</sup> PG&E’s Motion at 11-18.

<sup>37</sup> D.06-02-033.

<sup>38</sup> D.97-07-060, 73 CPUC 2d 600; D.98-08-068, 81 CPUC 2d 704.

<sup>39</sup> PG&E’s Motion at 15 (quoting J.D. Morris, *PG&E Union Mounts Formidable Opposition to SF Takeover Attempt*, San Francisco Chronicle (Sept. 27, 2019), <https://www.sfchronicle.com/business/article/PG-E-union-mounts-formidable-opposition-to-SF-14471912.php>).

the burden to demonstrate why its acquisition would not harm the interests of PG&E's employees.

The opposition of PG&E's unions raises serious doubts about whether PG&E's employees would be willing to join CCSF's workforce, due to the anticipated unfavorable effects of a CCSF acquisition on the terms and conditions of employment. Accordingly, CCSF will also need to prove that it has a workable plan to retain or attract sufficient employees to safely and reliably operate the electrical system in San Francisco. If CCSF intends to hire new employees, CCSF will need to demonstrate how it plans to recruit, train and integrate those workers given its own lack of experience and familiarity with its new and profound obligations. CCSF will face an extraordinary uphill battle in establishing that it can (a) serve the public interest with regard to PG&E's existing employees, and (b) fulfill the workforce quantity and quality needs of the San Francisco system, especially because (as PG&E previously noted) CCSF is already struggling to hire qualified workers for its existing operations (i.e., Muni); likewise, other municipal utilities have faced significant challenges in "acquiring and building the knowledge base to operate the utility."<sup>40</sup>

Reliability. The Commission has a continuing obligation to ensure the safe and reliable delivery of California's electric energy,<sup>41</sup> which affects its review in Section 851 proceedings.<sup>42</sup>

The Legislature found that "[c]hanges in ownership or control of an electrical corporation or gas

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<sup>40</sup> PG&E's Motion at 16 n.50 (quoting Synapse Energy Economics, Inc., An Analysis of Municipalization and Related Utility Practices, at 3 (Sept. 30, 2017), <https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/An%20Analysis%20of%20Municipalization%20and%20Related%20Utility%20Practices.pdf>).

<sup>41</sup> D.01-03-013; Pub. Util. Code § 362(a).

<sup>42</sup> D.04-10-036; D.97-04-042, 71 CPUC 2d 639 (Finding of Fact ("FOF") 5).

corporation may create uncertainty regarding the safe, efficient, and continuous provision of safe and reliable electrical and gas service to California customers, leading to economic instability.”<sup>43</sup>

Here, the Section 851 review will need to address substantial concerns about CCSF or the San Francisco Public Utilities Commission’s (“SFPUC”) ability to steward the electric transmission and distribution system currently serving San Francisco residents, which could affect the reliability of electrical service. As just noted, serious concerns exist about CCSF’s ability to recruit and retain qualified employees. PG&E’s assets include unusual architecture, particularly in the Financial District, where it operates a network system. PG&E specifically designed this architecture to include redundancy that promotes reliability, but its operation and maintenance also requires highly-specialized expertise and experience. CCSF employees lack such expertise and experience.

Additional questions exist regarding CCSF and SFPUC’s managerial capabilities. The scale and complexities of the assets CCSF proposes to condemn far exceed those that SFPUC currently manages. CCSF would need to show that it could supervise and direct complex capital projects, future planning, and emergency response and preparedness.

Safety. As noted, the Legislature has found that changes in ownership may create uncertainty regarding the continuous provision of safe service.<sup>44</sup> CCSF’s lack of experience in operating an electrical system on this scale raises serious doubts about whether and how CCSF

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<sup>43</sup> Pub. Util. Code § 854.2(a)(3); *see also* Pub. Util. Code § 854.2(a)(5) (“The state has a compelling interest in ensuring that when there is a change in the ownership or control of an electrical corporation . . . , the new employer maintains a qualified and knowledgeable workforce with the ability to ensure safe, reliable, and continuous service to California customers and communities”).

<sup>44</sup> Pub. Util. Code § 854.2(a)(3).

could become sufficiently competent to safely operate and maintain electrical service.<sup>45</sup> CCSF also will need to establish that managing a complex electric distribution system would not undermine its ability to manage the many other services, people, departments and finances that CCSF currently supervises. Harm to CCSF's other responsibilities would support a finding that CCSF's proposed condemnation would be adverse to the public interest. And CCSF would need to show that its taking of PG&E's assets would not negatively impact PG&E and the Commission's ongoing safety efforts and objectives.<sup>46</sup>

Wildfire mitigation costs. The Section 851 proceeding will involve review and consideration of the impact of the proposed transaction on wildfire mitigation efforts and related costs.<sup>47</sup> If CCSF succeeds in taking PG&E's assets, PG&E would have fewer customers among whom to spread the costs of the substantial wildfire mitigation measures necessary throughout PG&E's service territory.<sup>48</sup> Wildfire costs would be shifted to more rural areas that already bear substantial burdens from wildfire risk and may have less resources available to afford higher rates. That effect could multiply and reverberate if CCSF's condemnation led to similar eminent domain efforts by other municipalities with lower wildfire risks.

Additionally, the reduction in state and local tax revenues caused by CCSF's proposed takeover could diminish the government resources available to fund wildfire-related policy initiatives, leading to greater strain on the Commission and on investor-owned utilities.

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<sup>45</sup> See PG&E's Motion at 11-12.

<sup>46</sup> As an illustration, PG&E regularly deploys resources across its service territory to respond to emergency conditions, such as weather events. CCSF has no similar resources to deploy in cases of emergency. The CPUC would need to consider such safety considerations in evaluating whether CCSF's proposed acquisition of PG&E's assets would serve the public interest.

<sup>47</sup> See Scoping Memo at 4 ¶ 6.c ("Whether such review includes review of wildfire mitigation costs, or other additional costs").

<sup>48</sup> P.21-07-012, PG&E's Prehearing Conference Statement (Dec. 7, 2021), at 3.

Finally, while PG&E will always maintain its focus on public safety, including wildfire mitigation, it is worth observing that requiring PG&E to expend immense resources litigating CCSF's proposed taking tends to hinder, rather than serve, PG&E's and the Commission's shared goal of mitigating wildfire risks.<sup>49</sup>

Economic interests of customers and citizens. Yet another issue central to the Commission's review of the proposed transaction is economic concerns. Chief among these is rates and affordability, given the Commission's stated goal to use Section 851 review to assure continuing reasonable rates for both future CCSF customers and remaining PG&E customers. The Commission's review must also encompass more general impacts on the financial circumstances of the utility.<sup>50</sup>

CCSF will bear the burden to demonstrate the reasonableness of its anticipated rates and to establish a favorable comparison between CCSF's anticipated rates (which would be dependent upon the ultimate valuation) and PG&E's current, historical, and anticipated future rates. Currently, little is known about CCSF's anticipated rates, but there are good reasons to question whether CCSF could possibly maintain or decrease current rates given the additional costs that CCSF's proposed transaction would generate. Since CCSF has proposed to fund the potential acquisition through issuance of revenue bonds, CCSF's future rates would presumably depend on the purchase price of PG&E's assets and required debt service payments to service CCSF's substantial borrowing to pay the purchase price, as well as CCSF's cost of capital, operating and maintenance expenses, and other anticipated costs that CCSF would be obligated

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<sup>49</sup> *Id.*

<sup>50</sup> *See, e.g.*, D.03-04-052 ("There is in addition a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus lowering rates and at the same time enhancing the utility's financial health and the California economy").



to cover, including substantial severance damages, as described below. The Commission must also evaluate the possible rate impacts of a potential acquisition on remaining PG&E customers.

The purchase price must also include compensation to PG&E for stranded costs and severance costs related to legacy third-party power contracts, renewable energy contracts, leases, securitization charges, other tariff riders, debt redemption costs, and other costs, including additional engineering and construction work outside CCSF to maintain reliable electric service to PG&E's non-San Francisco customers after severing its electric system. Moreover, PG&E runs an integrated gas and electric system in San Francisco; separating these systems would both increase costs to PG&E, for which CCSF would have to compensate PG&E through severance payments, and create new costs for CCSF related to ownership and operation of the system in San Francisco, such as costs to replicate inventories, buildings, people, systems, common rights of way, procurement contracts, and many other items currently shared with PG&E's gas system.

Because CCSF would provide service only within San Francisco, San Francisco electric customers would no longer experience the economies of scale and scope that are available under the larger PG&E umbrella. As a result, costs to San Francisco customers would likely increase for items like equipment and material purchases, specialty utility vehicle and fleet purchases and operations, and utility-specific Information Technology (IT) and operational technology (OT) software licenses. CCSF would have difficulty negotiating volume discounts in the same way that PG&E can for contracted line resources and other items. And because CCSF would have to create a new and independent electric service system within San Francisco, CCSF also would need to fund the costs of setting up billing, mapping, cyber security, and other operational support and system costs that PG&E already has in place.

On top of all of these considerations, CCSF would need to finance the purchase price of

PG&E's assets and pay upfront the early costs before CCSF begins collecting rates. Thus CCSF would need to show that it can access the capital necessary to support these payments and that the related borrowing costs would not harm San Francisco customers. CCSF will have to show that it would serve the public interest to create these additional costs and that CCSF could absorb all of these costs without increasing customer rates.

Additionally, PG&E currently pays substantial amounts in state and local taxes as a result of its assets in San Francisco and its electrical service to San Francisco residents. A municipal utility would not pay such taxes, which would decrease the tax revenue available to fund important state and local initiatives.<sup>51</sup>

Policy objectives. In evaluating proposed transactions pursuant to Section 851, the Commission must also consider how the potential transaction would affect State and Commission policy. For example, in D.98-02-110, the Commission approved a lease by Southern California Edison Company, expressly reasoning that the transaction served the public interest because it would "advance the state's telecommunications infrastructure policy" and was "consistent with the Commission's policy" for the telecommunications industry.<sup>52</sup>

Here, CCSF has not articulated how its proposed taking would advance Commission or State policy objectives in any way. In fact, CCSF's proposed acquisition would divest the Commission of jurisdiction over CCSF's provision of electrical service in San Francisco because the Commission "has no jurisdiction over municipally owned utilities unless expressly provided by statute."<sup>53</sup> As a result, the Commission would lose the ability to ensure that electric service in

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<sup>51</sup> PG&E's Motion at 12.

<sup>52</sup> D.98-02-110, 78 CPUC 2d 655.

<sup>53</sup> D.86192, 80 CPUC 290 n.9 (1976).

San Francisco would continue to serve the varied, important policy objectives that the Commission and PG&E currently lead in California.

*State and Commission policies and projects.* The Commission and PG&E are jointly focused on activities to promote and accomplish the State’s ambitious climate goals through the implementation of numerous specific programs.<sup>54</sup> For example, the Commission is charged with advancing State policies related to microgrids, electric vehicle charging infrastructure, electric storage, power procurement, and distributed renewable generation resources and energy efficiency, and has programs and regulations relating to those topics that guide PG&E in its operations, including in San Francisco.<sup>55</sup> If CCSF accomplishes the proposed condemnation, not only is it unknown whether the San Francisco system would continue to participate in and contribute to these goals, but the Commission would also have no authority to require CCSF to do so.

The Commission and PG&E are also currently working cooperatively on the transition from the use of gas service to all-electric service. The Commission has initiated a long-term gas planning rulemaking because “[o]ver the next 25 years, state and municipal laws concerning greenhouse gas emissions will result in the replacement of gas-fueled technologies and, in turn, reduce the demand for natural gas.”<sup>56</sup> The rulemaking requires intensive and coordinated efforts by the Commission and utilities, which CCSF’s proposed takeover necessarily would undermine. In particular, because CCSF’s proposal would require a separation of electric and gas assets and service in San Francisco (as noted), it would increase costs, undermine efficiency, and

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<sup>54</sup> PG&E’s Motion at 13.

<sup>55</sup> *Id.* at 13 & nn. 38-42.

<sup>56</sup> Long-Term Gas Planning Rulemaking, <https://www.cpuc.ca.gov/industries-and-topics/natural-gas/long-term-gas-planning-rulemaking>.

complicate PG&E's anticipated transition to all-electric service in San Francisco.<sup>57</sup> CCSF will need to explain how the separation of electric and gas assets in San Francisco can be managed so that it will not impede or set back the Commission's long-term gas planning and climate-related goals. More broadly, CCSF will need to explain how it can equally participate in and advance existing State policies that serve the public interest, despite CCSF's lack of expertise and experience and the fact that it is under no obligation to collaborate with or agree to support the Commission's objectives. Indeed, even if the current leadership of CCSF were to say it supported these policies, the Commission would have no ability to bind future CCSF leaders.

*Fundamental customer benefits.* PG&E also extends numerous programs to its customers that promote the public interest, such as California Alternate Rates for Energy (CARE), which is a Commission program that offers a monthly discount on gas and electricity to income-qualified participants; and the Family Electric Rate Assistance Program (FERA), which similarly offers a substantial monthly discount on electricity only. In a Section 851 proceeding, PG&E would demonstrate how San Francisco's low-income residents would suffer as a result of CCSF's proposed acquisition and the resulting loss of these programs. CCSF would have to demonstrate how it would counteract and mitigate those harms to customers. But even a commitment by today's CCSF leadership would not ensure that low-income residents in San Francisco would be entitled to discounted power in the future.

PG&E provides its customers in San Francisco (and elsewhere) with other programs that serve the public interest. The Energy Savings Assistance Program offers free energy education, weatherization measures, and energy-efficient appliances to income-qualified renters and

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<sup>57</sup> PG&E's Motion at 14.

homeowners.<sup>58</sup> PG&E offers a SmartRate Summer Pricing Plan and a Winter Gas Savings Program that empower and reward customers by saving them money when they conserve power. PG&E also extends Balanced Payment Plans to its customers, as an optional way to eliminate swings in customers' monthly energy bills due to seasonal changes. PG&E funds other programs through charitable donations from its shareholders and provides bill-paying and emergency assistance to low-income customers.<sup>59</sup> It is doubtful whether CCSF has the infrastructure, funding (or willingness to charge its customer base to fund these programs), and interest in offering customer-benefiting programs of this kind to San Francisco residents. Again, CCSF will carry the burden to demonstrate how it might reproduce or otherwise maintain these benefits to San Francisco customers who enjoy and rely upon them as part of their electric service from PG&E.

Relatedly, PG&E customers in San Francisco contribute to these and other programs through their rates. PG&E customers pay a public purpose program surcharge that funds CARE, FERA, the Energy Savings Assistance Program, and various of the energy efficiency programs identified above.<sup>60</sup> If CCSF condemns PG&E's San Francisco assets, then PG&E's San Francisco customers would no longer pay the surcharge, which could undermine the strength and longevity of these programs for remaining PG&E customers.

### **C. Timing And Process For Section 851 Review**

CCSF cannot take PG&E's assets in San Francisco without first obtaining multiple approvals, as follows. First, CCSF must conduct a CEQA process and certify a final EIR. As

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<sup>58</sup> PG&E, Helping Customers in Need, [https://www.pgecorp.com/corp\\_responsibility/reports/2010/co\\_feature\\_03helping.jsp](https://www.pgecorp.com/corp_responsibility/reports/2010/co_feature_03helping.jsp)

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

discussed in PG&E's concurrently-filed motion to dismiss or stay, the Commission should await the outcome of that process before conducting a valuation proceeding. Second, if the final EIR endorses a project that involves the taking of PG&E's assets (as opposed to endorsing a "no project" alternative), CCSF at that point can ask the Commission to undertake a valuation proceeding. Third, if CCSF is willing to pay just compensation as determined by the Commission, CCSF can then initiate a condemnation proceeding in Superior Court pursuant to the Eminent Domain Law, California Code of Civil Procedure Section 1230.010 *et seq.* Fourth, if the Superior Court enters a judgment of condemnation, CCSF must obtain a decision from the Commission approving a transfer of PG&E's assets pursuant to Section 851, which includes a comprehensive determination that the transfer is in the public interest. CCSF would also need to seek approval from the Federal Energy Regulatory Commission at some point prior to a transfer of assets.

This is the only sequence of events that is compatible with the statutory framework. The Commission cannot conduct a valuation until CCSF specifies the assets it would take, and CCSF cannot do so until it has completed the CEQA process. Also, Public Utilities Code Section 1415 provides that CCSF must initiate a condemnation action within 60 days of the Commission's decision on just compensation, or else the just compensation determination shall have no effect (and CCSF shall be required to reimburse PG&E's costs of the valuation proceeding).<sup>61</sup> If the

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<sup>61</sup> Pub. Util. Code § 1415 ("If the commission determines that the political subdivision, in case of a petition of the first class, has failed to commence the action in a court of competent jurisdiction within 60 days after the commission has made and filed its finding of just compensation ... the commission shall make and file its order declaring that such finding shall no longer be of any force or effect, and make its finding as to the reasonable expenditures necessarily incurred by the owner in the proceeding before the commission, which should be assessed against the political subdivision. The political subdivision shall thereupon be liable to the owner in the amount thus found by the commission, and the owner may thereupon maintain an action against the political subdivision for such amount in any court of competent jurisdiction."). *See also* Pub. Util. Code

Commission were to proceed with valuation at this time, rather than deferring it as PG&E requests in PG&E’s motion for the Commission to exercise its discretion and in PG&E’s motion to dismiss or stay the Petition, it is likely that the operation of Public Utilities Code Section 1415 will render the valuation moot: Because the CEQA process likely will continue into 2024 or beyond, CCSF will not be able to pursue condemnation within 60 days of the Commission’s valuation decision, which is currently scheduled for the fourth quarter of 2023.

For similar reasons, the Commission’s Section 851 review should follow the Superior Court’s condemnation proceeding. Section 1415 requires CCSF to initiate a condemnation proceeding within 60 days of the date of the valuation decision, which is obviously not enough time for the Commission to conduct a review under Section 851.<sup>62</sup>

In all events, the Commission’s approval pursuant to Section 851 must precede any transfer of property from PG&E to CCSF. Indeed, the plain language of Section 851 forbids a utility from selling or otherwise encumbering property “without *first* having secured from the commission an order authorizing it to do so.”<sup>63</sup> Section 851 also states that a sale or other transaction without Commission approval is “void.”<sup>64</sup> Precedent confirms that reading of the statutory text. Before the California Court of Appeal’s 1967 decision holding that Commission approval was not required for a condemnation, the Commission approved condemnations under Section 851, providing a template for the appropriate process here. In those examples, the Commission addressed whether the proposed condemnation was in or adverse to the public

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§ 1414 (describing procedure for owner of assets to file petition with Commission if municipality fails to file a court action within 60 days of Commission’s just compensation determination).

<sup>62</sup> CCSF also must complete the EIR process and obtain all required approvals under CEQA, as discussed in more detail in PG&E’s Motion To Dismiss Or Stay The Petition As Premature.

<sup>63</sup> Pub. Util. Code § 851(a) (emphasis added).

<sup>64</sup> *Id.*

interest and asserted the right to impose conditions on the transfer of utility property *before* the utility transferred its property to the condemnor.<sup>65</sup>

Finally, in CCSF's Opposition to PG&E's Motion requesting that the Commission decline to hear the Petition, CCSF noted uncertainty about how a Section 851 proceeding could be initiated.<sup>66</sup> CCSF is correct that Section 851 applications are typically filed by public utilities seeking Commission approval to sell assets, not by third parties seeking to purchase those assets, and that PG&E would not voluntarily file such an application in this case because it opposes CCSF's proposed condemnation. In this circumstance, other procedures would be employed, if the matter reaches that stage. For example, CCSF might be able to file an application, with a request for a waiver of rules that would otherwise require the application to be filed by the utility. Alternatively, the Commission could elect to adopt an Order Instituting Investigation.

## V. CONCLUSION

The Commission is required to review CCSF's proposed condemnation pursuant to Section 851 to determine whether it serves the public interest and whether it is fair to employees. The Commission's review under Section 851 should await CCSF's certification of a final EIR, the completion of the valuation proceeding, and the entry of a judgment of condemnation by the Superior Court.

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<sup>65</sup> *See, e.g.*, D.65736, 1963 WL 137700; D.71162, 1966 WL 185377.

<sup>66</sup> P.21-07-012, Opposition of the City & County of San Francisco to the Motion of Pacific Gas & Electric Company for the Commission to Exercise Discretion to Decline to Entertain the Petition (Oct. 1, 2021), at 12-13.



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Respectfully submitted,

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