

1 WEIL, GOTSHAL & MANGES LLP  
Stephen Karotkin (*pro hac vice*)  
2 (stephen.karotkin@weil.com)  
Ray C. Schrock, P.C. (*pro hac vice*)  
3 (ray.schrock@weil.com)  
Jessica Liou (*pro hac vice*)  
4 (jessica.liou@weil.com)  
Matthew Goren (*pro hac vice*)  
5 (matthew.goren@weil.com)  
767 Fifth Avenue  
6 New York, NY 10153-0119  
Tel: 212 310 8000  
7 Fax: 212 310 8007

8  
KELLER & BENVENUTTI LLP  
9 Tobias S. Keller (#151445)  
(tkeller@kellerbenvenutti.com)  
10 Jane Kim (#298192)  
(jkim@kellerbenvenutti.com)  
11 650 California Street, Suite 1900  
San Francisco, CA 94108  
12 Tel: 415 496 6723  
Fax: 650 636 9251

13 *Attorneys for Debtors*  
14 *and Debtors in Possession*

15 **UNITED STATES BANKRUPTCY COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 **In re:**

19 **PG&E CORPORATION,**

20 **- and -**

21 **PACIFIC GAS AND ELECTRIC**  
22 **COMPANY,**

23 **Debtors.**

- 24  Affects PG&E Corporation  
25  Affects Pacific Gas and Electric Company  
 Affects both Debtors

26 *\* All papers shall be filed in the Lead Case,*  
27 *No. 19-30088 (DM).*

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11  
(Lead Case)  
(Jointly Administered)

**DECLARATION OF MARINO MONARDI IN  
SUPPORT OF THE DISCOUNTED EP  
ASSUMPTION MOTION**

Hearing Date: August 28, 2019  
Hearing Time: 9:30am (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102  
Judge: Hon. Dennis Montali

Objection Deadline: August 14, 2019, at 4:00 p.m.  
(Pacific Time)

1  
2 I, Marino Monardi, pursuant to section 1746 of title 28 of the United States Code, hereby  
3 declare under penalty of perjury that the following is true and correct to the best of my knowledge,  
4 information, and belief:

5 1. I am a Director, Energy Procurement and Policy Division, at Pacific Gas and Electric  
6 Company (the “**Utility**” and, together with PG&E Corporation, the “**Debtors**”).

7 2. I am knowledgeable and familiar with the Utility’s day-to-day operations and,  
8 specifically, the Utility’s energy procurement agreements.

9 3. I am authorized to submit this Declaration (the “**Declaration**”) on behalf of the  
10 Debtors in support of the *Third Omnibus Motion of Debtors Pursuant to 11 U.S.C § 365(a), Fed. R.*  
11 *Bankr. P. 6006, and B.L.R. 6006-1 for an Order Approving Assumption of Certain Contract Price*  
12 *Discounted Energy Procurement Agreements* (the “**Motion**”).<sup>1</sup>

13 4. Except as otherwise indicated herein, the facts set forth in this Declaration are based  
14 upon my personal knowledge, my review of relevant documents, and information provided to me by  
15 the Debtors’ employees or the Debtors’ legal, restructuring, and financial advisors. If called upon to  
16 testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit  
17 this Declaration on behalf of the Debtors.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such  
terms in the Motion.

## THE EP AGREEMENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. In the ordinary course of its operations, the Utility is party to various types of energy procurement agreements, including, without limitation, (a) power purchase agreements, pursuant to which the Utility purchases electric power from generators, and (b) capacity storage agreements, which provide the Utility access to capacity from energy storage facilities.

6. The Utility routinely and continuously evaluates its energy procurement agreements in light of, among other things, the Utility's operations, market conditions, pricing, the needs of the Utility's customers, the regulatory requirements imposed on the Utility, and to ensure the Utility is safely and reliably delivering power. As part of that evaluation, the Utility has identified the EP Agreements for assumption in the Chapter 11 Cases. Following discussions with the EP Counterparties (as defined herein), the Utility and each of the respective counterparties have agreed that, in exchange for assumption of the applicable EP Agreement, the parties will enter into the EP Amendments described below, which include valuable discounts for the Utility.

7. It is my understanding that the effectiveness of each of the EP Amendments and assumption of the EP Agreements pursuant to the Motion is conditioned upon the Utility obtaining the necessary approvals from the Bankruptcy Court and California Public Utility Commission (the "CPUC"). Accordingly, contemporaneously herewith, the Utility is seeking CPUC approval for the EP Amendments but, to the extent such approval is not obtained prior to the hearing on the Motion, the Utility requests that the Court approve the Utility's assumption of the EP Agreements, as amended, subject to CPUC approval. Pursuant to the EP Amendments, in the event CPUC approval is not attained within one hundred and eighty (180) days from the date approval is sought from the CPUC or the date of the Motion (whichever is later), either party may terminate the applicable EP Amendment and the assumption of the applicable EP Agreement shall be null and void. The various EP Agreements and the EP Amendments are discussed in further detail below.

## THE POWER PURCHASE AGREEMENTS

8. To enable the Utility to provide power to its customers and meet regulatory requirements, the Utility is party to various power purchase agreements (each, a "PPA") with developers and operators of power generation facilities and projects. Pursuant to the Motion, the

1 Utility is seeking to assume the following three (3) PPAs, each as amended by the applicable PPA  
2 Amendment Agreements (as defined below):

- 3 • Power Purchase Agreement between the Utility and Re Gaskell West  
4 3 LLC dated September 22, 2017 (the “**Gaskell 3 PPA**”);
- 5 • Power Purchase Agreement between the Utility and Re Gaskell West  
6 4 LLC dated September 22, 2017 (the “**Gaskell 4 PPA**”); and
- 7 • Power Purchase Agreement between the Utility and Re Gaskell West  
8 5 LLC dated September 22, 2017 (the “**Gaskell 5 PPA**” and, together  
9 with the Gaskell 3 PPA and the Gaskell 4 PPA, the “**PPAs**”).

9 9. A copy of the form of the PPAs is available at  
10 [https://www.pge.com/pge\\_global/common/pdfs/for-our-business-partners/energy-supply/electric-](https://www.pge.com/pge_global/common/pdfs/for-our-business-partners/energy-supply/electric-rfo/wholesale-electric-power-procurement/2017%20PV/PGE_2017_PV_PPA_final.docx)  
11 [rfo/wholesale-electric-power-procurement/2017%20PV/PGE\\_2017\\_PV\\_PPA\\_final.docx](https://www.pge.com/pge_global/common/pdfs/for-our-business-partners/energy-supply/electric-rfo/wholesale-electric-power-procurement/2017%20PV/PGE_2017_PV_PPA_final.docx). Aside  
12 from confidential commercial terms, I understand that the PPAs are substantially similar to the form.

13 10. The PPAs are long-term purchase agreements pursuant to which the Utility will  
14 purchase electric power generated by a generation facility or project operated by the respective  
15 counterparty to the PPAs (collectively, the “**PPA Counterparties**”). The generation projects that  
16 will generate the power to be purchased by the Utility pursuant to the PPAs, however, are currently  
17 under development and not yet operational and, as a result, the PPA Counterparties have not yet  
18 commenced delivering power to the Utility.<sup>2</sup> Upon completion of the generation projects, pursuant  
19 to the terms of the respective PPAs, the Utility will purchase power from the PPA Counterparties for  
20 a period of fifteen years, on a dollar per megawatt hour basis. Consequently, the Utility has no  
21 outstanding obligations to the PPA Counterparties under the PPAs, and no cure amounts are owed or  
22 payable in connection with the assumption of the PPAs as proposed pursuant to the Motion.

23 11. In connection with the proposed assumption of the PPAs, the Utility has negotiated  
24 favorable amendments to the PPAs with the PPA Counterparties. These amendments are  
25 memorialized in agreements between the Utility and the respective PPA Counterparty (the “**PPA**

26 \_\_\_\_\_  
27 <sup>2</sup>The PPA Counterparties entered into the PPAs prior to the completion of the respective generation  
28 projects because the PPA Counterparties use projected future revenue from the PPAs to obtain  
financing for the development and construction of the projects.

1 **Amendment Agreements**”). Among other things, the Utility and the PPA Counterparties have  
2 agreed to a ten percent (10%) discount to the respective per megawatt hour purchase price of power  
3 under each PPA. Additionally, the Utility and the PPA Counterparties have agreed to extend project  
4 and construction related deadlines in each PPA, and consequently, the time by which the Debtors  
5 would be obligated to commence purchasing power, by up to 24 months.

## 6 THE ENERGY STORAGE AGREEMENTS

7 12. To enable the Utility to comply with applicable regulatory requirements related to  
8 storage capacity and resource adequacy, the Utility is party to various energy storage agreements with  
9 various counterparties that provide energy storage services. Pursuant to the Motion, the Utility is  
10 seeking to assume the following two (2) energy storage agreements, each as amended by the  
11 applicable ESA Amendment Agreements (as defined below):

- 12 • Behind the Retail Meter Capacity Storage Agreement between the  
13 Utility and mNOC AERS LLC (“**mNOC**”), dated June 1, 2018, as  
14 previously amended by letters dated October 11, 2018 and November  
15 27, 2018 (the “**mNOC ESA**”); and
- 16 • Energy Storage Resource Adequacy Agreement between the Utility  
17 and Hummingbird Energy Storage, LLC (“**Hummingbird**”), dated  
18 June 1, 2018, as previously amended by letters dated October 11, 2018,  
19 November 27, 2018 and March 28, 2019, (the “**Hummingbird ESA**”  
20 together with the mNOC ESA, the “**ESAs**” and, collectively with the  
21 PPAs, the “**EP Agreements**”).

22 13. Copies of the forms of the ESAs are available at  
23 [http://www.pge.com/includes/docs/word\\_xls/b2b/wholesaleelectricssuppliersolicitation/Energy\\_Storage\\_2016/AppendixF2\\_CapacityStorageAgreement\\_IssuanceFinal.docx](http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricssuppliersolicitation/Energy_Storage_2016/AppendixF2_CapacityStorageAgreement_IssuanceFinal.docx) and  
24 [http://www.pge.com/includes/docs/word\\_xls/b2b/wholesaleelectricssuppliersolicitation/Energy\\_Storage\\_2016/AppendixF3\\_BTMCapacityStorageAgreement\\_IssuanceFinal.docx](http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricssuppliersolicitation/Energy_Storage_2016/AppendixF3_BTMCapacityStorageAgreement_IssuanceFinal.docx). Aside from  
25 confidential commercial terms, the ESAs are substantially similar to the forms.

26 14. The ESAs are long term agreements, pursuant to which the Utility will purchase  
27 storage capacity in certain battery storage projects from the respective counterparties to the ESAs (the  
28 “**ESA Counterparties**” and together with the PPA Counterparties, the “**EP Counterparties**”). The  
Utility utilizes the ESAs to meet the resource adequacy requirements (the “**RARs**”) imposed on it by

1 the CPUC and other regulators. The RARs ensure that California’s load serving entities (including  
2 utilities, community choice aggregators, and energy service providers) have sufficient capacity to  
3 meet peak electric load demand on their networks, and require that load-serving entities maintain a  
4 reserve margin. Like the PPAs, the energy storage projects that are the subject of the ESAs are  
5 currently under development and not yet operational, and the ESA Counterparties have not yet  
6 commenced providing storage capacity to the Utility.<sup>3</sup> Upon completion of the storage projects, the  
7 Utility will purchase storage capacity from mNOC and Hummingbird for periods of ten (10) or fifteen  
8 (15) years, respectively, on a dollar per kilowatt-month basis. Consequently, the Utility has no  
9 outstanding obligations to the ESA Counterparties under the ESAs and no cure amounts are owed or  
10 payable in connection with the assumption of the ESAs as proposed pursuant to the Motion.

11 15. In connection with the assumption of the ESAs, the Utility has negotiated favorable  
12 amendments to the ESAs with the ESA Counterparties. The ESA Amendments are memorialized in  
13 amendment agreements between the Utility and the respective ESA Counterparty (the “**ESA**  
14 **Amendment Agreements**” and, together with the PPA Amendment Agreements, the “**EP**  
15 **Amendments**”). Specifically, with respect to the mNOC ESA, among other things the parties have  
16 agreed to discounts on the contract price of approximately eleven percent (11%), and have agreed to  
17 extend two project completion milestones in the mNOC ESA by approximately fifteen (15) months,  
18 which will result in a corresponding delay to the Utility’s obligations to pay for the additional capacity  
19 by approximately fifteen (15) months. Similarly, with respect to the Hummingbird ESA, among other  
20 things, the parties have agreed to discounts on the contract price of approximately ten percent (10%)  
21 and have agreed to extend two project completion milestones in the Hummingbird ESA by twelve  
22 (12) months, which will result in a corresponding delay to the Utility’s obligations to pay for such  
23 capacity by approximately twelve (12) months.

24 **BASIS FOR ASSUMPTION**

25 16. I believe that the Utility’s assumption of the EP Agreements, as amended, represents  
26 a valid exercise of the Utility’s business judgment and will benefit the Utility’s estate. Energy

27 <sup>3</sup> The ESA Counterparties use the projected future revenue from the ESAs to obtain financing for the  
28 development and construction of the energy storage project.

1 procurement is a critical aspect of the Utility’s business operations. The Utility is undertaking a  
2 careful and thorough review of its portfolio of EP Agreements and has determined that the terms of  
3 the EP Agreements, as amended, are reasonable under the circumstances and that maintaining the  
4 ongoing, mutually beneficial relationships with the EP Counterparties is in the best interests of the  
5 Utility and its estate. Additionally, the EP Agreements ensure that the Utility will continue to have  
6 sources of power generated by renewable energy and battery storage capacity, enabling the Utility to  
7 comply with the California Renewables Portfolio Standard Program, energy storage compliance  
8 requirements, and other related procurement requirements, as required by sections 3291(b)(1)(D) and  
9 3292(b)(1)(D) of the California Public Utilities Code, as recently amended by Assembly Bill 1054.

10 17. The Utility has negotiated considerable discounts to the contract prices under the EP  
11 Agreements. The Utility estimates that the nominal value of the aggregate savings achieved pursuant  
12 to the EP Amendments is approximately \$20 million over the collective life of the EP Agreements.  
13 Moreover, the Utility has determined that the savings obtained through the discounted contract price  
14 far outweighs the milestone extensions that the Utility is granting to the EP Counterparties under the  
15 EP Amendments. Such extensions necessarily arose from the Utility’s commencement of the Chapter  
16 11 Cases and the resulting difficulty for the EP Counterparties to obtain the requisite financing to  
17 complete the underlying projects. Finally, as discussed above, the assumption of the EP Agreements  
18 will not result in any incremental costs to the Debtors’ estates because no cure amounts are owed by  
19 the Utility to assume the EP Agreements.

20 18. Accordingly, for the reasons set forth above and in the Motion, I believe that  
21 assumption of the EP Agreements, as amended, is a valid exercise of the Utility’s business judgment,  
22 is in the best interest of the Utility, its creditors and other parties in interest, and the relief sought in  
23 the Motion should be approved.

24  
25  
26  
27 *[Remainder of page intentionally left blank]*  
28

1 Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury, that the foregoing  
2 is true and correct to the best of my knowledge, information, and belief, and that this declaration was  
3 executed at San Francisco, California on July 31, 2019.

4  
5  
6  
7 /s/ Marino Monardi

8 Marino Monardi  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Weil, Gotshal & Manges LLP**  
767 Fifth Avenue  
New York, NY 10153-0119