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

17 **In re:**
18 **PG&E CORPORATION**
19 **-and-**
20 **PACIFIC GAS AND ELECTRIC**
21 **COMPANY,**
22 **Debtors.**

Case No. 19-cv-05257-JD
(Bankr. Case No. 19-30088-DM)
**RESPONSE OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
TO DEBTORS' MOTION PURSUANT
TO 11 U.S.C. §§ 105(A) AND 502(C) TO
ESTABLISH ESTIMATED AMOUNT OF
FIRE VICTIM CLAIMS FOR ALL
PURPOSES OF THE CHAPTER 11
CASES**

Hearing Date:
Date: May 21, 2020
Time: 10:00 a.m.
Ctrm: 11
Judge: Hon. James Donato

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1 The Official Committee of Tort Claimants (the “TCC”), by and through its attorneys,
2 hereby files its response to the motion (the “Motion”) of PG&E Corporation and Pacific Gas and
3 Electric Company, debtors and debtors in possession (collectively, the “Debtors”) for entry of an
4 order establishing an estimated amount for all Fire Victim Claims in the Debtors’ chapter 11 cases.

5 **INTRODUCTION AND SUMMARY OF RELIEF REQUESTED**

6 The Debtors’ Motion requests the Court to “estimate fire victim claims at \$13.5 billion”
7 (Motion at 1), to “be funded with \$6.75 billion in cash and PG&E stock valued at \$6.75 billion and
8 the assignment of certain rights and causes of action.” Motion at 2:10-12. The TCC requests that
9 this Court “estimate” the Fire Victim Claims at \$13.5 billion “to be funded with \$6.75 billion in
10 cash, the PG&E stock valued at \$6.75 billion, and the assignment of certain rights and causes of
11 action, so long as \$6.75 billion of cash and the \$6.75 billion of PG&E stock each have a value of
12 \$6.75 billion,” exactly as the Debtors represent in their Motion.

13 This clarification is necessary for two reasons: First, pursuant to the Order withdrawing the
14 reference in this case, this Court has the sole responsibility to estimate the fire claims “for all
15 purposes,” which thereby includes determining the amount to be distributed to the fire claimants.
16 *In re Roman Catholic Archbishop*, 339 B.R. 215, 220 (Bankr. D. Or. 2006) (the district court’s
17 estimation of tort claims paid by a capped trust is for the purpose of determining how much the
18 victims will be paid in distribution). Second, the Debtors current Plan provides PG&E stock that
19 does not have a guaranteed value of \$6.75 billion in the current coronavirus market collapse, and
20 therefore the Court must carefully word its estimation order in order to avoid subjecting the Fire
21 Victims to a situation in which they obtain devalued stock during the coronavirus market downturn.
22 This would be especially unfair considering every other creditor is obtaining cash that holds no
23 such risk, and not stock. PG&E created this imbalance by paying the first settlement cash dollars
24 available to the subrogation insurers and hedge funds instead of to the victims, and should not be
25 allowed to leave the fire victims holding the only risk in this case.

26 The Debtors’ Motion also requests that this Court enter an order “concluding the estimation
27 proceedings” (Motion at 1), in which the Debtors also requested the Court to estimate the value of
28 subrogation wildfire claims. The Debtors and the subrogation claimants settled those claims for

1 \$11 billion based on the subrogation claimants’ representation that they were reserving \$3.7 billion
2 of cash for payment of Fire Victims’ Claims. Accordingly, in order to conclude these Estimation
3 Proceedings, the TCC requests that the Court estimate the Subrogation Claims in the amount of
4 \$11 billion subject to the Subrogation RSA and the subrogation claimants’ stated agreement to
5 reserve \$3.7 billion of cash to pay Fire Victims’ Claims.

6 **STATEMENT OF FACTS**

7 **A. The Debtors’ Motion Reserves the Right to Withdraw the Motion on the Grounds**
8 **the TCC Has Not Performed Under the Tort Claimant RSA**

9 The Debtors’ Motion states that the TCC and Consenting Fire Professionals have not
10 provided a letter or made public statements supporting the amended Plan, and reserves the Debtors’
11 alleged right to withdraw the estimation Motion because of this alleged non-performance of the
12 Tort Claimant RSA. The TCC has not supported the current version of the Plan because the Debtors
13 and shareholder plan proponents have breached the Tort Claimant RSA by changing the Plan
14 construct on which the parties agreed. Accordingly, the TCC reserves its right to request that the
15 Court estimate the Fire Victim Claims in accordance with the parties’ actual settlement, including
16 all terms and understandings that were in place at the time of the Tort Claimant RSA, and reserves
17 all rights in the event that the Debtors’ Plan is not confirmed by June 30, 2020.

18 Section 2(j) of the Tort Claimant RSA states that “each Party shall use commercially
19 reasonable efforts to support and cooperate with the Debtors to obtain confirmation of the Amended
20 Plan.” See Exhibit 1 to Declaration of David J. Richardson (the “**Richardson Decl.**”), Dkt. 5038-
21 1 at p. 6 of 52, § 2(j). As explained below, the Debtors have changed that Plan in numerous respects
22 that are inconsistent with the Tort Claimant RSA, and the TCC contends that the Debtors have
23 breached the Tort Claimant RSA in other ways. The TCC contends that it has no obligation to
24 support a Plan that is no longer on file and which the Debtors changed materially. And, the TCC
25 has no obligation to support a Plan when the Debtors have breached the Tort Claimant RSA.

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1 **B. The TCC Contends that the Debtors Have Breached the Tort Claimant RSA, and**
 2 **Reserves the Right to Request Estimation Notwithstanding the Breach**

3 In their Motion the Debtors have explained why they believe the TCC is not in compliance
 4 with the Tort Claimant RSA. As a matter of fairness, the TCC sets forth below some of its principal
 5 arguments why the Debtors are not in compliance with, and have breached, the Tort Claimant RSA.
 6 The TCC is not asking this Court to rule on violations of the Tort Claimant RSA, as that is a matter
 7 before the Bankruptcy Court.

8 1. **The Tort Claimant RSA Requires \$13.5 Billion in Cash and Stock.** In December
 9 2019, the TCC, certain Consenting Fire Professionals, the Debtors, and certain Shareholder Plan
 10 Proponents entered into a settlement agreement defined here as the Tort Claimant RSA. The Tort
 11 Claimant RSA provides the Fire Victim Trust with “Aggregate Fire Victim Consideration” that
 12 includes \$6.75 billion in cash, \$6.75 billion in stock, certain assigned claims and causes of action,
 13 and certain rights under identified insurance policies. *See Exhibit 1* to Richardson Decl., Dkt. 5038-
 14 1, at Term Sheet, Article I, p. 42 of 52. It also requires the Debtors to file a motion asking this
 15 Court to estimate Fire Victim Claims at the “Aggregate Fire Victim Consideration” defined in the
 16 Tort Claimant RSA, which is the \$13.5 billion amount plus assigned claims, and rights under certain
 17 insurance policies (these latter elements of the consideration are ignored in the Debtors’ Motion).
 18 *Id.*, p. 4 of 52, § 1(i). PG&E’s multiple bankruptcy motions and press statements explain that “the
 19 Fire Victim Trust will be funded with \$6.75 billion in cash and PG&E stock valued at \$6.75 billion
 20 and the assignment of certain rights and causes of action.” *See, e.g.*, Debtors Estimation Motion.¹

21 2. **The Debtors Have Unilaterally Changed the Settlement Construct.** The Tort
 22 Claimant RSA required the parties to support the Debtors’ December 2019 Plan. It does not bind
 23 the TCC to whatever amendments the Debtors may make to that Plan without the TCC’s consent.
 24 The TCC contends that, since the TCC settled with PG&E in the Tort Claimant RSA last year,
 25 PG&E has made material changes to its amended Plan’s capitalization in the form of reducing
 26

27 ¹ The TCC understood from the outset that claims of governmental entities were not part of
 28 the \$13.5 billion cash/stock component of the settlement. Objections to governmental claims
 have been resolved to ensure that such claims are not paid from the corpus of the \$13.5 billion
 cash/stock component, and are before the Bankruptcy Court for approval.

1 equity by \$3 billion and increasing its debt load by more than \$3.7 billion than the amount agreed
 2 upon—a change that could materially affect stock value. Further, the corona virus worldwide
 3 tragedy is causing a devaluation of the PG&E shares intended for the Fire Victim Trust, to a value
 4 that is lower than the required \$6.75 billion value.

5 **3. PG&E’s Plan Changes and the Corona Virus Have Impacted the \$6.75 Billion**
 6 **Stock Value.** The Tort Claimant RSA, as amended by the First Amendment to Restructuring
 7 Support Agreement, Exhibit 2 to the Richardson Decl. (the “**RSA Amendment**”), requires that the
 8 Fire Victim Trust receive “\$6.75 billion in New HoldCo Common Stock (issued at Fire Victim
 9 Equity Value), which shall not be less than 20.9% of the New HoldCo Common Stock ...”
 10 calculated by a valuation formula based on projected net income times a multiplier of 14.9x, which
 11 is far beyond current market conditions as a result of the coronavirus pandemic (*see Appendix A*).
 12 *See Exhibit 2* to Richardson Decl., p. 2 of 23, § 3. The formula is susceptible to fluctuating market
 13 conditions, such as the unprecedented worldwide corona virus pandemic which is causing utility
 14 value to drop by a substantial percentage, and could provide Fire Victims with less than \$6.75
 15 billion in stock value. The amount is uncertain at this time. The stock of a comparable utility,
 16 Edison International, has been hit hard by this ongoing crisis, and shows on the chart attached as
 17 Appendix A a current multiple of only 11.7x. The chart sets forth the TCC’s explanation of publicly
 18 available data showing the downward valuation of Edison’s stock in response to the coronavirus
 19 epidemic, and the resulting downward calculation of a multiple that the plan would use to calculate
 20 the value of that stock. The TCC has requested that the Debtors guarantee that the cash/stock
 21 portion of the Aggregate Fire Victim Consideration issued to the Fire Victim Trust will be “funded
 22 with \$6.75 billion in cash and PG&E stock valued at \$6.75 billion” as PG&E’s estimation motion
 23 represents. As explained below, Section 23 of the RSA contains a clause which requires
 24 reformation to conform to the economic expectations of the parties. Pursuant to Section 23, the
 25 TCC has requested such reformation. The Debtors have not provided that guarantee.

26 **4. PG&E Has Failed to Deliver the Registration Rights Agreement that Impacts**
 27 **the \$6.75 Billion Stock Value.** The RSA Amendment also obligates the Debtors to issue the stock
 28 to the Fire Victim Trust pursuant to a registration rights agreement that would govern when the Fire

1 Victim Trust and other shareholders may sell the stock in order to obtain the cash value of the stock.
2 See Exhibit 2 to Richardson Decl., p. 2 of 23, § 3. This agreement directly affects the Fire Victim
3 Trust's ability to maximize the value of the stock at the time of sale. The TCC has requested that
4 the Debtors agree in writing that the stock of other stockholders cannot be liquidated prior to the
5 Fire Victim Trust so as to undercut the Fire Victim Trust's stock value, impairing the Fire Victims'
6 ability to receive the promised \$6.75 billion of stock value. The Debtors have not agreed to such a
7 condition or term. Without such agreement it is impossible to know whether the Fire Victim Trust
8 will be able to liquidate the stock into cash in an amount consistent with the promise of the Motion
9 and the Plan.

10 **5. PG&E Is Uncertain Whether It Will Fund Before August 29, 2020 as Agreed.**

11 The Tort Claimant RSA requires that the Fire Victim Trust receive "\$5.4 billion in cash contributed
12 on the Effective Date." See Exhibit 1 to Richardson Decl., Dkt. 5038-1, p. 42 of 52, Article I. It
13 further requires that such Effective Date must occur before August 29, 2020, by making it an event
14 of "Automatic Termination" if the Effective Date has not occurred "prior to August 29, 2020." *Id.*,
15 p. 7 of 52, § 3(a)(ii). But the Debtors' have filed a motion to amend their Plan to provide that the
16 Debtors may fund the cash and stock components of the Aggregate Fire Victim Consideration as
17 late as December 31, 2020. See Bankr. Dkt. 6398. Under the plain terms of the Tort Claimant
18 RSA, this delay would terminate the agreement. See Tort Claimant RSA, Section 3(a)(ii). Cash
19 funded at a later date does not hold the same value as cash funded at the promised, earlier date.
20 The recipients are Fire Victims, many of whom live paycheck to paycheck, are struggling under
21 the events of the corona virus pandemic, and simply want to recover their losses (fire losses, not
22 investment losses) as soon as possible. The TCC and Consenting Fire Professional have requested
23 the Debtors to state when they will fund the cash and stock, in order to determine if they are
24 anticipatorily breaching the Tort Claimant RSA. The Debtors have not given the TCC or the
25 Consenting Fire Professionals any commitment that stock and cash will be funded before August
26 29, 2020, and the Debtors' ability to fund the cash and stock before August 29, 2020 has been
27 placed in doubt by the Debtors' own contingency motion changing Plan terms.
28

1 6. **PG&E Stock Valued at \$6.75 Billion Must Mean What It Says.** The Debtors’
2 Motion requests the Court to “estimate fire victim claims at \$13.5 billion” (Motion at 1), to “be
3 funded with \$6.75 billion in cash and PG&E stock valued at \$6.75 billion and the assignment of
4 certain rights and causes of action.” Motion at 2:10-12. But that is not what the Plan says as
5 amended. The promise of \$6.75 billion in cash and \$6.75 billion in stock value must actually mean
6 \$6.75 billion in cash and \$6.75 billion in stock value, and must include all other consideration
7 granted under the Tort Claimant RSA. Creative accounting will not suffice. Anything less will
8 prevent the Bankruptcy Court from being able to find that the Debtors’ Plan is fair, equitable, and
9 in good faith, under Section 1129 of the Bankruptcy Code, and California common law principles
10 of frustration of purpose, public policy, and the like. And anything less will be contrary to the
11 public promises PG&E has made to Fire Victims in its multiple filings and press releases touting
12 the Tort Claimant RSA.

13 7. **The Plan Valuation of the Stock Must Be Reformed.** The TCC contends that all
14 of these facts establish that the Debtors and the Shareholder Plan Proponents are in breach of the
15 Tort Claimant RSA, and that the Plan valuation is unenforceable under applicable law and the
16 Debtors’ representations. Section 23 of the Tort Claimant RSA states that, in the event of invalidity
17 or unenforceability of the agreement, the parties shall negotiate in good faith to modify the Tort
18 Claimant RSA to effect the original intent of the parties. As reflected in the Debtors’ motions and
19 public statements, and on the plain terms of the Tort Claimant RSA, the intent of the parties is that
20 the Fire Victim Trust be funded with the Aggregate Fire Victim Consideration, which is far more
21 than the Debtors’ Motion describes, and is at least “\$6.75 billion in cash and PG&E stock valued
22 at \$6.75 billion and the assignment of certain rights and causes of action” (Motion at p. 2) so long
23 as such value is real and ascertainable. That was the victims’ material economic benefit of this
24 settlement, as PG&E has represented to the courts and the public repeatedly. Section 20 of the Tort
25 Claimant RSA requires that the parties cooperate in carrying out that purpose. *See Exhibit 1* to
26 Richardson Decl., Dkt. 5038-1, p. 15 of 52, § 20.

27 8. **The Debtors Have Not Corrected These Plan Deficiencies.** For the Aggregate
28 Fire Victim Consideration to hold the value intended by the parties, there must be confirmation that

1 \$5.4 billion of the cash component, and the transfer of common stock worth \$6.75 billion, will be
 2 accomplished before August 29, 2020. In order for the Aggregate Fire Victim Consideration to
 3 hold the value intended by the parties, there must be a registration rights agreement in place that
 4 protects the Fire Victim Trust from a sell-off by other shareholders. The Debtors and Shareholder
 5 Plan Proponents have declined to provide any of these assurances.

6 **9. The Subrogation Claimants Promised to Reserve \$3.7 Billion to Pay Fire**
 7 **Claims.** When the TCC negotiated the Tort Claimant RSA, the Debtors had already filed their
 8 motion for approval of the Subrogation RSA, which confirmed that it had been negotiated on the
 9 understanding that Insurers had acknowledged a continuing obligation to pay approximately
 10 \$3.7 billion in reserves to their insured Fire Victims (plus another \$2 billion of IBNR, which are
 11 incurred but not reported/reserved amounts). But TCC members are receiving reports from Fire
 12 Victims that many Insurers are renegeing on their contractual obligations, trying to force the Fire
 13 Victim Trust to pay insured damages that are contractually covered as reserves. The Aggregate
 14 Fire Victim Consideration to be paid into the Fire Victim Trust does not have the value agreed to
 15 in the Tort Claimant RSA if Insurers refuse to abide by their contractual obligations to pay the full
 16 insured amount of each Fire Victim’s claim. Any estimation of the amount of Fire Claims—both
 17 Fire Victim Claims and Subrogation Claims—must be based on fulfillment of Insurers’ legal
 18 obligations to their clients, or risk inflating the actual amount of Fire Victim Claims far beyond any
 19 “estimate” made by this Court, and substantially decreasing the actual recovery received by each
 20 Fire Victim.

21 **C. These Estimation Proceedings Were Withdrawn to Estimate All Fire Claims,**
 22 **Including Subrogation Claims**

23 10. The Debtors’ original motion seeking estimation of Fire Claims, filed in July 2019,
 24 requested estimation of all “Wildfire Claims,” which now carry the definition of “Fire Claims” in
 25 the Debtors’ Plan. *See* Bankr. Dkt. No. 3091.

26 11. The Debtors settled both aspects of Fire Claims pursuant to RSAs. First the Debtors
 27 settled the Subrogation Claims that pertain to insurance payments made to Insureds on account of
 28 the insured portion of each damages claim, by entering into the Subrogation RSA. Although the

1 Motion claims that this removed the Subrogation Claims from this proceeding, that is not accurate.
 2 The Subrogation Claims remained a part of these Estimation Proceedings, and the Subrogation
 3 Group remained active in all hearings and discovery taken place in these proceedings, until the
 4 Subrogation RSA was approved by the Bankruptcy Court on the same day as the Tort Claimant
 5 RSA.²

6 12. The Subrogation RSA settles more than \$20 billion of alleged Subrogation Claims
 7 for an all-cash payment of \$11 billion. *See Exhibit 3* to Richardson Decl., Bankr. Dkt. 3992 (the
 8 “**Subrogation RSA Motion**”), at p. 8:14-15 (“RSA settles and resolves in excess of approximately
 9 \$20 billion in Subrogation Claims under the Plan for \$11 billion”). The Subrogation RSA Motion
 10 informed the Court, the TCC, and all parties in interest, that the Insurers acknowledged an ongoing
 11 obligation to their Insureds of at least \$3.7 billion in reserves, plus additional amounts:

12 The claims information provided by the Ad Hoc Subrogation Group
 13 indicates that to date, total claims had been paid in excess of \$15 billion
 14 with respect to the 2017 and 2018 Northern California wildfires. The
 15 information further showed a reserve amount of \$3.7 billion, and
 allocations for Incurred but Not Reported and Incurred but Not Enough
 Reserved amounts of \$2 billion based on the insurers’ estimation of
 anticipated claims that had not yet been filed or reported.

16 *Id.*, p. 22:5-9.

17 13. The Declaration of Homer Parkhill filed in support of the Subrogation RSA Motion
 18 details far more extensive reserves as of July 30, 2019, totaling more than \$3.4 billion in reserves,
 19 and more than \$1.2 billion in IBNR, broken out by fires. *See Exhibit 4* to Richardson Decl., at
 20 Exh. B thereto. At the hearing to approve the Subrogation RSA, counsel for the Subrogation Group
 21 confirmed that the reserves/IBNR obligations of Insurers included at least \$4 billion in excess of
 22 the \$16 billion in paid amounts as of that date. *See* Bankr. Dkt. 4992, Transcript of Proceedings on
 23 December 5, 2019, p. 45:21-23. The Bankruptcy Court found the terms of this settlement to be
 24

25 _____
 26 ² *See* Transcript of Proceedings, October 7, 2019, Dkt. No. 107, p. 6 (statement by Mr.
 27 McCallen that “if” Subrogation RSA is approved, “then we won’t be in front of Your Honor any
 28 longer on this proceeding”); Transcript of Proceedings, November 4, 2019, Dkt. 171, p. 16
 (statement by Mr. McCallen that Subrogation RSA not yet approved, “So as of now obviously
 I’m still here ...”); Transcript of Proceedings, November 18, 2019, Dkt. No. 203, p. 14 (statement
 by Mr. McCallen that settlement adjourned to December 10, and “our status is the same as it was
 before ...”).

1 sufficient under the fair and equitable standard of Fed. R. Bankr. P. 9019 based on the record before
2 it, which includes these representations. *See* Bankr. Dkt. 5173.

3 14. The Subrogation RSA specifically allocates funds to members of the Subrogation
4 Group with a reserve to address the future payment of these contractually required reserves. *See*
5 Exhibit 3 to Richardson Decl., at p. 11, “Distributions.”

6 15. The Motion’s extensive quotations of defined terms from the Plan demonstrate that
7 the Insureds’ obligation to pay outstanding reserves and the actual value of Fire Victim Claims are
8 directly related. By those definitions, any Fire Claim that is not a Subrogation Claim or other
9 excepted definition is a Fire Victim Claim. Any dollar of reserves that is not properly paid to an
10 Insured risks becoming an extra dollar asserted against the Fire Victim Trust. The Tort Claimant
11 RSA was negotiated with an understanding of these definitions, and with an understanding of the
12 Subrogation Group’s and Debtors’ statements to the Court confirming the ongoing liability for \$3.7
13 billion in reserves, but additional incurred obligations. As a result, any proper estimation of the
14 Fire Victim Claims, and any order that closes these Estimation Proceedings, should include a
15 finding that estimates the Subrogation Claims at \$11 billion, and reaffirms the ongoing contractual
16 obligations of Insurers to pay appropriate reserves to their insured Fire Victims.

17 DISCUSSION

18 **A. The Estimation Order Must Estimate the Fire Victim Claims at \$13.5 Billion**

19 Consistent with the Debtors’ original estimation motion, and the District Court’s order
20 withdrawing the reference to estimate Fire Claims for “all purposes” (Bankr. Dkt. 3671), the
21 Debtors’ Motion also asks this Court to estimate Fire Victim Claims for “all purposes.” Regardless
22 of how courts may define “all purposes” from an academic perspective, the practical implications
23 in this case are that this Court is estimating claims for purposes of distribution, as well as Plan
24 confirmation. A court that is estimating the claims of tort victims in a case where their recovery
25 will be subject to a capped trust is estimating the claims for distribution purposes, because it
26 “effectively limits the amount that will be distributed, thereby causing the estimation of the claims
27 to be for distribution purposes, not merely for voting and confirmation purposes.” *In re Roman*
28 *Catholic Archbishop*, 339 B.R. 215, 220 (Bankr. D. Or. 2006). This Court’s estimation order will

1 be far-reaching in its implications, as it will determine the ultimate recoveries of Fire Victims in
2 these cases. To the extent that the Debtors and TCC differ in their interpretation of the value of the
3 Fire Claims, it is critical that any estimation err on the high side of that dispute to ensure that Fire
4 Victims are protected. *Id.*, at 223 (stating that court “should err on the high side of the probable
5 range, to assure an adequate fund for payment of liquidated claims”).

6 The “value” given by debtors under a settlement is the “best evidence to estimate [the]
7 Debtors’ legal liability.” *In re Specialty Prods. Holding Corp.*, 2013 Bankr. LEXIS 2015 *52, 2013
8 WL 2177694 (Bankr. Del. May 20, 2013).

9 The Tort Claimant RSA provides that this Court will conclude these Estimation Proceedings
10 by entering an “Estimation Approval Order,” which is an order that:

11 shall provide for the aggregate estimation and aggregate allocation of the Fire
12 Victims Claims in the amount of the Aggregate Fire Victims Consideration for
13 all purposes in these Chapter 11 Cases (including, without limitation, for
14 distribution to the Fire Victims Trust under the Amended Plan).

15 Tort Claimant RSA, Exhibit 1 to Richardson Decl., Dkt. 5038-1, p. 3 (ECF 4 of 52), Section I.(i).

16 The Motion does not reflect this requirement, but asks only that this Court estimate the Fire
17 Victim Claims at the flat amount of \$13.5 billion, without regard to the remaining consideration
18 granted under the Tort Claimant RSA, and without regard to subsequent Plan amendments and
19 recent events that change or imperil the Debtors’ ability to provide the Fire Victim Trust with the
20 agreed Aggregate Fire Victims Consideration.

21 Any order of this Court that estimates the Fire Victim Claims should track the Debtors’
22 Motion which states that the Fire Victim Trust is to “be funded with \$6.75 billion in cash and PG&E
23 stock valued at \$6.75 billion and the assignment of certain rights and causes of action” (Motion at
24 2:10-12) so long as \$6.75 billion of cash and the \$6.75 billion of PG&E stock each have a value of
25 \$6.75 billion.

26 The Debtors’ representation to this Court that the PG&E stock is valued at \$6.75 billion
27 must mean what it says, or the Motion is illusory. This is especially true when the Subrogation
28 Claimants are getting \$11 billion in cash, and not a single share of stock.

1 The TCC contends that shareholders, who the Plan permits to buy shares at a steep discount
2 to the stock valuation provided to Fire Victims, and subrogation claimants who have purchased
3 subrogation claims at a reported 35 cents on the dollar, stand to make an estimated two to five
4 billion dollars upon exit from the bankruptcy cases, based upon the profits they will generate
5 recovering their share of the \$11 billion-cash Subrogation RSA settlement, and from selling the
6 new shares of stock they will purchase at a discount. This stands in stark contrast to the Camp Fire
7 victims who are still living hand to mouth in difficult conditions.

8 **B. Estimation Must Be Estimation of All Fire Claims**

9 The Debtors' Motion also requests that this Court enter an order "concluding the estimation
10 proceedings" (Motion at 1). These Estimation Proceedings were withdrawn to this Court for
11 estimation of all Fire Claims. The Fire Victims' and Subrogation Group's respective portions of
12 those Fire Claims are each the subject of a settlement. But neither can be estimated in isolation of
13 the other. They form two component parts of each damage claim—the insured and uninsured
14 portions—and have a direct relationship. Every dollar of damages that is covered by insurance is
15 a dollar that is not a Fire Victim Claim. And every uninsured dollar of damages that is a Fire Victim
16 Claim is not a Subrogation Claim.

17 The Tort Claimant RSA was negotiated with full awareness of the terms of the Subrogation
18 RSA, and is dependent upon satisfaction of those terms. The Debtors' Subrogation RSA Motion
19 was filed with the Bankruptcy Court, and promised that the Subrogation RSA reflects a continuing
20 obligation of Insurers to pay more than \$3.7 billion in reserves, plus additional IBNR amounts, to
21 their Insureds. See Exhibit 3 to Richardson Decl., Dkt. No. 3992, p. 22 of 30, lines 5-9.

22 While Fire Victims have rights to enforce such payments under their policies, or pursue bad
23 faith claims for non-payment, estimation of Fire Victim Claims cannot be fairly addressed by this
24 Court without findings that pertain to the obligations of Insurers to pay the reserves/IBNR that Fire
25 Victims are owed. The Subrogation RSA is not a settlement of reserves as between Insurers and
26 their Insureds. Rather, it is an acknowledgment of the then-pending amount of reserves that
27 Insurers owed to their Insureds as of the date of the Subrogation RSA, and a settlement of how
28 much of those reserves could be recovered from the Debtors' estates once paid to the Insureds.

1 If this Court were to estimate Fire Victim Claims for “all purposes” in these cases, but not
2 estimate Subrogation Claims under their concurrent Subrogation RSA, and the Debtors’ current
3 Plan were not confirmed, this Court’s order could dramatically alter the respective rights of Fire
4 Victims and subrogation claimholders, as Fire Victims would be bound by an estimation order but
5 subrogation claimholders would be free to assert their claims at any amount.

6 It would not be proper to conclude these Estimation Proceedings with an estimate of Fire
7 Victim Claims based solely upon a post-petition settlement, without also estimating the
8 interconnected Subrogation Claims based upon their corresponding post-petition settlement.

9 **C. The TCC’s Proposed Estimation Order**

10 For the reasons explained above, the TCC requests the Court enter the following Order on
11 the Motion:

12 Ordered as follows:

- 13 1. The Debtors’ Motion requests the Court to “estimate fire victim claims at \$13.5 billion”
14 (Motion at 1), to “be funded with \$6.75 billion in cash and PG&E stock valued at \$6.75
15 billion and the assignment of certain rights and causes of action.” Motion at 2:10-12.
16 The Court estimates the Fire Victim Claims at \$13.5 billion to be funded with \$6.75
17 billion in cash, the PG&E stock valued at \$6.75 billion, and the assignment of certain
18 rights and causes of action, so long as \$6.75 billion of cash and the \$6.75 billion of
19 PG&E stock each have a value of \$6.75 billion, as the Debtors represent in their Motion.
- 20 2. The Debtors’ Motion also requests that this Court enter an order “concluding the
21 estimation proceedings” (Motion at 1), in which the Debtors also requested the Court to
22 estimate the value of subrogation wildfire claims. The Debtors and subrogation
23 claimants settled those claims for \$11 billion based on the subrogation claimants’
24 representation that they were reserving \$3.7 billion of cash for payment of Fire Victims’
25 Claims. Accordingly, in order to conclude these Estimation Proceedings, the Court
26 estimates the Subrogation Claims in the amount of \$11 billion subject to the Subrogation
27 RSA and the subrogation claimants’ stated agreement to reserve \$3.7 billion of cash to
28 pay Fire Victims’ Claims.

1 The TCC would consent to entry of an order that includes the above terms.

2 **CONCLUSION**

3 The TCC requests the Debtors fix these problems between now and the May 21 hearing on
4 the estimation Motion. At an appropriate time in that process we will file supplemental briefs and
5 evidence periodically, in order to update this Court on our progress. We remain available to appear
6 at status conferences periodically during that time to update and brief this Court on our progress so
7 that the Court is fully apprised in the premises before ruling on these important issues.

8 The TCC reserves its right to file any motion in these estimation proceedings in furtherance
9 of the relief requested above, or for other relief that is within this Court’s jurisdiction in this
10 proceeding.

11 For all of the reasons argued herein, the TCC respectfully requests that this Court enter an
12 order in the form described above.

13
14 Dated: April 2, 2020

BAKER & HOSTETLER LLP

15 By: /s/ Robert A. Julian
16 Robert A. Julian
17 Kimberly S. Morris
18 David J. Richardson

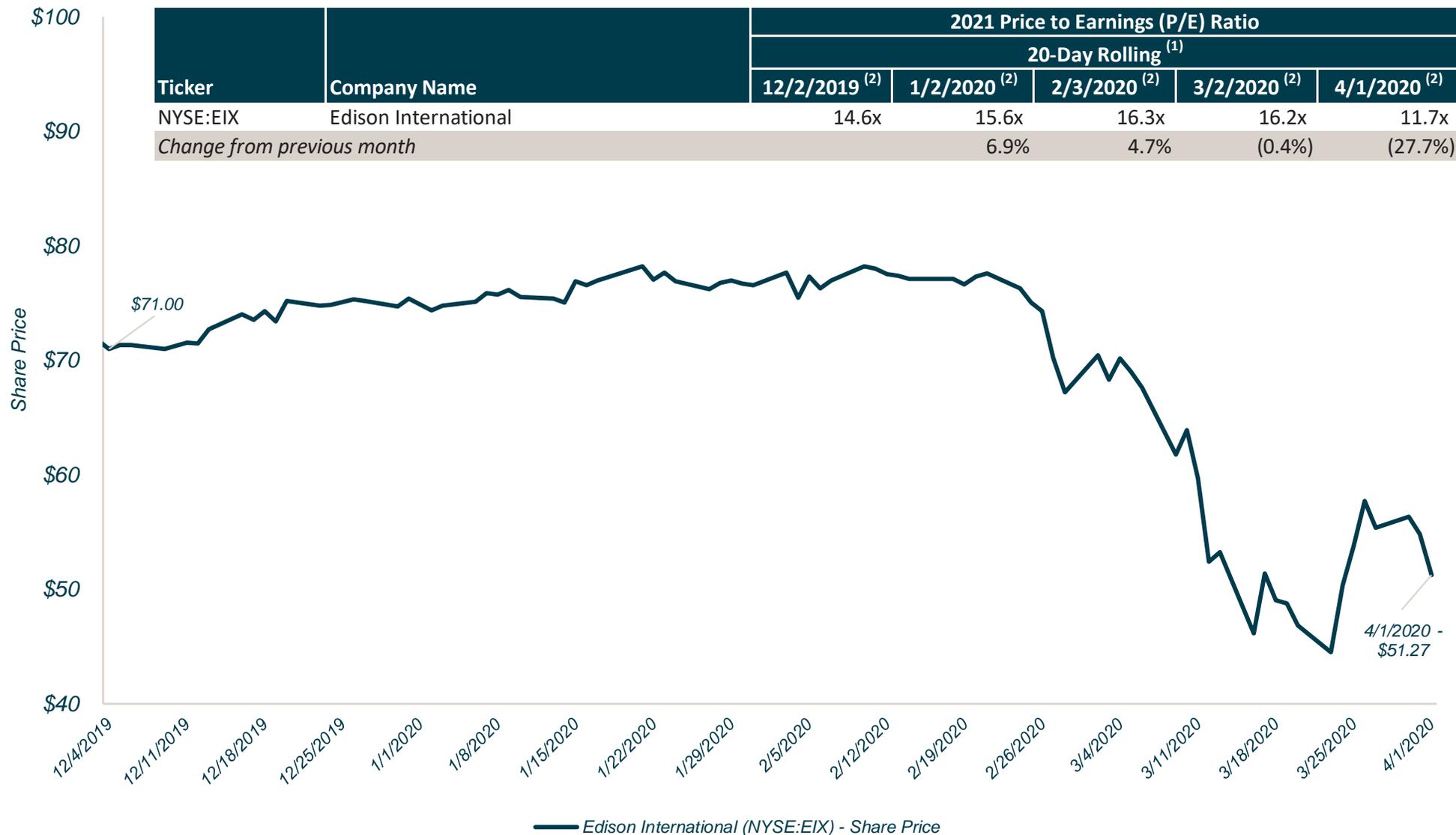
19 *Attorney for The Official Committee of Tort*
20 *Claimants*

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APPENDIX A

Edison International Market Equity Valuation



Source: CapIQ as of April 2, 2020

(1) Represents average normalized 2021 estimated P/E ratio over the prior 20-day trading period per CapIQ Consensus Estimates

(2) As of market close