

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92711]

August 20, 2021

Order Granting Exemption from Section 16 of the Securities Exchange Act of 1934 for PG&E Fire Victim Trust

The PG&E Fire Victim Trust beneficially owns more than ten percent of PG&E Corporation common stock. The Trust was created to provide funds for certain tort claimants of PG&E. The Trust requests an exemption from the application of Section 16 of the Securities Exchange Act of 1934 to “Share Exchange” transactions with PG&E that will be entered into solely for tax purposes. The requested relief would not affect the application of Section 16 to any other Trust transactions in PG&E common stock.

I. Background

Section 16 of the Exchange Act applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act. Upon becoming an insider, Section 16(a) requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) also requires insiders to report changes in such ownership.

To curb abuse of company information by insiders, Section 16(b) provides the issuer (or shareholders suing on behalf of the issuer) a private right of action to recover from an insider any profit realized by the insider from any purchase and sale (or sale and purchase) of any equity security of the issuer within any period of less than six months.

II. Request for Exemption

On January 29, 2019, PG&E Corporation (“PG&E” or “Parent”) and its principal operating subsidiary Pacific Gas and Electric Company, a California utility company (“Utility,” together with PG&E, the “Debtors”), filed in the U.S. Bankruptcy Court for the Northern District of California a joint request for relief under chapter 11 of the U.S. Bankruptcy Code. At the time of the filing, tens of thousands of tort and other claims were pending against Utility for its alleged responsibility in connection with fires that occurred between 2015 and 2018 (collectively, the “Fire Victim Claims”).

The Bankruptcy Court approved the Plan of Reorganization by order dated June 20, 2020¹ which provided for the creation of the Trust and its funding by the Debtors with cash, shares of PG&E common stock and certain other assets. According to the Confirmation Order, the Trust is required to “administer, process, settle, resolve, liquidate, satisfy, and pay all Fire Victim

¹ The Confirmation Order, together with the Plan attached thereto as Exhibit A, is available at <https://www.sec.gov/Archives/edgar/data/75488/000095015720000795/ex2-1.htm>.

Claims[.]” and funding of the Trust “shall be in restitution and full and final satisfaction, release, and discharge of all Fire Victim Claims.”

The Plan and PG&E Fire Victim Trust Agreement² became effective on July 1, 2020. The Trust Agreement provides, among other things, that:

a. the Trustee “is and shall act as the fiduciary to the Trust” and the members of the Trust Oversight Committee “shall serve in a fiduciary capacity representing current holders of Fire Victim Claims in the administration of the Trust . . . [and] shall not have any fiduciary duties or responsibilities to any party other than holders of Fire Victim Claims[.]”

b. the Trustee and others assisting in the administration of the Trust are required to have no interest in and at all times to be independent of the Debtors and the Fire Victims;

c. the purposes of the Trust are limited to the administration, settlement, satisfaction and payment of the Fire Victim Claims, and the maximization and monetization of the Trust assets for the purposes of paying such claims, all in compliance with the Plan and the Confirmation Order;

d. the Trust has no beneficiaries other than the holders of Fire Victim Claims; such beneficiaries are entitled to receive distributions from the Trust but only to the extent that their claims have been “approved” in compliance with an adjudicatory process governed by rules approved by the Bankruptcy Court;

e. the Trust is directed to sell its holdings of common stock only upon a determination that such sale is “in the best interest of the beneficiaries of the Trust;”

f. the Bankruptcy Court retains jurisdiction “with respect to any action relating to or arising out of the Trust;” and

g. the duration of the Trust is set to automatically end upon the exhaustion of the Trust assets and the approval by the Bankruptcy Court of the final accounting report submitted by the Trustee.

As required by the Plan and the Confirmation Order, between July 1 and August 3, 2020, the Debtors transferred to the Trust pursuant to an assignment agreement dated as of July 1, 2020³ approximately 480 million shares of common stock (the “Chapter 11 Plan Shares”).

Because the initial transfer of Chapter 11 Plan Shares made the Trust a more than ten percent beneficial owner of common stock, the Trust filed a Form 3 on July 10, 2020 to report this event,

² The Trust Agreement is available at <https://www.sec.gov/Archives/edgar/data/1004980/000119312520191183/d923552dex994.htm>.

³ The Assignment Agreement is available at <https://www.sec.gov/Archives/edgar/data/1004980/000119312520191183/d923552dex993.htm>.

and subsequently filed Form 4 on August 3, 2020 to report its receipt of a subsequent transfer of Chapter 11 Plan Shares.

In order to maximize the assets available for the payment of Fire Victim Claims and, accordingly, reduce the portion of such claims that will remain unpaid upon exhaustion of the Trust assets, the Trust will exchange, on a one-for-one basis, in advance of any sale of shares of common stock, the Chapter 11 Plan Shares it currently owns and intends to sell for the same number of substitute shares of common stock ("New Shares") received from Parent immediately prior to the sale (each such exchange, a "Share Exchange"). The New Shares are of the same class as the Chapter 11 Plan Shares surrendered, and entitle the holder to the same rights. The Trust will neither tender nor receive any monetary consideration in connection with a Share Exchange.

On July 8, 2021, as authorized by the Bankruptcy Court, the Trust and Debtors entered into an agreement pursuant to which they agreed to terms and procedures making it possible for the Trust to consummate a Share Exchange prior to each sale of New Shares.

Rule 16a-2(d) provides that transactions by persons or entities in certain fiduciary capacities are exempt from Section 16 for the 12-month period following appointment and qualification, to the extent such person or entity is acting in such fiduciary capacity. The rule provides that after the 12-month period, transactions by such person or entity in such fiduciary capacity shall be subject to Section 16 only if such person or entity is a more than ten percent beneficial owner. As of June 30, 2021, the conclusion of the 12-month period following its appointment, the Trust remains a more than ten percent beneficial owner subject to Section 16, so that, absent relief, its transactions in a fiduciary capacity to the Fire Victims will be subject to Section 16.

The Trust has requested relief from Section 16 with respect to the Share Exchanges, and represents that it will file Section 16(a) reports with respect to its sales of New Shares and any transaction in the common stock other than the Share Exchanges. The application of Section 16 to the Share Exchanges could give rise to the result that assets of the Trust, contributed by the Parent to compensate the Fire Victims for harm caused by the Debtors, could instead be returned to the Debtors in a private action under Section 16(b).

The Trust represents that the Share Exchanges are solely for tax purposes to maximize funds available for distribution to the Fire Victims. The Share Exchanges are consistent with the Trust's fiduciary duties to the holders of Fire Victim Claims, who are the sole beneficiaries of the Trust, and will not permit the Trust to realize a profit on the common stock exchanged. As a result, the Share Exchanges would not present the potential for abuse of inside information that Section 16 was intended to prevent. The exemption does not affect the application and protections afforded by Section 16 for the Trust's other trading activity in the common stock.

Pursuant to its authority under Section 36, the Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors to exempt the Trust from Section 16 with respect to the Share Exchanges

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that PG&E Fire Victim Trust shall be exempt from Section 16 with respect to the Share Exchanges.

By the Commission.

Jill M. Peterson,
Assistant Secretary.