Restructuring in the Rearview Mirror – a 10-Year Retrospective of California's Doomed Experiment with Electric Deregulation. By The Energy Overseer Courtroom 22 Coverage of the PG&E Bankruptcy

PG&E Creditors Mostly Listen

Pacific Gas & Electric owes $15 billion to approximately 45,000 creditors. About 200 of those creditors and their representatives showed up for a June 7 meeting in San Francisco hosted by the United States trustee, who is monitoring the utility's Chapter 11 bankruptcy proceeding.

Though able to ask questions of several top PG&E officers while they were under oath, the audience mainly listened to questions about financial matters posed by Steve Johnson, one of the attorneys from the trustee's office assigned to track the case.

Little new information was elicited from PG&E president Gordon Smith and others, although Johnson probed the sensitive issues of the utility's financial transactions with its parent company, PG&E Corporation, and with affiliates.

After the session, US Trustee Linda Ekstrom Stanley told reporters she was disappointed that PG&E did not reveal anything about its plan of reorganization, except that it intends to "pay all valid claims with interest" and will make its filing as soon as possible.

"There was nothing new for us," she said of the nearly three-hour session. Last week, most of the PG&E executives did a question-and-answer session with the trustee's attorneys covering much of the same ground, Stanley said.

Also disappointed were a few unlucky creditors to whom PG&E had made payments that were not honored by banks after the utility filed for Chapter 11 protection on April 6. One example raised during the session was of a woman who had won a personal injury settlement from the utility for $50,000 but had her check bounce. "When can I tell her she'll be paid?" asked the plaintiff's attorney.

PG&E's bankruptcy attorney Jim Lopes offered sympathy but no relief for such circumstances. Prepetition debts such as this one need to be certified through a proof of claim and will be dealt with in the reorganization plan. Claims must be filed by September 5, but Lopes told creditors it is unlikely that a plan will be approved and implemented before then.

"Trade creditor" Howard Ash asked whether PG&E intended to make special allowances for the thousands of small companies that are owed less than $10,000 each. "Can you agree that these creditors did not cause the crisis?" he asked. Ash wanted to know whether the reorganization plan might allow quick payoff of such claims.

PG&E's attorney Lopes admitted that "trade debt is relatively small" compared to the amounts owed to banks and power suppliers. He said bankruptcy law allows for an "administrative convenience class" to be considered for special treatment, but he would not guarantee that will be part of PG&E's plan.

Lopes repeated the utility's claim that it intends to pay all valid claims. "We believe we are solvent. Our assets exceed our liabilities," he said. "Nothing is impeding our ability to file a plan as soon as possible."

However, no one from the utility was able to say when a plan would be forthcoming or what it would entail.

In terms of financial details, trustee attorney Johnson elicited basic information from chief financial officer Kent Harvey about debts and assets.

The utility listed real property valued at $12.14 billion, including land and buildings. Personal property, such as cash, investments and regulatory assets, was valued at $19.5 billion. The total $32 billion in assets was determined on book value, said Harvey.

The trustee put emphasis on PG&E's hydroelectric assets, which are estimated to be worth between $3.9 billion and $4.2 billion, according to the utility.

On the liabilities side, PG&E listed $3.6 billion in secured debt, such as first-mortgage bonds and accounts receivable; $800 million in priority claims, such as taxes and money owed to employees; and $10.6 billion in unsecured debt.

Roughly half of the unsecured debt is owed to banks and lenders, about 40 percent is owed to power suppliers, and the rest is split among several categories of creditors, including about $190 million owed to PG&E Corporation for suspended payment of dividends.

PG&E has $60 million in cash, plus $2.8 billion in short-term investments, or "cash equivalents."

Now that the Department of Water Resources is buying power, CFO Harvey said the utility's liquidity situation is "relatively stable for the foreseeable future."

While the trustee's attorney pressed PG&E on a number of issues related to its power purchase commitments, the deepest probe came in the context of the utility's relationships with its corporate parent and affiliated enterprises. Johnson asked about the "ring-fencing" of PG&E's National Energy Group, which officials defended as a way to let the unregulated entity achieve its own credit rating to raise capital.

Johnson also pressed the utility officials about the dispute with the California Public Utilities Commission's Office of Ratepayer Advocates with regard to the "first priority" of the holding company to make certain the utility has sufficient capital.

Chris Warner, general counsel for PG&E, emphasized that the priority is meant to ensure sufficient funds for capital investments, while ORA argues "the parent has to infuse cash whenever needed."

Johnson also went over findings of a CPUC-ordered audit of financial transactions between the utility and its parent, in which about $3.9 billion was transferred to PG&E Corp. over the 1996-2000 period. PG&E defended the payments as $1.1 billion in dividends to its sole stockholder, which were then disbursed to corporate shareholders, and $2.8 billion for retiring shares in order to rebalance the utility's debt/equity ratio after selling off generation assets [Arthur O'Donnell].

CPUC Wins on PG&E Accounting Matter, but New Jurisdictional Skirmishes Arise

In keeping with his careful reading of bankruptcy law, Judge Dennis Montali on June 1 dismissed Pacific Gas & Electric's motion to stay implementation of parts of a California Public Utilities Commission order on stranded-cost recovery accounting [PG&E v. CPUC, No. 01-3072]. The March 27 CPUC order adopted what has come to be known as the "TURN accounting method," by requiring PG&E and Southern California Edison to net rate undercollections against proceeds all the way back to January 1998.

PG&E argued that the "automatic stay" provisions of bankruptcy law should prevent the CPUC from implementing its ruling, but the agency argued that it holds a sovereignty exemption from the court's jurisdiction.

Montali decided that the CPUC's exemption is not absolute but that, in this case at least, PG&E did not show that bankruptcy law trumps the legitimate exercise of regulatory powers.

Before addressing his determination in detail, Judge Montali discussed what it was not about. "It is not about a power struggle between a bankruptcy court and an agency of the executive branch of California government. Nor is it about second-guessing or preempting the wisdom of that agency. It is not about a conflict between federal and state law. Nor is it about setting retail electric rates. Most importantly, it is not about solving PG&E's, or California's, or the country's energy crisis," Montali wrote.

Much of the 30-page ruling was devoted to laying out how prior courts have weighed in on interpretation of the portion of the bankruptcy code that deals with regulatory exemptions and whether special circumstances exist that would allow the court to enjoin the agency from carrying out its order.

Montali determined that the choice of the TURN accounting approach represents "the essence of CPUC's ratemaking authority over PG&E" and said that PG&E did not provide sufficient reasons to overturn the order. "Even if an injunction could issue," he held, "PG&E has not demonstrated irreparable harm, a balance of hardships in its favor, a likelihood of prevailing on the merits, or that the public interests would be served."

He concluded, "The public interest is better served by deference to the regulatory scheme and leaving the entire regulatory scheme to the regulator, rather than selectively enjoining specific aspects of one regulatory decision that PG&E disputes." Montali denied PG&E's motion for injunction and granted the CPUC's motion for dismissal.

Though seen as affirmation by the court that the CPUC is the pre-eminent forum for utility retail regulatory matters, the ruling does not definitively end what is bound to be a continuing attempt to balance the jurisdictions of the court and the state agency as they affect PG&E's Chapter 11 process **[Arthur O'Donnell]**.

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