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 Moves to Vacate Ratepayers' Committee

With the unprecedented appointment of nine consumer representatives to an "official committee of ratepayers" on May 4, the US trustee overseeing Pacific Gas & Electric's bankruptcy case has tried to cover all major utility customer groups. In doing so, the agency has picked a panel that reflects nearly every major economic segment in Northern California--from dairy farmers to restaurants, from munis to manufacturers.

One interest not represented on the panel, however, is the state of California. And, if PG&E has its way, the committee will be disbanded before it begins. US Trustee Linda Stanley told CALIFORNIA ENERGY MARKETS, "Right from the very beginning, I felt there was something missing here. Usually creditors are just interested in money."

The appointment of diverse consumer interests is unique, but Stanley believes it to be in conformance with Section 1102 of the Bankruptcy Code, which provides for the appointment of official committees to represent those affected by a bankruptcy.

Recognizing the public interest as part of a utility case presents a special circumstance, particularly following a US Supreme Court determination that states do not fall under the jurisdiction of a bankruptcy court.

Stanley pointed out that the last major electric utility case, involving Public Service Company of New Hampshire, had active participation from the state's attorney general that she termed "very helpful" in making sure that public interests were represented.

"In this case, the state of California is not coming in," she said, even though it has begun buying power on behalf of the utility's customers. In fact, the state is taking an adversarial position with respect to the case, with the California Public Utilities Commission filing a claim of sovereign immunity from court jurisdiction in response to PG&E's challenge to agency rulings.

"Without the state, there's an empty place at the table," Stanley said.

Stanley and staff met May 8 with the new committee to discuss their rights and responsibilities, including the right to hire an attorney at PG&E's expense, to investigate matters, and to participate in a plan of reorganization.

The most important duty, she said, is to put their differences aside and "speak with one voice to represent the fiduciary interests of consumers."

One issue for the group is how to respond to PG&E's reorganization plan, whether to suggest amendments when a plan is forwarded or whether to press their own plan. A consideration is how to deal with the possibility of a sale of major assets, such as the hydroelectric system or transmission facilities.

"I feel they have a contingent claim," Stanley said of the consumers' groups.

PG&E feels differently, and on May 9 the utility filed a motion to vacate the trustee's decision to appoint the panel.

PG&E claimed it "does not object to ratepayers having a voice in the process, when issues arise where the court determines they have standing." But the utility objected to what it called "procedures that are outside of the existing Bankruptcy Code." Ratepayer groups "are neither creditors nor equity security holders and are therefore not eligible for appointment to a committee," said PG&E.

Now that PG&E has filed the expected motion, the matter of its existence becomes the first priority for the committee to address. A hearing was set for May 18.

For the time being, members of the committee said they want to keep a low profile. No decisions have been made on representative counsel or how to forge a common agenda. The group has begun interviewing attorneys but expects the process to take a little longer, one member said **[Arthur O'Donnell].**

How Secure Are PG&E Corporate Assets? Federal Filing Raises Doubts

Though PG&E Corporation took a lot of criticism for prebankruptcy moves to build a financial fence around the National Energy Group subsidiary, a recent filing to the US Securities and Exchange Commission casts doubt on how protective the "ring-fencing" action might be.

PG&E had maintained that the financial move was meant to allow NEG to obtain its own credit rating and secure separate financing without being hurt by the utility's fiscal woes. The company eventually secured a $1 billion loan from GE Capital secured by NEG assets. NEG currently has $2.2 billion in debt.

In an 8 K notice May 7, PG&E Corp. warned that creditors may try to pull down the fences and undo financial transactions between the corporation and the subsidiary, including a $250 million transfer made during the fourth quarter of 2000. Also, the court could potentially order "substantive consolidation" of corporate assets, essentially allowing creditors to attach NEG assets to pay off the utility's debts.

Such an action is more likely if the court determines that the financial moves were made with the intent to defraud creditors. No one has formally made such an accusation in the PG&E case, but the suggestion has been raised by consumer activists that the ring-fencing was done even though PG&E knew it was bound for bankruptcy court.

PG&E in the notice said that it warned investors it could not ensure that a fraudulent transfer argument made in bankruptcy court would fail.

Another risk for PG&E Corp. is the California Public Utilities Commission's holding-company investigation, which could seek to reverse capital transfers between the corporation and non-utility subsidiaries **[A. O'D.]**.

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