

**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**

Judge Vacates Ratepayers’ Committee

In a decision released Friday, May 18, Judge Dennis Montali ruled against creation of a committee to represent the interests of consumers in the Pacific Gas & Electric Chapter 11 bankruptcy proceeding. “[T]here is no authority in the Bankruptcy Code for the appointment of the Official Committee of Ratepayers,” Montali ruled. In addition, he said, “ratepayers have other means and fora to protect their interests.”

US Trustee Linda Stanley had argued that PG&E’s customers were entitled to representation in the case and that they may have contingent claims on PG&E assets by virtue of the public-interest standards of utility regulation. Stanley said her unprecedented appointment of a consumers’ committee was necessitated by the absence of the state of California from direct involvement in the proceeding as part of its legal strategy to assert sovereign immunity from court jurisdiction.

Pressed by PG&E to reject the committee, Montali determined that bankruptcy law recognizes legitimate creditors’ claims that existed at the time of the Chapter 11 filing. Ratepayers may have future claims, he acknowledged, “but no one is able to articulate a particular claim of any ratepayer qua ratepayer that existed on the petition date.”

The judge also held that ratepayers have other options for representation, including participation in the case by the state’s attorney general or regulatory actions by the California Public Utilities Commission. “In summary, the court reminds the parties that the Bankruptcy Code, and the bankruptcy court, were designed to resolve debtor-creditor problems; state agencies are where issues such as rates for electricity are handled. In its wisdom, Congress was correct: the estate should pay for dealing with those debtor-creditor issues in bankruptcy. It should not be burdened with matters likely to be resolved elsewhere” **[Arthur O’Donnell]**.

PG&E Wants \$25 Million in Executive Retention Bonuses and Severance

Claiming that it needs to provide incentives for key employees and management to remain on the job, Pacific Gas & Electric on May 25 asked the US Bankruptcy Court to approve more than \$20 million in bonus payments, with about \$17.5 million going to top executives.

Also included in the package is about \$5 million in severance and benefits payments to 31 management employees displaced when PG&E sold off its power generation facilities. In keeping with past practices, PG&E is paying nearly \$100,000 per person in severance packages, plus continuing health insurance coverage and other benefits.

The \$25 million total request drew immediate adverse reaction from consumer advocates, but the official committee of unsecured creditors has signed off on the motion in light of conditions that will tie payments to speedy completion of the utility’s reorganization plan.

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The management retention program would provide \$17.5 million, or an average of \$77,000 per person for 226 participants who are considered “essential employees.” Top executives could see their salaries double under the plan. About 1,000 lower-level employees would split \$2 million in other incentive programs for “superior work” and meeting business goals prior to the bankruptcy petition date.

PG&E’s top six executives are eligible for one-third of their projected bonuses only if PG&E files a reorganization plan by January 1, 2002, with the rest payable after confirmation of the plan. For other managers, half of the incentive would be paid upon filing the plan or on the one-year anniversary date of the Chapter 11 filing, April 8, 2002, whichever is earlier. The second payment would be made at the two-year anniversary date or upon court confirmation of the reorganization plan. The participants must remain employed by PG&E to earn the payments.

Ed Feo, an attorney representing the creditors’ committee, said that the bonus packages had been reviewed by the accounting firm PricewaterhouseCoopers and were found to be in conformance with industry practices.

The committee’s major concern was that the incentives were dependent upon successful and timely completion of the bankruptcy case, he said.

In testimony backing the request, PG&E vice president of human resources Russell Jackson said that the “most essential employees would be difficult or impossible to replace.” The proposed incentives are “comparable (if not less generous) to similar retention programs approved by courts in large Chapter 11 cases,” he said.

The bonuses for lower management are “designed to strengthen PG&E’s position in the marketplace, improve customer service and reduce operating costs,” he said. “I am further informed and believe that the payments will boost employee morale generally, since PG&E’s inability to pay wage-related debts to its employees has caused anxiety and has led many of PG&E’s employees to question the viability of working for a company in bankruptcy.” Keeping the employees will be especially important during system emergencies, he said.

Asked about the utility executive retention program, consumer advocate Mike Florio of The Utility Reform Network laughed hysterically for several minutes, dropped his phone on the floor and then responded, “Why? It seems to me there is nothing they need more than to change some of these key employees, especially those guys whose bad decisions over the past two years caused the bankruptcy.”

Florio, senior attorney for TURN, lamented the court’s rejection of a committee to represent ratepayer interests last week. TURN would have been on the committee.

In a separate filing, PG&E asked the court to authorize it to assume collective bargaining agreements with various unions that represent 70 percent of utility employees, about 13,830 workers **[Arthur O’Donnell]**.

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