

**Restructuring in the Rearview Mirror – a 10-Year Retrospective of California’s  
Doomed Experiment with Electric Deregulation.  
Courtroom 22 Coverage of the PG&E Bankruptcy**

**PG&E Hatches an Exit Plan**

Pacific Gas & Electric shaved ten weeks off its expected timetable for exiting Chapter 11 by filing a proposed plan of reorganization with the US Bankruptcy Court on Sept. 20. The utility had previously won an extension to its deadline for filing an exclusive plan until December 6. Since parties were under a strict gag rule concerning the plan, no one outside the development process even suspected it would be filed so soon.

Timing was not the only surprise embodied in the proposal, which calls for separation of the utility from its corporate parent and a transfer of key regulatory assets away from state jurisdiction. Basically, the plan would create two publicly traded entities, the Pacific Gas & Electric Company, a state-regulated retail distribution utility, and PG&E Corporation. However, under PG&E Corp. will be four business units: Generation, Electric Transmission, Gas Transmission and the National Energy Group. The first three will comprise assets currently housed within the utility, notably “retained generation” assets, including Diablo Canyon nuclear plant and PG&E’s vast hydroelectric system, as well as in-state gas pipelines and 18,500 miles of high-voltage transmission.

The PG&E utility will hold on to power and gas distribution assets and functions, continue to administer independent power contracts with qualifying facilities and handle customer services.

The new structure will be recapitalized in order to pay off about \$13.2 billion in debt. PG&E expects to use \$9.1 billion in cash and \$4.1 billion in corporate bonds to fully pay all valid claims pending in the bankruptcy proceeding. Secured creditors will be paid in cash, PG&E said, and unsecured creditors will receive 60 percent in cash and 40 percent in notes.

The PG&E utility will not be a wholly owned entity but will be publicly traded, with the corporation retaining an unspecified share of equity and the rest open to public sale at a per-share price still to be determined. Current holders of PG&E Corp. common stock are expected to be issued new shares in the entities, but those details have not been worked out.

“This is plain vanilla bankruptcy work,” explained PG&E Corp. CEO Bob Glynn. “The plan is an achievable solution that will enable [PG&E] to move out of Chapter 11 as a financially strong business positioned to continue safe, reliable and responsive delivery of gas and electricity to its customers, to pay all valid creditor claims in full, and to do so without asking for a rate increase or a state bailout.” He told reporters in a conference call that net changes to the workforce “will not be substantial” and that from the customer’s point of view, the change will be “seamless.”

Although the utility is confident it will receive approval from bankruptcy judge Dennis Montali and the financial community--the official creditors’ committee has already signed off on the plan--there will be friction with state regulators opposed to the divestiture of utility assets to the corporation.

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In essence, the plan asks Montali to approve a transfer of assets that would contravene state law ABx1-6, which forbids divestiture of utilities’ generation assets and requires that power from them be kept under state ratemaking jurisdiction at least through 2006. The power sales arrangements proposed by PG&E would become federal wholesale contracts and thus would be exempt from regulation by the California Public Utilities Commission.

One thing PG&E is looking for is certainty that its own power will be fully compensated, something it fears is at risk under the CPUC’s allocation proposals for directing utility rate collections to DWR. The utility has lost several battles over market valuation of its assets and attempts to end the rate freeze imposed by restructuring law. It had blamed the freeze as a major factor in the financial squeeze that led to its bankruptcy filing last April.

Ratepayer advocates immediately lashed out at the plan. Nettie Hoge, executive director of The Utility Reform Network, said the plan will rob consumers of valuable generation assets they have paid for through rates, then overcharge them for electricity from those assets.

The PG&E plan calls for power from Diablo Canyon and hydro facilities to be sold to the utility at about \$0.05/KWh under 12-year contracts. Though PG&E said that “market rate” is far cheaper than the average cost of energy being purchased by the Department of Water Resources or bought under revised QF contracts, TURN argued for a cost-of-service comparison. Hoge accused PG&E of stealing assets and then charging inflated rates. “In the name of paying off gougers, PG&E wants to become one.”

Governor Gray Davis said, “I’m very wary of PG&E’s proposal to transfer all of its generating capacity from a regulated environment to a nonregulated environment, which shifts oversight from the PUC to the Federal Energy Regulatory Commission.” Davis added, “That obviously will be challenged in court. PG&E is hoping that the state will give way to the bankruptcy decision. The state will take the position: the state law is a state law and should not be abrogated.”

Ed Feo, an attorney with Milbank Tweed, the firm that represents unsecured creditors in PG&E’s Chapter 11 proceeding, said this conflict appears to fall within Judge Montali’s jurisdiction.

“Provisions of the Bankruptcy Code make it clear that the bankruptcy court has the ability to issue orders notwithstanding state laws to the contrary as necessary for the plan of reorganization.” That includes disposal or sale of assets, Feo said.

PG&E asked the court for approval of the associated disclosure statement by the end of December, with confirmation of the reorganization plan within six to eight months. After obtaining various regulatory approvals from FERC, the Nuclear Regulatory Commission and the US Securities and Exchange Commission, PG&E hopes for consummation of the plan by the end of 2002 **[Arthur O’Donnell]**.

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