

**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**

A Year in Courtroom 22

I was running late for the 9:30 am hearing. The parking lot at the Glen Park Bay Area Rapid Transit station was full, and Thursday-morning street cleaning had wiped out half of the available parking spaces along nearby Wilder Street. Round and round I went until a spot appeared.

There were no delays as BART sped beneath Mission Street and into the heart of San Francisco's Financial District to my stop at Montgomery Plaza--at least today no one had thrown himself on the tracks, as sometimes happens.

But the metal detector at the 19th-floor entrance to the US Bankruptcy Court was tweaked higher than at San Francisco International Airport. Beep. Remove change and pen from pockets. Beep. Take off the belt. Beep. This time the glasses. Beep. What could it be? Oh, there must be some sort of metal shank in my shoes. "OK, you can go," said the guard--who must be secretly amused at making all the suits pare down their assets as they enter the court.

At last, the elevator deposited me on the 22nd floor, and I swung through the doors just in time to find that I was the only person attending a teleconference.

Judge Dennis Montali, the court recorder and I were the only souls inside Courtroom 22. Disembodied voices of lawyers came through the speaker system, and at least I caught Montali's recap of his oral scheduling order. Just enough information to write an item for the newsletter, so I didn't feel quite so foolish.

On the way back down to the street, I thought about the difference a year makes. When Pacific Gas & Electric filed for Chapter 11 bankruptcy on April 9, 2001, you couldn't find a seat in the packed courtroom. There were dancing pigs at the Pine Street entrance, and while the TV cameras were not allowed into the courtroom, there were plenty of other media types inside. Only those who had previously notified the court of their planned attendance were given little badges at the entryway after they'd checked for your name from a list: green for attorneys, purple for media and yellow for the public.

No one knew quite what to expect. Montali, a former Naval Reserve officer with active duty aboard two destroyers, had a reputation for running a tight ship. He exhibited his stern disapproval when a cell phone rang out during the proceeding in violation of a cardinal rule of courtroom decorum. When an activist attempted to read her "open letter" to the court, Montali cut her short and sent her back to her seat--although he later gave her a chance to speak her mind.

With a few flashes of wit, Montali proved he was well aware that he was presiding over one of the biggest bankruptcy cases in history and was likely to be plying some uncharted legal waters in an unprecedented case. During a second hearing that same week, Montali peered over the still-packed courtroom and openly wondered whether he was going to have to find a larger room to accommodate all of the people who came to watch the show.

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That never became necessary. Soon, the activists and nonprofessional observers disappeared from the scene, attendance by general media grew intermittent, and the parade of motions, filings and objections became routine and, well, mundane. Sometimes to alleviate boredom, I pictured little cash registers above the heads of the high-priced attorneys, ringing up their billable hours as they droned on and on about something or other.

Remembering how much money is involved always helps spark my flagging interest level.

The PG&E bankruptcy is far less contentious than many Chapter 11 proceedings. As a "solvent debtor," the utility has promised to pay 100 percent of valid claims, which prevents the kind of desperate fight over assets that is already marking the Enron proceeding. That does not mean the case is lacking in conflict; certainly the fact that PG&E recognizes only about \$14 billion of the \$40 billion in filed proofs of claim means that somebody is going to be unhappy at the end. So far, though, the debtor and its major financial creditors appear to be pretty much in synch.

Where the PG&E case has generated sparks has been over legal principles. Early on, Judge Montali had to come to terms with the issue of balancing federal powers against the sovereign immunity claims of state regulators and other agencies. The issue first came up when PG&E tried to have the court overturn the California Public Utilities Commission's order on accounting for stranded-cost recovery, and Montali upheld the determination that ratemaking decisions are a legitimate exercise of state "police" powers.

That finding held the door open to the CPUC's offensive against PG&E's proposed plan, which in large part depends on the judge placing federal jurisdiction above state authority. Despite a precedent in the most relevant bankruptcy case, involving utility Public Service Company of New Hampshire, Montali has refused to accept PG&E's broad claim that bankruptcy code preempts state laws. The book is still open to a more narrow preemption claim, but clearly the issue is one that will determine whether PG&E's proposal will fly.

All other aspects of the PG&E case pale in comparison to this crucial legal determination--\$40 billion in claims notwithstanding.

The next major phase in the case will come when the CPUC files its alternate plan of reorganization on April 15. No doubt, the courtroom will be packed once again, and maybe the dancing pigs will make a reappearance **[Arthur O'Donnell]**.

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