
CALIFORNIA CREDIT ISSUES: PG&E BANKRUPTCY

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NAPCO

- This is intended to be interactive- please ask questions whenever you have them
- It is ok to interrupt me
- This is not legal advice - Consult your counsel!



Pacific Gas & Electric Bankruptcy

- PG&E filed bankruptcy on January 29, 2019, in the Northern District of California before Judge Montali (before whom the 2001 case is still open)
- Principal Causes
 - CCAs/load and talent drain
 - Fires
 - California “inverse condemnation”
 - SB901 covered wildfires for “stress tests”, securitizations, etc.
 - 2017 and earlier
 - 2019 and later
 - Not 2018; camp fire
 - San Bruno probation

Pacific Gas & Electric Bankruptcy

- Unprecedented
- Bankruptcy of one of the nation's largest utilities
- Under federal probation for a gas explosion that killed eight
- Under threat of indictment for murder for fires
- A political/jurisdictional brawl
- 300 PPAs totaling \$42BB notional.

Theory of Chapter 11

- Debtor in possession operates estate to increase value over liquidation value
- Debtor accepts or rejects contracts to reorganize- including PPAs
- Debts of estate, like any 2019 fires, are administrative claims
- Bankruptcy is a slow-motion massive, multi-party litigation settlement process
- A plan of reorganization is proposed and voted on by creditors

Pacific Gas & Electric's PPAs

- Compared to last time
 - Market higher than PPAs prices then, opposite now
 - PPAs post-MRTU settle with ISTs or financially if ISTs are not used
 - Cash-flow problem in a power crisis vs. actual insolvency
- Assume or reject
 - Debtor could agree to assume after renegotiation, e.g. *United Airlines*
 - Despite reports, there is no “writing down” of the PPAs by the Judge
 - PPA sellers, politicians, CPUS and CCAs say they want PG&E to assume PPAs
 - Forward contracts – not many PPAs are below market
 - Market energy price + market compliance instrument price

Pacific Gas & Electric's PPAs

- CPUC President Picker says “we won’t let” PG&E reject renewable PPAs
- The PPA seller “nobody benefits” argument
 - How costs are passed through to ratepayers
 - There is a practical limit to how much ratepayers can pay
 - PCIA, CCA competition
 - More value for fire victims as enterprise value of emergent entities improved
 - If I owe \$200 in pre-petition debt, and I am going to make \$100 in post-petition revenue to pay that, and I have \$50 in costs, everyone else but the specific creditors is benefited if I make the costs into pre-petition rather than post-petition, as I would have \$100/250 to distribute rather than \$50/200
 - Renewable goals
 - Steel in the ground does not evaporate if PPAs are rejected

FERC

- FERC Order
 - FERC claims “concurrent jurisdiction” over what is a PPA default
 - Rejection = prepetition default per §365(g)
- PG&E v. FERC
 - Adversary proceeding brought by PG&E to keep out FERC
 - First Energy
- Potential trap for PPA sellers
 - *NRG v. Maine PUC* and bankruptcy, \$100MM probation, fire victims
 - “... the sole concern of [FERC] would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.” [*Morgan Stanley v. Snohomish*] 350 U. S., at 354–355” *NRG Power Marketing, LLC. v. Maine PUC*

Preparing for bankruptcy and “participating”

- Understanding exposures
 - Claims
 - Preferences
- Unsecured, administrative, and 503(b)(9) claims
- Peanut buttering of defaults to CAISO as provided in tariff
- Knock-on credit “victims”
- Confusion and misinformation

Likely Plan Issues

- CPUC
 - Legislative role
- No milestones in the DIP financing
- Ability to pounce during exclusivity period?
- Reorganize around bad FERC/CPUC outcomes?
- PG&E required to keep employees for six months post-filing
- Hedge funds buying up fire claims, indicates an investment in what emerges

Likely Plan Issues (continued)

- Distribute shares in gasco/2+ discos/transco/?
- After shedding contracts, is it more competitive?
- Public entities will have non-dischargeable claims under §1141(d)(6)(A) if they can prove fraud or the other typical elements of non-dischargeable personal bankruptcy claims
 - Some pre-petition claims may remain owed
- Does California keep a provider of last resort?
- Will power quality vary by neighborhood wealth?



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