



308:Corporate Restructurings & Shutdowns

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Faculty Biographies

Linda L. Agerter

Linda L. Agerter is chief counsel of utility operations for Pacific Gas and Electric Company ("PG&E") in San Francisco. She is responsible for overseeing the legal work associated with PG&E's distribution and retail service business. For the last two years, she has been on a special assignment assisting with the development and planning for implementation of PG&E's plan of reorganization.

Prior to this position, Ms. Agerter worked on a variety of transactional and regulatory matters before the California Public Utilities Commission, the California Energy Commission, and the Federal Energy Regulatory Commission. Before joining PG&E, Ms. Agerter worked at several law firms and the U.S. Department of the Interior.

Ms. Agerter received a BA from Allegheny College and graduated from the Harvard Law School.

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Geoffrey M. Creighton serves as general counsel to Global IP Sound Inc., a Voice over IP technology company with offices in Stockholm and San Francisco.

He previously served as chief counsel to Key3Media Events (now known as MediaLive International), as counsel in the law department of Sun Microsystems, as a litigator in private practice, and as a Judge Pro Tem.

Mr. Creighton earned a BA at Stanford University and a JD at the University of Michigan Law School.

James R. Edwards

James R. Edwards currently serves as senior legal counsel for Qualcomm Incorporated. He previously served as vice president, general counsel & secretary of Wireless Knowledge, Inc., a communications software company. Prior to this position, he served as vice president, general counsel & secretary of InJet Digital Aerosols, Inc., a medical device company and as vice president, general counsel & secretary of General Atomics, a high technology research and development company.

He serves on the board of directors of ACCA.

Mr. Edwards obtained his BS from Colorado State University and his JD from the University of San Diego, School of Law.

**PG&E's Original Plan of Reorganization
Separating 100 Years of Vertical Integration**

Linda Agerter

**ACCA 2003 Annual Meeting
October 8, 2003**

Topics

- Y **PG&E's Bankruptcy and Original Plan of Reorganization (POR)**
- Y **Separation Process - Integration**
- Y **Separation Contracts**
- Y **Master Separation Agreement and Asset Transfer Assumption and Assignment Agreements**

Pacific Gas and Electric Company

PG&E's Bankruptcy and Original POR

Hydro Dam
and
Powerhouse

- 20,000 + employees
- 15 million people served
- 4.8 million electric customers
- 3.8 million gas customers
- 70,000 sq. miles
- 91,000 miles electric distribution line
- 18,500 miles electric trans. line
- 38,944 miles gas distribution pipe
- 6,300 miles gas transmission pipe
- 6,420 MW owned generation
- \$10.5 billion operating revenues
- \$22 billion assets

Electric
Transmission

Gas
Regulator
Station

Overview of Bankruptcy "How fast things change"

PG&E's Bankruptcy and Original POR

- Y Prior to the summer of 2000 PG&E was one of the healthiest energy utilities in the United States
- Y Beginning in June of 2000, cost of procuring energy increased above frozen retail rates
- Y PG&E made repeated, but unsuccessful, requests to allow recovery of procurement costs in retail rates
- Y By the spring of 2001, PG&E had incurred \$9 billion in procurement costs that it was unable to collect
- Y PG&E was downgraded to an uncreditworthy rating and filed for bankruptcy under Chapter 11 on April 6, 2001

Current Status and Key Dates

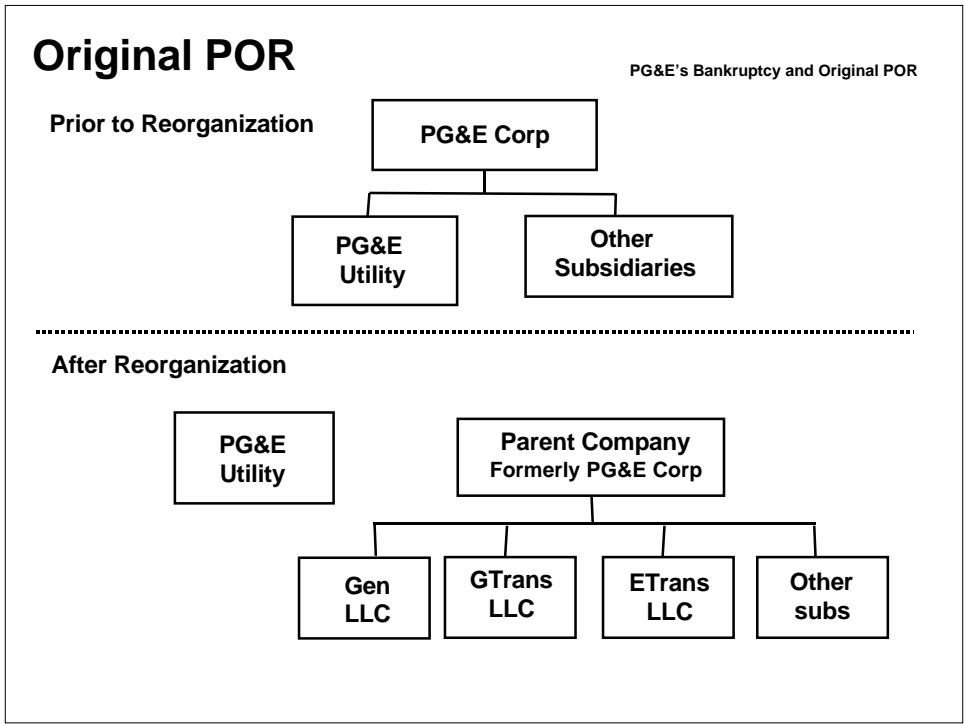
PG&E's Bankruptcy and Original POR

- Υ **Declared Chapter 11 on April 6, 2001**
- Υ **Filed "Original PG&E plan" POR on September 20, 2001 and revised POR on April 19, 2002**
- Υ **CPUC plan filed on April 15, 2002**
- Υ **Hearings began November 18, 2002**
- Υ **Stay in proceedings on March 11, 2003 for settlement talks**
- Υ **Settlement reached between PG&E and CPUC staff is June 2003**
- Υ **"Settlement POR" filed June 27, 2003**
- Υ **Proceedings on settlement POR underway at CPUC and bankruptcy court**

PG&E's Original Plan of Reorganization

PG&E's Bankruptcy and Original POR

- Υ **Four "Investment grade" businesses would emerge from bankruptcy:**
 - ≤ **PG&E - the reorganized distribution utility**
 - ≤ **Gen LLC – electric generation**
 - ≤ **GTrans LLC – gas transmission**
 - ≤ **ETrans LLC – electric transmission**



- ### POR Teams
- Separation Process
- Y Senior Management and Leadership Team
 - Y Project Management
 - Y Business Teams
 - ≤ Gen
 - ≤ ETrans
 - ≤ GTrans
 - ≤ Disco
 - Y Finance
 - Y Legal – SEC, FERC, NRC, IRS, Bankruptcy
 - Y Financial Analysis
 - Y HR
 - Y Tax
 - Y Accounting
 - Y Disclosure
 - Y Communications
 - ≤ Internal
 - ≤ External
 - Y Public and Governmental Relations
 - Y Separation

Separation Process “multi-functional teams”

Separation Process

	<u>Distribution</u>	<u>Generation</u>	<u>Gas Trans</u>	<u>Electric Trans</u>
Assets	X	X	X	X
IT	X	X	X	X
HR	X	X	X	X
M&O services	X	X	X	X
A&G services	X	X	X	X
Financial	X	X	X	X
Permits	X	X	X	X
Intangible/assets /contingencies	X	X	X	X
Accounts	X	X	X	X
Land	X	X	X	X
Contracts	X	X	X	X

- Separation Process**
- Separation Process
- Υ **Policy Resolution**
- ≤ **Steering Committee – Officers from all LOBs, legal, IT, financial**
 - ≤ **Working Teams – Matrixed team consisting of affected business team reps and knowledgeable specialty team reps and separation team reps**
 - ≤ **Policy decision recommended by working team and approved by steering committee for each issue**
 - ≤ **Implementation activities described and responsibilities assigned**

Asset Separation “Design Criteria”

Separation Process

- Υ **Service must remain safe, reliable and in legal compliance**
- Υ **Satisfy requirements for tax-free spin**
- Υ **Minimize costs**
- Υ **Minimize service agreements between PG&E and Newcos**
- Υ **Implementable promptly after POR confirmation**
- Υ **Establish specific demarcation lines:**
 - ≤ **How do you undo 100 years of vertical integration and mass accounting?**

Separation – “details, details”

Separation Process

Hierarchy of Separation Decisions

- Υ **Direct assign where possible – for example:**
 - ≤ **Most power plant assets assigned to Gen**
 - ≤ **Most distribution lines assigned to the Utility**
 - ≤ **High pressure backbone pipeline assets assigned to GTrans**
- Υ **Split remainder according to policy decisions and accounting methods:**
 - ≤ **Assets assigned (or split) by LOBs based on policy decisions**
 - ≤ **Numerous accounting studies performed, for example:**
 - **Historic Cost Less Depreciation (HCLD) values determined for equipment within assets that needed to be split**
 - **Physical counts or relative miles of “pipe or wire” determined**
 - **100’s of buildings and structures examined for “predominant user”**

Asset Separation – “An example”

Separation Process

Υ Electric Substations**Electric Substations**

Separation Process

Υ 860 Substations

- ≤ 366 Distribution-only < 60 kV
- ≤ 77 Transmission-only ≥ 60 kV to 500 kV
- ≤ 417 Combined transmission and distribution

Υ Equipment in substations includes switches, breakers, transformers, reactors, structures, land, buildings and telecom**Υ Most locations have all equipment in single accounts****Υ Solution for combination electric substations**

- ≤ Used work management to identify each piece of equipment and age
- ≤ Assigned historical cost to each piece of equipment using the HCLD method
- ≤ Allocate the book value of the asset records based on the HCLD pieces of equipment
- ≤ Land, buildings and infrastructure assigned to the “majority owner”
- ≤ Substation agreements between owner and tenant assigned cost and operational responsibilities

Separation Contracts

Y Overview

- ≡ Separation Agreements
- ≡ Major FERC jurisdictional agreements
- ≡ Post-Separation service agreements
- ≡ Post-Separation joint asset use agreements
- ≡ Post-Separation information sharing agreements
- ≡ Post-Separation lease agreements

Separation Contracts

Y Separation Agreements

- ≡ Master separation and distribution
- ≡ Tax matters
- ≡ Asset transfer, assignment and assumption agreements between reorganized PG&E and each of Gen, GTrans and ETrans
- ≡ Environmental indemnity
- ≡ Employees matters
- ≡ Pollution control bonds
- ≡ Trademark and service mark assignment and license
- ≡ Patent assignment and license
- ≡ Nuclear decommissioning master trust amendment and assignment

Separation Contracts

Y Major FERC Jurisdictional Agreements

- ≡ **Gas transportation and storage**
- ≡ **Gas revenue transfer**
- ≡ **Metering**
- ≡ **Electric system interconnection**
- ≡ **Generation interconnection**
- ≡ **Master power purchase and sale**
- ≡ **“Back to back” agreements regarding existing third party agreements**

Separation Contracts

Y Post-Separation Service Agreements

- ≡ **Telecommunication services**
- ≡ **Network and computer master services**
- ≡ **Construction, engineering and maintenance services**
- ≡ **Control center services**
- ≡ **Meter services**
- ≡ **Technical and ecological services**
- ≡ **Geoscience and seismic services**
- ≡ **Field services**
- ≡ **General services**
- **Hydro facilities service**
- **Nuclear insurance allocation**

Separation Contracts

Υ Post-Separation Joint Asset Use Agreements

- ≡ **Master pole lease**
- ≡ **Substation and switchyard**
- ≡ **Weather station**
- ≡ **Data center co-location**

Υ Post-Separation Information Sharing Agreements

- ≡ **Operational data sharing**
- ≡ **Electric settlement data sharing**
- ≡ **Procurement and scheduling services**
- ≡ **Electric energy determination and billing**
- ≡ **Records access and library**

Separation Contracts

Υ Post-Separation Lease Agreements

- ≡ **Materials distribution center**
- ≡ **Control centers**
- ≡ **General office complex**
- ≡ **Master communication easement**
- ≡ **Field facilities**
- ≡ **Interim occupancy**

MASTER SEPARATION AND DISTRIBUTION AGREEMENT

BY AND AMONG

**PG&E CORPORATION, A CALIFORNIA CORPORATION,
PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION,
PG&E HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
NEWCO ENERGY CORPORATION, A CALIFORNIA CORPORATION,
ETRANS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,
GTRANS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
AND
ELECTRIC GENERATION LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

DATED AS OF _____

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ASSET TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

BY AND [BETWEEN/AMONG]

**PACIFIC GAS AND ELECTRIC COMPANY
AND
LLC**

[AND ANY SUBSIDIARIES OF LLC TO WHICH ASSETS ARE TRANSFERRED]

DATED AS OF _____, _____

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A	Glossary of Terms
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You are In-House Counsel to an Insolvent Business – What Now?

By James R. Edwards

1. Who is your client?

- Directors
- Officers
- Employees
- Shareholders
- Creditors
- Guarantors
- Workout professionals
 - All have strong ideas as what the company should do.
 - One person may have several roles.
 - Lawyer receives conflicting direction.
 - If there are resignations of officers or directors, what then?

 - Who is in charge? What if you can't tell?
 - What if you are placed in an untenable situation?
 - What if you guess wrong?

 - Where do you go to for help?
 - What if there is no money to pay for help?

2. Are there conflicts between related parties?

- Fiduciary duties of officers and directors
- Duty of loyalty and duty of care
- Duty to creditors
- Creditors vs. shareholders
- Duty to preserve and protect assets
- Alter ego liability
 - Are there personal economic interests driving decisions?
 - How do you explain fiduciary duties to officers & directors?
 - Do you advise officers and directors to seek own counsel?
 - What does counsel do if breaches of fiduciary duties are observed?

 - What if counsel is the only officer left?

3. Shareholder conflicts.

- Shareholders are paid last.
- Payment of assets from an insolvent corporation.
- Tax issues. The asset of the loss carry-forward rights.

4. Creditors & Guarantors.

- Shareholders as creditors & guarantors
- Officers & directors as creditors & guarantors

5. Employees.

- Rights under state and federal labor laws
- Unpaid payroll taxes
- Conflicting roles.

6. What are the attorney-client privilege issues?

- The client is the holder. Again, who is the client?
- Waiver by client. Conflicting interests.
- Privilege is easy to lose, give up in a high stress situation.
- In bankruptcy, the trustee is the holder.
- Important issue in fraud claim.

7. What alternatives do you have to bankruptcy?

- Private workouts or liquidations
 - Maximum management control
 - Limited and controlled disclosure
 - Low cost
 - No automatic stay
 - Creditor consent needed
 - No fixed rules
 - Debtor not dissolved
- Assignment for the Benefit of Creditors
 - Private
 - Less financial disclosure than BK
 - Opportunity for asset sale to favored buyer
 - Loss of control
 - No automatic stay
 - Debtor not dissolved

- State Law dissolution.
 - Entity ends
 - Ends tax and corporate reporting
 - Perhaps assumptions of debts by shareholders
 - No automatic stay
 - Judicial proceeding possible

8. If bankruptcy, 7 or 11?

- Chapter 7 – Management is ready to throw in the towel.
- Chapter 11 – Management will continue the struggle.

9. Chapter 7 – Pluses and Minuses.

- Benefits
 - Stops civil litigation
 - Indicates closure of the business
 - Possibly reduce alter ego liability
 - Trustee takes over management
- Costs
 - Major disclosures required under penalty of perjury
 - Possible litigation by trustee to avoid preferential transfers
 - Management loses control
 - Public proceeding
 - May trigger guarantee collection

10. Chapter 11 – Pluses and Minuses.

- Benefits
 - Creditors forced to allow debts to be paid in orderly manner
 - Create time and opportunity to liquidate for a higher price
 - Create time and plan to pay tax liabilities
 - Stops litigation
 - Best employed when there are no major secured creditors
- Costs
 - Very expensive process
 - Intensive disclosures which are very time consuming
 - Extensive negotiations with creditors
 - Proceeding may ultimately fail
 - Lost opportunity costs for management

11. When should bankruptcy not be filed?

- Entity does not qualify under 11 USC 109.
- Debtor or principals cannot make the necessary disclosures under oath
- Debtor or principals are dishonest.
- Major litigation will continue despite bankruptcy.
 - Governmental proceeding dealing with violations of law.
- With only one creditor who is willing to fight discharge of debt.
- Debtor has prior bankruptcy dismissed recently.
- A person or enterprise will lose a valuable asset.
- If certain debts are not dischargeable.
- There is no reorganization plan or exit strategy.

For further help with these issues see Personal and Small Business Bankruptcy Practice In California (J. Scott Bovitz, Editor) published by the Regents of the University of California, Continuing Education of the Bar. This checklist was substantially drawn from Chapter 5, Counseling Insolvent Business Entities Prior to Bankruptcy by Michael T. O'Halloran.

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