Pacific Gas & Electric Company (PG&E)

PG&E is a Central and Northern California utility with 4.6 million customers. On April 6, 2001, it filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code citing $9 billion in obligations and losses of $300 million a month. Its voluntarily bankruptcy was the result of deregulation, along with manipulation of the energy market by Enron and others.

In the PG&E reorganization plan, the utility asked the bankruptcy court to preempt all applicable state and local laws so it could transfer the company's assets in electric transmission, interstate gas transmission, and electric generation to new corporate entities not subject to California Public Utilities Commission (CPUC) oversight or other state authority. PG&E's generation assets included a vast hydroelectric system with a network of 174 dams stretching more than 500 miles, along with associated watershed lands. PG&E sought regulation only under the exclusive ratemaking jurisdiction of the Federal Energy Regulatory Jurisdiction (FERC).

In ***re Pacific Gas & Electric Co.***, 283 BR 41 (ND Cal 2002), the U.S. District Court for the Northern District of California overruled the U.S. Bankruptcy Court and held that PG&E could use the federal bankruptcy process to transfer its generation and transmission assets out from under state rate regulation. The Court noted that Congress changed the Bankruptcy Code in 1978 to remove the ability of state regulators to veto reorganization of public utilities in federal bankruptcy proceedings. The Court also ruled "Congress, in enacting a 'technical amendment' to the Bankruptcy Code, intended to permit any debtor to avoid all state and federal laws as part of a plan of reorganization." In other words, the ruling made bankruptcy court a safe haven for companies wanting to get out of financial difficulty. They could evade state regulation, sell their publicly paid for assets and walk away with the money.

Since the 2001 bankruptcy filing, two electricity rate increases amounting to a 40 percent hike were imposed by California. Additionally, the state took over the job of buying power for PG&E and another utility, Southern California Edison, at a cost of $6 billion in 2001 alone. Ironically, the rate increases created a cash windfall for PG&E. It reported profit in 2001 of $1.1 billion and cash reserves of as much as $5.5 billion. Company employees were given bonuses totaling $64 million, about 30 percent higher than they had seen the year earlier.

Having lost in court, the California Public Utilities Commission caved in to the demands of PG&E by agreeing to a settlement of the bankruptcy case. In doing so, PG&E will be enriched by about $9 billion, every dollar of which has been proposed to come directly from ratepayers. The deal has been spun as being necessary to keep PG&E solvent.

In the most recent plan, it is proposed that:

- PG&E will use three primary revenue sources to repay creditors in full for the $13 billion owed;

- PG&E will retain $3.2 billion in surplus rate revenues it has collected since January 2001 (the so-called "headroom");
- PG&E will recover an additional $2.21 billion from ratepayers over nine years, beginning Jan. 1, 2004, through the CPUC's creation of a regulatory asset in PG&E's ratebase. The cost of this recovery will actually total $5.27 billion of ratepayer contributions over the nine years, when return on and amortization of the amount and taxes on the return and amortization are added; however, any money PG&E recovers from electricity generators and marketers in pending rate overcharge litigation would reduce this amount.
- PG&E will issue $8 billion in debt securities, the cost and repayment of which will be recovered in rates.

Will Enron and its creditors follow PG&E's lead by putting PGE into bankruptcy? Will PGE sell its generation assets so new owners will be exempt from state laws and regulations and be allowed to generate and trade electricity with no controls on price? Or will Oregon's PUC negotiate a deal to remain a regulator at the expense of PGE ratepayers who will pick up the tab with billions in rate increases?

"The commission protected its jurisdiction. PG&E protected its pocketbook and ratepayers are paying for everybody to do that."
— Nettie Hoge, executive director of The Utility Reform Network, estimating that a plan being discussed in June 2003 could cost consumers $8.8 billion over the next nine years.

"This may be a great deal for PG&E and its creditors but it is funded out of the pockets of California consumers."
— Doug Heller, a senior consumer advocate with the Foundation for Taxpayer and Consumer Rights on the June 2003 plan.