LEGAL ALERTS | JAN 14, 2019

CPUC Proceedings of Note: PG&E Restructuring, Undergrounding and Wildfire Mitigation

Public Agencies Will Be Impacted by Various Actions

Pacific Gas and Electric's announcement that it intends to file for bankruptcy by the end of January will have a significant impact on public agencies. The California Public Utilities Commission recently began an investigation into PG&E restructuring, as well as other important rulemakings that directly affect local governments. Cities, counties, joint powers authorities and special districts should strongly consider getting involved in the proceedings.

PG&E Bankruptcy & Restructuring

PG&E continues to encounter regulatory and financial difficulties related to its safety record on both gas and electric services well after the San Bruno gas pipeline explosion, which resulted in massive CPUC-imposed fines and federal felony convictions against PG&E. There is widespread criticism and massive potential liability arising out of wildfires allegedly linked to PG&E's facilities and infrastructure. In addition, the CPUC's Safety Division has alleged that PG&E deliberately falsified gas pipeline mapping mandated by the CPUC.

Today, PG&E announced that it intends to file for bankruptcy protection by the end of the month, citing potential wildfire liabilities of approximately $30 billion, with only $1.4 billion in wildfire insurance. Since fall 2017, PG&E's stock has lost more than three quarters of its value due to growing wildfire liability concerns. PG&E's bankruptcy will be complex and must address the competing interests of fire victims, creditors, customers and energy providers.

PG&E's bankruptcy announcement is another in a string of inauspicious events for the troubled utility. The bankruptcy announcement came just a day after PG&E's CEO, Geisha Williams, exited the company. On Jan. 8, PG&E

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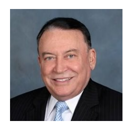

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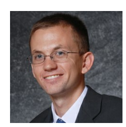

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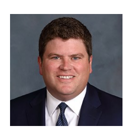

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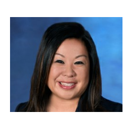

announced the sudden “retirement” of three officers directly in charge of the electric system. The next day, Moody’s downgraded PG&E’s credit rating, citing a challenging environment for the utility as potential liabilities grow, liquidity reserves decline and access to capital becomes more uncertain. Multiple media outlets recently reported that PG&E was exploring the sale of its natural gas division in the spring to avoid bankruptcy. However, PG&E's natural gas assets only account for between 20 and 30 percent of the company and it is not clear that it had a buyer lined up or that the sale would net enough to stave off bankruptcy.

In December, the CPUC announced it is evaluating PG&E’s corporate governance, structure and operations. Regulators are concerned that recurring safety problems at PG&E indicate a deep and systemic problem with the company’s safety culture that requires unprecedented reform. The CPUC is considering splitting the gas and electric distribution and transmission divisions into separate companies, converting the company into a group of regional subsidiaries or municipal utilities, and replacing PG&E leadership. The CPUC will also evaluate whether PG&E should transition into a “wires-only company” that only provides electric distribution and transmission services and, if so, what entities should provide generation services in PG&E’s absence.

PG&E restructuring is of significant concern to Northern California Community Choice Aggregators and other communities that may consider forming municipal utilities to provide residents with retail electricity while maintaining local control. PG&E and other investor-owned utilities may also attempt to move a significant portion of their wildfire liabilities to ratepayers and CCAs. PG&E is expected to make initial filings with the CPUC in its restructuring investigation by Jan. 16, with opening comments from other stakeholders filed by Jan. 30.

Utility Undergrounding Programs – Rule 20

The CPUC is considering revisions to the Electric Rule 20 utility undergrounding programs of IOUs. This multi-phase proceeding is examining Rule 20 funding allocations, trading credits among municipalities, changes to IOU undergrounding tariffs, contracts between cities and IOUs, and program restructuring.

Dozens of communities throughout the State have active undergrounding programs, while others have programs that are dormant, but can become active or can trade unused undergrounding credits to other cities. This proceeding provides municipalities with an important opportunity to influence a topic rarely considered by the CPUC. The administrative law judge overseeing this matter issued a memo outlining the scope of the rulemaking in November, with initial stakeholder proposals expected in mid-January.

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SB 901 Wildfire Mitigation Plans & De-Energization of Power Lines

Catastrophic wildfires linked to utility infrastructure pose a grave and enduring threat to local communities. The Legislature recently passed SB901, which requires all IOUs to adopt preventive strategies and develop mitigation programs that minimize the risk of its electrical lines and equipment, while considering the dynamic effects of climate change. SB901 also requires the CPUC to consider appropriate procedures for notifying customers who may be impacted by the de-energization of electrical lines. These procedures must prioritize communications with critical first responders, health care facilities and telecommunications infrastructure operators.

To implement SB901, the CPUC began three proceedings:

- In October, the CPUC initiated a rulemaking to seek guidance on the form and content of utility wildfire mitigation plans. This proceeding is fast-tracked on an expedited timetable, with IOU wildfire mitigation plans due in the summer.
- In December, the CPUC opened a proceeding to specifically examine de-energization of power lines during dangerous conditions in high-risk areas, to develop best practices and local government coordination. This proceeding is expected to tackle some of the more complex de-energization topics related to wildfire.
- In January, the CPUC opened a rulemaking to implement Public Utilities Code section 451.2, which requires the CPUC to determine how to allocate costs associated with the 2017 wildfire to the IOUs and their ratepayers.

Wildfire mitigation and de-energization procedures are of paramount concern to California communities that face heightened wildfire risk and challenges integrating potential de-energization events into their disaster response preparedness programs.

Best Best & Krieger LLP attorneys represent CCAs and municipalities before the CPUC, and previously provided assistance to cities and other stakeholders during PG&E's prior bankruptcy and restructuring. If you have any questions about how these proceedings at the CPUC may impact your agency or project, please contact the authors of this Legal Alert listed to the right in the firm's Municipal Law practice group, or your BB&K attorney.

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