

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

AB 2283 (Gallagher) – As Amended March 17, 2022

SUBJECT: Public utilities: wildfires: victim compensation

SUMMARY: Requires the California Public Utilities Commission (CPUC) to undertake a comprehensive review of actions taken by the Pacific Gas and Electric Company (PG&E) that materially and adversely affected the value of its stocks provided as a part of its settlement agreement with victims of wildfire that is a part of PG&E's Plan of Reorganization (Plan) approved by the United States Bankruptcy Court (Court) on June 20, 2020.

EXISTING LAW:

- 1) Establishes the CPUC, which has regulatory authority over public utilities, including electrical corporations. (California Constitution Article XII, §§ 3, 4)
- 2) Subjects public utilities that fail or neglect to comply with any order, decision, decree, rule, direction, demand, or requirement of the CPUC, to a penalty of not less than \$500, nor more than \$100,000, for each offense. (Public Utilities Code § 2107)

FISCAL EFFECT: Unknown. This bill is keyed fiscal and will be referred to the Appropriations Committee for its review of the fiscal effect of this bill.

BACKGROUND:

Pacific Gas & Electric (PG&E) Bankruptcy – On January 29th, 2019 PG&E filed for Chapter 11 protection in the Court (No.19-30088-DM). In that filing, PG&E claimed \$51.7 billion in total debt versus approximately \$71 billion in assets. According to the company's first day filings PG&E's decision to seek relief under Chapter 11 was "necessitated by a confluence of factors resulting from the catastrophic and tragic wildfires that occurred in Northern California in 2017 and 2018, and PG&E's potential liabilities arising therefrom." PG&E asserted that its bond ratings dropped so precipitously that it was unable to maintain the cash flow needed to operate as the markets anticipated that the utility would have to book billions of dollars in liability.

Fire Victim Trust (Trust) – On June 20, 2020, the Court approved PG&E's bankruptcy Plan, which established the Trust and authorized \$13.5 billion in compensation to victims of the 2015 Butte Fire, the 2017 North Bay Fires, and the 2018 Camp Fire. According to filings in the Court docket:

Nearly 83,000 Fire Victim Claims have been filed in the Chapter 11 Cases. Over 95% of the proof of claim forms submitted by those Fire Victims specified the amount of the claim was 'unknown'...As a result, it is not currently possible to predict what any specific claimant will be paid or a percentage recovery on such Claim any specific claimant should expect out of the approximately \$13.5 billion in total consideration that will be transferred to the Fire Victim Trust under the plan. An intensive analysis is underway to determine which of these fire victim Claims are eligible for compensation. For example, over 4,000 claims identified loss addresses well outside the perimeter of any of the relevant fire zones.

Court filings also state the settlement as follows:

The Fire Victim Trust will be funded with consideration with an aggregate value of approximately \$13.5 billion as follows: (i) \$5.4 billion in Cash on the Effective Date of the Plan; (ii) an additional \$1.35 billion in Cash, consisting of (a) \$650 million to be paid in Cash on or before January 15, 2021 pursuant to a Tax Benefits Payment Agreement, and (b) \$700 million to be paid in Cash on or before January 15, 2022 pursuant to a Tax Benefits Payment Agreement; (iii) \$6.75 billion in common stock of Reorganized PG&E Corp. (using an equity value equal to 14.9 multiplied by the Normalized Estimated Net Income as of a date to be agreed upon among the parties to the Tort Claimants RSA), representing not less than 20.9% of the outstanding common stock of Reorganized PG&E Corp. as of the Effective Date; and (iv) the assignment of certain causes of action and insurance rights on the Effective Date. All Fire Victim Claims shall be satisfied solely from the Fire Victim Trust with no recourse to the Debtors, the Reorganized Debtors, or their respective assets and properties. Funding of the Fire Victim Trust as provided above shall be in full and final satisfaction, release, and discharge of all Fire Victim Claims.

Status of Trust – The following table reflects the *approximate* receipts by the trust in cash and stock. This does not reflect claims paid to Fire Victims to date or outstanding. The table was prepared after a review of Court filings, statements on the Trust website, a conversation with attorneys for the Trust, and media articles:

	<i>Balance</i>
<i>Bankruptcy Plan Cash Status:</i>	<i>\$ 13.5 billion</i>
Cash from PG&E to Trust on exit	less \$ 5.4 billion
Two additional payments from PG&E to Trust per Plan	less \$ 1.35 billion
<i>Net to be satisfied by sale of stock</i>	<i>\$ 6.75 billion</i>
Sale of stock by Trust (January '22)	less \$ 483 million
<i>Net to be satisfied by sale of shares</i>	<i>\$ 6.244 billion</i>
Less additional sale of stock in spring	unknown
<i>Net remaining to be satisfied by sale of shares (& must include transaction costs)</i>	<i>unknown</i>
<i>Common Stock Shares held by Trust Status:</i>	
Shares issued on exit from Bankruptcy from PG&E to Trust	<i>477,743,590</i>
Sale of shares by Trust @ \$12.09 (Jan '22)	less 40,000,000
Sale of shares by Trust (spring '22)	less 60,000,000
<i>Current shares held by Trust</i>	<i>377,743,590</i>
<i>*All data is approximate</i>	

The stock was trading at \$9.97 on Monday, June 22, 2020 immediately after the Court approved PG&E's Plan approving the stock transfer to the Trust. Since that time it has been as low as \$8.29 in August 2021, and as high as \$13.01 in January 2022. The stock closed at \$12.30 on Friday, April 15th which would value the remaining shares held by the Trust at approximately

\$4.6 billion. One of the greatest challenges facing the Trust is managing the sale of the stock in a manner that does not have an adverse impact on the value – the Trust owned approximately 20% of the company on PG&E’s exit from bankruptcy.

COMMENTS:

- 1) *Author’s Statement.* According to the author, “The Trust was created to compensate fire victims for damages cause by PG&E during some of the most devastating wildfires in California’s history. Victims agreed to a deal that would pay the Trust \$13.5 billion, half in cash and half in stock that at the time of the deal was valued at \$6.5 billion. Unfortunately, subsequent actions by PG&E are thought to have devalued the stock price, leaving the Trust short billions of dollars for payments that were promised to victims. AB 2283 simply asks the CPUC to investigate subsequent actions taken by PG&E that may have caused stock to devalue so that the Legislature can determine if future legislative action is warranted.”
- 2) *CPUC as a Market Analyst.* As currently structured this bill requires the CPUC to investigate actions that have been taken by PG&E which “materially and adversely affected the value of its stocks.” The mission of the CPUC is to regulate services and utilities, protect consumers, safeguard the environment, and assure Californians’ access to safe and reliable utility infrastructure and services. The CPUC as a regulator and is not in a position to be a market analyst and connect the actions of a publicly held company with the reactions of the markets. Nor is the analysis requested based on markets that act logically and consistently. The financial markets are affected by many factors such as political upheaval, interest rates, current events, exchange rate fluctuations, natural calamities, and much more.

Practically, it is also not clear what value an analysis by the CPUC would have and how it would be used if the CPUC was able to accomplish the task, and in a timeframe of value to its purpose. Historically it takes the CPUC a minimum of 18 months, and often more, to move through its quasi-judicial processes, open a proceeding or investigation, take public comment, research the issues, etc.

- 3) *Stock Management by the Trust.* There is a need for the Trust to secure a value of stock sales that meets the intended \$6.75 billion anticipated for the Trust in the bankruptcy settlement. The most significant challenges are the price of the stock rising to a level sufficient to fund the value planned for by the settlement and then managing the sale in such a way that the value of the stock is not diminished when it hits the market.

Two years ago when the stock was transferred to the Trust, it owned approximately 20% of PG&E. Although eligible for dividends, payment to shareholders was limited by the Plan until specified thresholds are achieved by the company. To date no dividends have been paid to shareholders including the Trust.

For contractual and market reasons, the Trust cannot sell its stock holdings all at once just because the value reaches a level that could provide the anticipated and needed revenues. A large sale of stock dumped into a market can immediately devalue its worth. Consequently, the Trust has to manage the sequencing and timing of the sale of stock to

maintain its value which may not match the cash flow needed to fund claims when the administrative and investigative work is completed on the claims.

- 4) *Other Impacts on Trust Cash.* There is remaining litigation that was assigned to the Trust by PG&E as part of the Plan that could result in additional revenues to the Trust at some future date. The assigned claims include lawsuits against vegetation management companies and shareholder derivative lawsuits against certain former and current officers and directors of PG&E (Corp and Utility) for the 2017 and 2018 fires. The Trust was assigned these claims as part of the Plan and now has the sole authority to pursue those claims. The proceeds from any of the assigned claims become part of the trust “corpus” that is available to be paid to victims. However, there are also outstanding claims by agencies such as FEMA which are to be paid first from these cases if there are settlements or judgments for the plaintiffs with the remainder to the Trust.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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