

Public Comment

from January 28, 2019
RCEA Board of Directors Meeting

From: [ja savage](#)
To: [Lori Taketa](#)
Cc: [REDACTED]
Subject: PG&E's bankruptcy & nuclear waste
Date: Sunday, January 20, 2019 2:08:13 PM

Jan. 20, 2019

J.A. Savage
RCEA Board

[REDACTED]
Eureka, CA [REDACTED]

Trinidad

Re: PG&E Bankruptcy

Dear Board:

Since your last meeting, PG&E's began preparing to file bankruptcy. I assume you and counsel are all thinking about it:

"Sure, it would be great to take over the production facilities right here at King Salmon, but, oh that pesky nuclear waste." I hope you come up with a plan long before one is forced on the county by bankruptcy court.

PG&E may have stuffed most of the radioactive waste in concrete casks at Humboldt Bay, but remember, those casks are only meant to last a century or so, and that's not counting sea level rise and whatever other challenges nature or sabotage throws its way. So, if RCEA is looking to buy-out PG&E's generation facilities to avoid being beholden to a new, unregulated supplier at the site, you should be the first to get that waste taken care of by a long-lived, dedicated public agency.

If there's not already communications started between RCEA and nuclear community choice neighbors in San Luis Obispo (MBCP), I hope RCEA initiates one.

I assume it will be the opposite of a 'power grab.' Federal, state, and financial entities will all want to duck taking over PG&E's radioactive liability.

If community choice comes up with an early plan to create a new public entity to care for nuclear waste in perpetuity, it ease the way as responsibly as possible.

I support "municipalizing" or, um, "commchoiceizing." I hope the courts and the state will determine a way to allow us to finance it while allowing a new public board to free community choice from radioactive liability.

Yours Truly,

J. A. Savage
[REDACTED]

cc: County Supervisor Madrone

From: [ja savage](#)
To: [Lori Taketa](#)
Subject: addendum letter on PG&E bankruptcy
Date: Monday, January 21, 2019 7:36:55 AM

If the board is interested in a little more info on how PG&E wanted to treat nuclear waste in its last bankruptcy, see below. I was an energy journalist for many decades and spent a lot of time in bankruptcy court during PG&E's first bankruptcy. While those stories have been lost in laptop changeovers during the years (didn't think that it would come up again, sigh), I do have this synopsis of what PG&E attempted at the time for the Humboldt and Diablo plants.

Written circa 2010

The nuclear industry discovered it can use limited liability corporations to shield itself from economic risk from the power plants—leaving the economy as a whole to soak up losses if and when the new corporations' power plants have an accident or other asset-threatening event. Utilities are not always successful in setting up an LLC to hold the power plants. Limited liability corporations are shell corporations backed by letters of credit.

California narrowly avoided being forced to have Diablo Canyon put into one of these shell corporations. When PG&E filed for bankruptcy in 2001, PG&E attempted to rearrange its Diablo Canyon ownership through that federal court. Bankruptcy court, unlike other courts, is only set up to protect those to whom the company owes money. While the court clearly did not like putting the nuclear plant's ownership in a LLC, there was no legal reason to preempt it. The only reason that PG&E still owns the plant outright is because it settled the case outside bankruptcy court. Before that settlement, PG&E envisioned its nuclear operations post-bankruptcy being organized under a "Gen" affiliate. That company would have operating authority over the reactors, but in turn, a Gen subsidiary, called Diablo Canyon LLC, would own the plant. But to be even more confusing, Gen would lease back Diablo Canyon from the subsidiary and operate the reactors. According to documents filed at the NRC, management of PG&E's reactors would have been at the sole discretion of the non-state-regulated subsidiary—it would not have a board of directors.

In addition to keeping management of nuclear plants out of state regulation, the shell corporation would have received the \$1.1 billion in funds accumulated to decommission the reactors. That money had been set up by the state to be out of reach of the utility, but under bankruptcy court, PG&E could have made the switch.

Another corporate strategy widely used by utilities is called "ringfencing." States have allowed utilities to set up parent holding companies outside of the utilities that operate nuclear power plants. The underlying reason states have gone for this set up is to protect utilities, and their ability to deliver electricity to customers, from financial losses from affiliate companies. For instance, a utility has a subsidiary that invests in a chain of sports retail stores, like SoCal Gas did. The chain of retail stores ends up being a loser investment. If a utility is ringfenced from its subsidiaries, then such losses stay with the subsidiary and do not become the problem of the utility. However, if a utility gets into trouble, its parent company cannot be forced to bail it out.

PG&E's bankruptcy was an interesting case in the weakness of ringfencing. Right before the utility filed for Chapter 11 protection in bankruptcy court, it sent \$5 billion, yes


billion, to its parent company. The parent company did nothing to keep PG&E out of bankruptcy. The state spent years in litigation trying to get that money back—so far, unsuccessfully, but the case proceeds in state court. The money was just gone—disappearing into the pockets of the parent company.

Beware of bankruptcies for other reasons. Bankruptcy court can be haven for environmental scofflaws. Bankruptcy protection can be used to flout environmental laws and leave nuclear power plants without enough funds to operate safely. Not that there are too many big companies right now with shaky financials or anything—big energy companies like say, Enron, whose operations entail certain environmental consequences—but just say there are a few.

PG&E brought well-known Harvard law professor Laurence Tribe to bankruptcy court to argue that paying back PG&E's creditors by allowing the utility to pursue its spin-off plan is supported by federal law and federal law only. Tribe maintained there is no health and safety consideration strong enough to allow California law to interfere with federal bankruptcy law—in which paying back the creditors is all that matters. "If state and local laws that are said to obstruct this plan ... are preempted, [the company] does so with full authority of Congress," said Tribe. Although in PG&E's case, Bankruptcy Court Judge Dennis Montali agreed that state environmental law cannot be overridden so easily by having a corporation simply declares bankruptcy. His decision was then declared incorrect by U.S. District Court Judge Vaughn Walker. Walker's decision made new federal precedent by siding with PG&E. The utility, or any other corporation declaring bankruptcy, can now make its plans without consideration of local planning laws, state environmental laws, the Coastal Commission and any number of other agencies that would otherwise be involved with a sale or transfer of assets, like a nuclear power plant, that might have social and environmental impact.

In other words, all those years of scraping and fighting for local environmental law goes down in flaming defeat when the stock market comes into play.

J. A. Savage



Letter to the RCEA Board regarding Item 7.5 on 1/28/19 Meeting Agenda:

From: Glenn Zane [REDACTED]
Sent: Thursday, January 17, 2019 12:01 PM
To: Matthew Marshall [REDACTED]
Cc: David O'Neill [REDACTED]; Brian Morrison [REDACTED]; Kevin Davis [REDACTED]; Diane O'Neill [REDACTED]
Subject: Contract under which Blue Lake Power will sell power to RCEA

Matthew:

Thank you for the response to my email. I have reviewed it with David and others and BLP makes the following proposal to RCEA.

- 1) BLP will sell power to RCEA under a one year term contract at the rate of \$55 per MWhr. That price will not include payment for the REC's which BLP will retain.
- 2) The power sold will be up to 10.5 MW per hour and RCEA will be obligated to take not less than 7.5 MW in any hour for which power is purchased.
- 3) BLP stands ready to negotiate the formal, detailed terms of an agreement under which it will perform as above.

Please advise if this email will suffice or if you need a formal letter from David to take to your board. I emphasize BLP is fully ready to perform under this arrangement and that the plant will operate in compliance with all permit stipulations.

Best, Glenn

Glenn A. Zane
Continental Resource Solutions

[REDACTED]
[REDACTED]