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PG&E Bankruptcy FAQs for PPA Holders

1. **When and where is PG&E expected to file for bankruptcy?**

Currently, PG&E is expected to file for bankruptcy on January 29, 2019, likely in the United States Bankruptcy Court for the Northern District of California in San Francisco (the "Bankruptcy Court").

2. **Could the federal government shutdown impact the filing?**

The government shutdown could possibly impact the filing. Currently, however, the Bankruptcy Court is operating as normal. Moreover, it is likely that the Bankruptcy Court would otherwise take necessary action to accommodate a filing of this importance.

3. **What could happen to my Power Purchase Agreement (a "PPA") with PG&E in bankruptcy?**

Following a bankruptcy filing, PG&E could quickly move to reject a PPA (meaning, a breach of the PPA by PG&E for which the project owner is entitled to damages) or to assume a PPA (meaning, to reaffirm and perform the PPA going forward). For strategic or other reasons, PG&E could also do nothing at all for a considerable period of time while PG&E continues to evaluate its options.

4. **Is it likely that PG&E will reject my PPA?**

There is considerable uncertainty and debate on this critical issue despite the fact that a large number of PG&E's renewable PPAs substantially exceed current market

pricing. On the one hand, since PG&E passes through most of its PPA costs to PG&E's utility customers, and since rejection of its portfolio of high-priced PPAs would create a large new group of unsecured creditors, it can be argued that PG&E has little to gain from rejecting high-priced PPAs. On the other hand, given the continuing evolution of the California energy market in so many areas, including the extraordinary recent growth in Community Choice Aggregators that are eroding PG&E's customer base, and the continuing battles at the CPUC over PCIA and related exit fees for PG&E's departing load, PG&E could view strategic PPA rejections as part of an overall plan to strengthen its position for the future.

5. **What would PG&E have to show to convince the Bankruptcy Court to grant a motion to reject a PPA?**

For most contracts, a debtor only needs to show that the rejection is an appropriate exercise of its business judgment, *e.g.*, because the contract is financially burdensome. The treatment of PPAs, however, is more complicated because the Federal Energy Regulatory Commission ("FERC") has jurisdiction over the sale of wholesale electric energy. Certain courts (New York) have held that only FERC can decide if a debtor can walk away from its PPA obligations; others (Texas) have held that the bankruptcy courts can rule on a rejection motion but should apply a heightened standard that takes the public interest into account; still other courts (Ohio) have held that the bankruptcy courts need only consider the debtor's business judgment, just like any other contract. As there is no controlling precedent on this specific issue from the highest federal court in California, *i.e.*, the Court of Appeals for the Ninth Circuit, it is not clear what standard the Bankruptcy Court would apply.

In a recent development, NextEra Energy, which sells renewable energy to PG&E under various PPAs, submitted a petition to FERC on January 18, 2019 seeking a declaration that if PG&E files for bankruptcy, PG&E may not reject any FERC-jurisdictional PPAs without first obtaining approval from FERC under the standards set forth in the Federal Power Act.

6. **How quickly could PG&E move to reject PPAs?**

This can happen as soon as the first day of the bankruptcy filing, *i.e.*, January 29, 2019. The Bankruptcy Court could rule on such motions in a matter of weeks.

7. **How long does PG&E have to decide whether to reject or assume its PPAs?**

For contracts like PPAs, PG&E could take a long time to decide, essentially up and until just before the end of the bankruptcy process, *i.e.*, when a plan of

reorganization is filed. If, however, PG&E does make the strategic decision to reject burdensome PPAs, it could move to reject such PPAs quickly.

8. **What happens to a PPA during the period when PG&E is deciding whether to assume or reject?**

While debtors may or may not perform their obligations under contracts during this decision-making period, the non-debtor is required to perform its obligations (unless the court orders otherwise). In addition, in previous energy company bankruptcies, debtors have argued, for contracts they have decided to reject, that they are not required to pay the contract price for power delivered after the bankruptcy filing (post-petition), but instead should only pay a current market price under the theory that paying the higher price does not benefit the bankruptcy estate.

9. **To the extent power is provided during the pendency of PG&E's bankruptcy, is the PPA counterparty's claim for payment afforded priority status?**

Yes, such claims for post-petition deliveries are considered expenses of administering the bankruptcy estate and, if a debtor is to reorganize, must be paid in full.

10. **If PG&E moves to reject a PPA, what grounds would a counterparty have for opposing that motion?**

The counterparty could argue, among other things, that only FERC can address such questions or that a heightened standard should apply. It is likely that many PPA counterparties will be in a similar position, providing an opportunity for similarly situated PPA sellers to work together collaboratively to challenge PG&E actions. Any resulting challenges and litigation could take many months, or even years, to resolve.

11. **If PG&E prevails in its motion to reject, either by overcoming an opposition or because the counterparty does not object, what happens then?**

The counterparty will have the right to file a claim for its rejection damages, which are, as a general matter, determined under the terms of a PPA. Such claim will likely be treated as an unsecured claim. Many (if not most) PPAs contain mark-to-market "Settlement Amount" provisions, which generally provide for damages equal to the sum of (i) the difference between the net present value of the expected future payments PG&E would have made for product deliveries under the PPA versus the net present value of a replacement PPA at the current market value for such product deliveries plus (ii) the PPA seller's costs (e.g., legal and administrative costs) to replace the PG&E PPA.

12. **What will the counterparty receive for its rejection damages as an unsecured claim?**

The percentage payment on unsecured claims (and other claims) will be set forth in a plan of reorganization for PG&E, which must be approved by the Bankruptcy Court. Historically, recovery in prior energy bankruptcies has ranged from pennies on the dollar to a 100% recovery. This is a primary benefit of a bankruptcy filing; it allows debtors to discharge their obligations at a hefty discount and then emerge from bankruptcy with a healthier balance sheet.

13. **What concerns should I have related to any project debt financing on my PPA project?**

A bankruptcy filing by PG&E would likely result in an event of default under most customary commercial bank project financings, which typically are secured by the PPA and other project assets. Given the importance of PPA revenue, financing parties will evaluate intervening in the bankruptcy proceedings and may make attempts to prevent or delay rejection of the PPA. If the PPA is rejected, that would result in a separate event of default. Any such event of default would likely require notice to the financing parties and block future equity distributions, result in default interest being charged, and permit the financing parties to exercise remedies, including application of cash in any project accounts to a repayment of the debt. In addition, during the continuance of any such default, the borrower will be required to pay the enforcement costs of the financing parties, which would include, among other things, the expenses of the financing parties incurred in connection with the bankruptcy proceeding. Project sponsors are advised to review carefully their credit agreements to develop a plan of action (including proper notices) upon a PG&E bankruptcy filing.

14. **What concerns should I have related to any tax equity financing on my PPA project?**

On projects under construction that have contracts with PG&E (for example, PPAs or interconnection agreements), a bankruptcy filing by PG&E would likely allow the tax equity provider to refuse to fund its equity contribution agreement upon completion. Those contributions serve to repay a portion of the construction debt or construction equity contributions by the sponsor, and they also serve as a mechanism to monetize the available tax benefits from the project (investment tax credits or production tax credits, and the deferral benefit from accelerated depreciation). For operating projects that have already reached completion and final funding, a bankruptcy filing could have varying implications, including, at a minimum, the sponsor managing member needing to obtain tax equity investor

consent to take actions in the bankruptcy proceeding, and a delay in reaching the flip point if revenues from PG&E to the project company are not received or are delayed. In addition, in some cases, the bankruptcy filing may allow the tax equity investor to remove the sponsor as the managing member.

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