



## ESC Local 20 PG&E Member Bulletin: January 29, 2019 “Bankruptcy FAQ”

### **Frequently Asked Questions about possible bankruptcy filing**

**Note: this “FAQ” is not intended as legal advice. We are attempting to answer as many member questions as possible, but the situation changes frequently. We will share new information as it becomes available.**

#### **What does bankruptcy mean?**

In short, the bankruptcy means that PG&E does not have enough money to pay all of its liabilities, especially the liabilities and potential liabilities from the 2017 and 2018 wildfires. However, PG&E can and will keep operating while it figures out how to pay all of its debts. This process could take years in bankruptcy court. During this time, all employees will continue coming to work and you will be paid on time. Bankruptcy does not trigger “automatic layoffs.” All the provisions of our union contract remain in force and the duty to bargain changes remains in place throughout.

**Will our union contract remain in force if there is a bankruptcy?** Yes, the bankruptcy filing does not remove PG&E’s obligation to follow our union contract. PG&E management has said that our contracts are not being targeted and PG&E plans to uphold its labor obligations.

Additionally, ESC Local 20 will do everything to ensure that our union contract gets special protection during the bankruptcy proceedings. We are prepared to petition the court for what is called a “thirty day order” to maintain our contract with all the wage and benefit (health care, retirement contributions, etc) protections. Such motions are often granted because the court does not want to disrupt the operations of the company. PG&E can do this as well, and we expect at present that this will occur.

#### **What is ESC Local 20 doing to prepare to protect members in this uncertain time?**

ESC Local 20 is ready to stand up for our members and the expertise they provide that is essential to run a safe and stable utility. ESC Local 20 staff and member leaders are meeting with the Governor and other key legislators, and developing a plan for relationships with the CPUC. The Union is hiring a new Policy Specialist as well as retaining Bankruptcy Counsel to help guide us through this complex process. We have become a party to the CPUC proceeding on PG&E’s Safety Culture. We continue to work together with our allies, including close coordination with IBEW 1245, to make sure our members are protected.

### **TOPIC: RETIREMENT AND PENSION**

#### **Will a bankruptcy filing impact our pension?**

At this point, we do not expect there will be any impact to retirement. PG&E’s executives have said many times that they have no intent to reduce pensions or retiree health benefits as part of this process. Both the pension fund and the retiree medical trust are currently very well funded.

**Retirees:** Current retiree pension payments are paid by the Pension Fund, which is held separately from other assets directly controlled by PG&E and is covered by a federal law called ERISA. In the event PG&E changes its current position and wishes to modify retiree pension payments, Chapter 11 requires that benefits continue unchanged until a modification or termination is either agreed to or ordered by the court.

**Vested Employees:** Active employees also accrue vested benefits from the Pension Fund. Pension benefits are the amount that you would get if you retired today if you have more than three years of pension credit; this is true for either the traditional pension or the cash balance plan. During a Chapter 11 bankruptcy it is difficult for an employer to reduce pension benefits. First, PG&E would have to propose the reduction to the Union. Second, PG&E would have to bargain in an attempt to get the Union's agreement. If the Union does not agree to any reduction, PG&E can petition the bankruptcy court to request a reduction, but there are legal hurdles it must overcome to obtain it.

**Not Yet Vested Employees:** PG&E must also continue to contribute to the Pension Fund for projected benefits which are not yet vested. PG&E cannot unilaterally stop contributing to the pension fund. Maintaining the retirement benefit is required by our contract. PG&E cannot choose to stop paying those costs any more than they can unilaterally cut salaries or health benefits, paid vacation, etc.

**Retiree Health:** Retiree health benefits are paid from a well funded trust that also is not, at this time, expected to be impacted by the bankruptcy. Moreover, under Chapter 11, the same duty to bargain over any proposed changes applies to retiree health. Any modifications, post bargaining, would have to be petitioned for through the bankruptcy court and the same hurdles that apply to retiree pension modifications would apply.

The SF Chronicle wrote a very thorough article about retirement benefits:

<https://www.sfchronicle.com/business/networth/article/PG-E-tells-retirees-not-to-worry-about-pensions-13533794.php>

### **Will the bankruptcy impact the Cash Balance Pension?**

The Cash Balance Pension in this regard is the same as the traditional pension: it is paid out of the same pension fund and is currently very well funded. PG&E is required to continue making contributions to fund vested benefits and future accruals for those in the Cash Balance Pension. Chapter 11 requires that any changes the Company wishes to make be proposed and bargained just like they would pre-bankruptcy.

### **Could a bankruptcy judge order PGE to stop making payments to the pension in order to reduce PG&E's total cost of operations?**

This is very unlikely. When pension benefits have been reduced in bankruptcy, it is because the employer requests to do so. Before that could happen, Chapter 11 requires that PG&E notify the Union of its intent to change its pension obligations and bargain. Without agreement from the Union, PGE would have to petition the court. The unions can, as participants in the Bankruptcy case, fight to stop that request and sometimes are successful. In this case, PG&E has indicated so far that they have no intent to make this request.

### **Could the company be forced by the court to turn the pension assets over to the Pension Benefit Guaranty Corporation who would close the trust and disperse the assets?**

This seems unlikely at this point, given how well funded the plan is and the likelihood that PG&E will continue to contribute to the fund.

### **Will the company continue to match our 401K contributions?**

Yes. 401(k) contributions are in our contract and the Company cannot unilaterally stop paying this, any more than any other change to benefits.

### **What about early retirements?**

There are no indications the Company is planning to offer early retirement incentives at this time.

## **TOPIC: LAYOFFS, JOB SECURITY**

### **What about Layoffs?**

We do not expect layoffs as a result of the bankruptcy at this time. Layoffs are controlled by our contract and by state law and offer significant protection for employees. If management is looking for a fast and easy way to cut costs, they will look at other options instead of laying off union-represented employees.

### **What protections do we have from the new state law, SB 901, on layoffs?**

SB 901 was passed last year with the help and support of ESC, and it has some very beneficial provisions regarding layoffs following a “change of control.” It says that there can be no layoffs of employees for 180 days after the change in control. Then, following the initial 180 days, for the next two years management can only lay off employees with approval of the CPUC. This is not 100% protection but the requirement for CPUC approval of a layoff will likely be a very high hurdle for any company to achieve. ESC can contest any filing for approval of a layoff at the CPUC.

In short, SB 901 provides for a total of 30 months of protection against layoffs after a bankruptcy filing.

A “change of control” includes a change of ownership of the company, or a bankruptcy filing, and would also apply if PG&E sells off part of its business. Therefore, if PG&E, or part of it, was purchased by another entity, our understanding of SB 901 is that that a sale would be another change of control that would trigger another 30-month period of protection.

SB 901 applies to all the ESC membership and those who are still in bargaining for first-time agreements (Gas Storage Reservoir, IT PM, Sourcing Specialists) as well as IBEW, SEIU and non-management employees of the company.

SB 901 also says that PG&E cannot reduce wages and benefits for 180 days following a bankruptcy or other “change of control.”

### **What are the layoff protections in the ESC contract?**

Our contract says that layoffs can only be because of lack of work or other legitimate business reason. In addition, the company cannot lay off while contracting out work. That means, contractors would have to be let go before.

Next, ESC would be able to negotiate over the size and scope of the layoff. In the past, ESC has successfully reduced the number of layoffs proposed by PGE. Then, there would be a complicated process to determine which employees are affected, offer voluntary severances, and establish recall rights. In 2009, ESC reduced a proposed layoff of Senior New Business Reps and Estimators from 90 to 57.

## **Seniority lists**

Several employees have found inaccuracies or omissions on the seniority lists available through the HR intranet site. The Union has notified HR, who has apparently fixed the problem. If you think information on the HR site is wrong or incomplete, please contact your union representative.

**Does seniority fall strictly on hire date or is it by job classification?**

In our contract, seniority is defined by your hire date with PG&E. If you change jobs, you keep your original hire date as your seniority date; we want employees to be able to move around during their career without any penalty. If you quit PG&E and come back, seniority is your most recent hire date.

**TOPIC: POTENTIAL SALE OF GAS OR OTHER SPLIT-UP OF PG&E**

**What about the possible sale of PG&E's Gas business?**

ESC is opposed to PG&E selling off Gas Operations, or any other parts of its operations. We do not see breaking up PG&E as a solution to the current problem, and we will fight strongly against any such attempts.

**If PG&E is split up, will IFPTE have to negotiate a new contract?**

Not necessarily. It is possible our current contract would be applied to a successor company. This would be our goal and in the event of a partial sale, we would do everything in our power to make that happen. But given the unknowns, e.g. whether the buyer is public or private, we can't say exactly what would happen to our CBA if PG&E is split up.

**If PG&E sells off gas, do the union members in gas automatically get bid rights into electric so they can stay a PG&E employee?**

We can't answer this question at this time. This is a very specific question about a situation where there are too many unknowns. Our contract does not have specific language to cover this specific situation. We can say that PG&E would have to negotiate with ESC about how a sale of Gas Operations would affect our members, and this is one proposal that we could make.

**OTHER TOPICS**

**What is the impact on workload and staffing?**

Without full staffing, PG&E cannot stay safe and compliant, now and in the future.

ESC is still pushing for improvements to staffing in Service Planning and Estimating, and other areas. We are pushing management to get new hires in our classifications exempted from the hiring freeze on the grounds of safety and compliance. We are not going to give up because PG&E is operating under bankruptcy.

The accelerated inspection program will create a lot of work for ESC members: producing job packages to ensure that repairs are done correctly, mapping and recording the work being performed, etc. Our work ensures accurate records for future planning, and also is essential for PG&E to be able to show the CPUC and other authorities what they have done. We need appropriate staffing to achieve this.

**There have been some rumors going around about PGE and ESC looking at an LOA to convert current Hiring Hall employees into permanent positions. Is there any truth to that?**

Yes, ESC is pushing PG&E to convert current Hiring Hall who have been at PG&E for over a year to regular positions. Unfortunately, the hiring freeze and bankruptcy filing are making this more difficult. PG&E continues to hire linemen, inspectors, and other construction classifications as part of its safety program, and our work is equally important to public safety. We will keep pushing to expand permanent positions to cover the work needed to run a safe, stable utility.

**Will this affect STIP for monthly employees?**

So far, management has said that the 2018-19 STIP will follow the normal PG&E review process in February. The Company has indicated it may want to make possible changes to the STIP program for future years. Any changes will require negotiations with the Union.

**At any point, do you foresee employees not getting paid?**

No, we do not expect that employees will face not getting paid as a result of the bankruptcy. PG&E intends to continue operating as usual during bankruptcy, which includes making payroll as required by state law and our contracts. Payroll was not interrupted during the 2001 bankruptcy.

**How does the bankruptcy affect contract negotiations and ratification for newly represented groups that do not have a settled contract yet?**

The negotiations for groups currently in bargaining - Gas Storage Reservoir Engineers and Specialists, IT Project Managers, and Sourcing Specialists - will continue. PG&E is obligated to continue to bargain with us as a matter of labor law, even in a bankruptcy situation. PG&E may ask the Bankruptcy Court to approve the addition of these sections to our existing CBA but these types of contracts are regularly approved during Chapter 11 bankruptcies. Furthermore, these groups are not of such a scale that would impact PG&E's overall financial situation.

**Will the Promotion in Place / PM advancement process continue to be offered?**

Yes, this will continue.

**Will bankruptcy affect the DCPD retention payments?**

This is extremely unlikely, because those payments are not just in a signed Letter of Agreement, but also written into state law. When the CPUC denied the 25% retention payments, we worked with IBEW Local 1245 to pass a state law, SB 1090, overriding the CPUC. That law passed overwhelmingly, meaning that the retention program is now written into state law.

**What is ESC Local 20 doing right now?**

Our union is becoming more and more active in all the venues where we can have an impact on PG&E's future, including the Legislature, the CPUC, the Governor's office, and others. We are hiring a full time researcher/policy analyst to prepare more detailed CPUC filings, letters, position papers, and to track political developments. We are also adding the appropriate subject matter experts to our legal team. Finally, we are coordinating closely with the other unions at PG&E.

**What can members do right now?**

We will be asking our strongest asset - our members - to get more involved as well. We will form committees of members to meet with public officials and provide our perspective and facts. We also encourage all members to contribute to LEAP, our Legislative Education and Action Program. The bigger our political war chest, the more influence we can have in Sacramento. You can sign up for LEAP by contacting your local union representative.