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**PG&E BANKRUPTCY UPDATE – COURT ENTERS ORDERS THAT WILL
ALLOW MANY CONTRACTORS AND SUPPLIERS TO GET PAID FOR PRE-
BANKRUPTCY WORK**

Yesterday, January 31, 2019, the U.S. District Bankruptcy Court issued a number of “First Day” orders in the PG&E bankruptcy, including two that provide a way for many contractors, subcontractors, and suppliers to get paid much more quickly than if they had to submit claims through the normal general creditor claim process. “First Day” orders are issued at the beginning of a Chapter 11 bankruptcy to facilitate the continued business operations of the bankrupt company and protect the company’s assets from immediate loss.

At PG&E’s request, Judge Montali issued two orders that are good news for contractors, subcontractors, and suppliers that performed work or provided materials and services prior to PG&E filing bankruptcy on January 29, 2019.

**1. Interim Order Authorizing Debtors to Pay Prepetition Obligations
Owed to Certain Safety and Reliability, Outage, And Nuclear Facility
Suppliers**

In this interim order, the Court authorizes PG&E to pay certain categories of contractors and vendors for prepetition and postpetition work, materials, and services. Among the companies who will benefit from the order are “Specialized and Integrated Vendors.”

The motion for the order describes Specialized and Integrated Vendors as companies providing

specialized services that are closely integrated with the Debtors'¹ transmission, distribution, generation, and retail business operations. In certain cases, the Debtors must obtain the services of a Specialized Vendor because state and federal laws and regulations require vendors to possess certain certifications, permits, licenses, particular knowledge, or technical "know-how." Consequently, certain services (*e.g.*, electrical, line-related, welding, waste-removal, earth-moving, information-technology, security, and cybersecurity services) may only be performed by Specialized Vendors due to the risks posed by the nature of the Debtors' facilities, which expose Specialized Vendors to, among other things, high voltage electricity, high-pressure gas, high-speed rotation motors, and potentially hazardous or radioactive substances. A very limited number of vendors possess the certifications, permits, licenses, knowledge, technical "know-how," experience, or safety qualifications necessary to perform the services that are provided by the Specialized Vendors, and, therefore, such vendors cannot be easily replaced.

Under the order, PG&E may pay pre-bankruptcy claims of Specialized and Integrated Vendors who agree to "continue to supply goods or services to the Debtors on Customary Trade Terms or such other terms that are individually agreed to by the Debtors and such Operational Integrity Supplier." In other words, if a company refuses to continue to do work for PG&E, it will not be eligible for payment pursuant to the order. The order also reserves the right to require payments to be returned, in whole or in part, in accordance with provisions of the Bankruptcy Code (*e.g.*, "claw back" provisions of the Code).

PG&E itself determines who is on the approved list of "Specialized and Integrated Vendors." The list of such companies is confidential and not publicly available. In its bankruptcy papers, PG&E and its parent company claimed that they

with the assistance of advisors, spent significant time prior to the Petition Date analyzing and reviewing their operations, books and records, accounts payable systems, and prepetition vendor and service provider lists to identify those vendors, suppliers, and service providers that are in fact critical to the Debtors' operations and public health and safety, the loss of which could materially harm the Debtors' businesses and/or their customers and the public, in order to determine the Operational Integrity Suppliers.

Thus, if you are owed money by PG&E, it is important to contact PG&E representatives and colleagues to make sure that you are on the approved list or are added to the list. As one bankruptcy specialist has stated, there is no formal court process involved; instead, contractors and suppliers may need "to grovel" in order to be included.

¹ The term "Debtors" includes Pacific Gas & Electric Co. and its parent entity, PG&E Corp.

If your company is a Specialized and Integrated Vendor, then you can expect to be paid in full for pre-bankruptcy work in the relatively near future in accordance with the terms of your contract. We would expect that in most instances, the timing of payment would be either days or up to two or three months, rather than several years later.

The current order has been issued on an interim basis. There is a \$30,100,000 cap on the amount of payments that PG&E can make prior to entry of a final order. PG&E has requested authority, in any final order, to spend up to \$116,200,000 on payments to contractors and vendors.

2. Interim Order Authorizing Debtors to Pay Prepetition Obligations Owed to Lien Claimants

The Court issued another First Day order that authorizes payment of various categories of lien claimants. These include a category referred to as “Maintenance and Repairmen”, which PG&E’s papers state

provide maintenance and repair services on the Debtors’ vast network of production, transmission, and distribution facilities, including the Debtors’ generation units and gas facilities (the “**Maintenance and Repairmen**”). The Maintenance and Repairmen, among other things, maintain, repair, refurbish, and replace components of the Debtors’ facilities and equipment and provide fuel and parts for the Debtors’ generation units.

Many of the Maintenance and Repairmen are not under contract to perform future services, but rather perform work and related services on an order-by-order basis. If the Debtors become delinquent in their payments for such goods provided or services rendered, the Maintenance and Repairmen may assert liens, including mechanics’ liens and materialman’s liens, against the Debtors’ property for the amounts owed.

Contractors, subcontractors, and suppliers who performed work on PG&E facilities should fall within the category of Maintenance and Repairmen if the work is performed on PG&E owned property. Thus, companies performing work or supplying materials to PG&E substations, generating facilities, buildings, and yards should be considered Maintenance and Repairmen eligible for payment provided that they have a right to claim a mechanic’s lien. It is possible that PG&E may attempt to assert that claimants who failed to preserve their lien rights (for example, by failing to serve a preliminary notice when one was required) will not be considered to be Maintenance and Repairmen. In addition, if work is performed on public property, such as on streets and right of ways, it usually would not be subject to a mechanic’s lien.

To maintain eligibility for payment under this provision, claimants may want to preserve and perfect their mechanic’s lien rights. There are relatively inexpensive methods to preserve and perfect lien rights in bankruptcy, but it is important that proper procedures are followed to avoid violation of the bankruptcy automatic stay. In addition, there are statutory time periods within which you will need to take action; if you fail to do

so, you could lose your lien rights. Given the complexity of this area of the law, we recommend that you consult with an attorney to preserve and perfect your lien rights as to PG&E property.

PG&E is authorized by the order to determine who is a Maintenance and Repairmen and how much to be paid. You will want to contact PG&E representatives you know to try to persuade them to pay you for your work, materials, and services, if you believe you may qualify for payment under this interim order.

Under the order, the court reserves the right to require payments to be returned, in whole or in part, in accordance with provisions of the Bankruptcy Code (e.g., “claw back” provisions of the Code).

The current order has been issued on an interim basis. Under the order, there is a \$25,800,000 cap on the amount of payments that PG&E can make prior to entry of a final order. PG&E has requested authority, in any final order, to spend up to \$65,500,000 on payments to lien claimants.

Conclusion

The two interim orders issued by the Court are good news for contractors, subcontractors, and suppliers who are owed payment for prepetition work, materials, and services. However, the two orders are not the only basis for companies to obtain prompt payment of amounts owed for work in connection with PG&E facilities. As PG&E has acknowledged in its own briefs,

Section 503(b)(9) of the Bankruptcy Code provides that, “[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9). The Debtors will be required to pay in full all claims entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code to confirm any chapter 11 plan filed in the Chapter 11 Cases. See 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority in order for a chapter 11 plan to be confirmed).

For further information and recommendations regarding pursuing payment from PG&E, please see our January 17, 2019 Construction Alert or contact us at (650) 691-2888.