

What's New?

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 **NORTON ROSE FULBRIGHT**

Any PG&E bankruptcy filing is expected to take at least two years to play out. The DIP lenders set a two-year term with another year possible. No PPAs were disavowed in the last PG& bankruptcy, but the gap in renewables prices is much greater today.

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FERC has been asked to declare that PG&E cannot change or cancel its wholesale PPAs without FERC permission. The bankruptcy court in the FirstEnergy bankruptcy found it alone had jurisdiction. That case is being appealed to the 6th circuit. Two cases went the other way involving the NRG and Calpine bankruptcies. In both, the courts said FERC consent was needed, but the bankrupt company was the electricity supplier, not the purchaser.

PG&E is filing not because of burdensome contracts, but because of fire claims. The case may be a taste of things to come as extreme weather patterns become a bigger problem for utilities. Any outcome that leads to setting aside contracts with independent generators has the potential to chill future investment in California. The large political component makes it hard to analyze purely on legal grounds.

A bankruptcy filing will not fix PG&E and the other California utilities' problems with future fires. California is one of two states with inverse condemnation or strict liability for utilities for damage caused by their power lines even if they followed accepted safety procedures. It needs a bigger political solution.

Project developers are waiting to read an opinion by a federal court that cast doubt on whether developer fees can be added to basis for calculating investment tax credits on renewable energy projects. The judge gave Invenergy until January 24 to persuade him that there is proprietary information in the opinion that should be deleted.

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