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Lafayette on the hook for legal fees that PG&E does not pay

By Nick Marnell

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Some trees slated for removal along this trail enjoy a stay of execution. Photo Nick Marnell

One ramification of the Pacific Gas and Electric Company Jan. 29 bankruptcy filing is that the company will likely no longer be able to reimburse the city of Lafayette for legal bills in its defense of a lawsuit brought against the city and the utility by a local citizens group.

PG&E and Lafayette are financially linked in a 2017 Agreement for Tree Removal. According to a city staff report, PG&E would pay the city a mitigation fee of \$531,000 - \$475,000 in cash and \$56,000 in future tree plantings - to remove 272 trees on private and public property. The company deemed that the trees had to go as they prevent first responder access and safety inspections, and that the tree roots could damage underground pipes.

A local citizens group, Save Lafayette Trees, sued the city and the utility. "The city failed to conduct any environmental review before entering into the contract with PG&E," said Stephan Volker, SLT attorney. The litigation is ongoing, and the doomed trees enjoy a stay of execution.

Not only are the city and PG&E joined as co-defendants in the SLT lawsuit, but PG&E agreed to reimburse the city for its legal costs, with the logic that it is the utility's pipeline safety program that was being challenged. Through January, the company had reimbursed the city for \$114,000 in legal fees.

Because of the Chapter 11 bankruptcy, the days of PG&E reimbursement to Lafayette may be over. Past due city invoices for the utility totaled \$41,500, and since the city's claim against PG&E for that money would likely be paid at cents on the dollar and not paid for several months, or even years, Lafayette had to dip into the mitigation money to pay its own legal costs.

Jennifer Wakeman, Lafayette financial services manager, said that there are no outstanding legal charges, but city attorney Mala Subramanian warned that the city would use funds from the the \$433,000 mitigation balance to pay future legal expenses. Depending on how far and how slowly the SLT lawsuit moves through the system, the legal costs could be substantial.

"This presents a huge financial risk for the city," said a speaker at the Jan. 28 city council meeting. "You are fighting the residents who are trying to ensure their safety. Is this really where the city wants to go?"

In an ironic twist to this story, as the utility is being sued by the Lafayette citizens group for removing trees near gas pipelines, a federal judge on Jan. 30 chastised PG&E for not cutting down trees and removing fallen limbs near its electric power lines, blaming the utility for its role in the wildfires that have ravaged Northern California over the past two years.

PG&E spokesman Jeff Smith declined to comment on the company bankruptcy filing or the reimbursement of Lafayette legal expenses.

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