restructuring
TODAY

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Utility merger bill comes to life in Senate legislation

The repeal of PUHCA last week survived an important vote yet a few senators are quietly attempting to restore some of its provisions.

Sens Mark Dayton, D-Minn; Paul Wellstone, D-Minn, and Dianne Feinstein, D-Calif, last week put in an amendment that requires FERC to determine that a pending utility merger enhances competition in the wholesale electricity markets, produces significant gains in operational and economic efficiency and "results in a corporate and capital structure that facilitates effective regulatory oversight."

Utility mergers are not inherently bad, Dayton asserts, producing efficiencies, economies of scale and cost savings.

But mergers, Dayton claims, can reduce competition, increase costs and frustrate effective regulatory oversight.

The amendment does not impose new regulatory requirements on proposed utility mergers, Dayton contends. It mirrors the PUHCA wording "which the bill before us would repeal."

UK gets rules to protect green power users

The UK's Ofgem last week gave electric suppliers a set of guidelines to protect the public that buys green power.

UK electric supply companies were recently required to get a portion of their power from renewable sources and Ofgem estimates that already about 60,000 green power customers are spending $21 million+ a year.

Suppliers must tell customers what forms of generation qualify as green. Thee guidance outlines rules suppliers must follow to sell it and marketers have to tell the public who to call with complaints.

"These guidelines will help customers use their market power to help the environment," says Virginia Graham, Ofgem director of social environmental affairs.

Enron-Dynegy suit moves to Texas

Federal bankruptcy Judge Arthur Gonzalez Friday agreed to move Enron's $10 billion lawsuit against Dynegy to Houston at Dynegy's request.

Enron filed the suit against Dynegy when it sought bankruptcy protection, alleging that Dynegy withdrew from their proposed merger allegedly as part of a plan to ruin the energy trader.

Judge Melinda Harmon should take over the case partly because the Houston court has "greater subpoena power" than the bankruptcy court, Judge Gonzales explained.

The decision is important, attorneys argue, because key witnesses in the case have shown reluctance to testify in court.

Judge Gonzales rejected a motion by Enron's unsecured creditors to intervene in the suit.

The SEC asked Judge Gonzales to deny Enron's request to give out $140 million in bonuses and severance pay over the next year.

The proposal does not specify who would get the money or how the plan would benefit Enron's estate, asserts SEC Attorney Neal Jacobson.

The bonuses are key to the company's reorganization, Enron argues.

Retention bonuses of about $40 million would go to about 1,300 employees over the next year, Enron proposes, and $90 million in commissions would be paid to those who sold Enron assets.

Enron wants 850 employees to share $7 million in severance benefits.

The proposal is unfair to the more than 4,000 former Enron employees who got maximum severance packages of $5,600 each, their attorneys say.

Two restructuring groups working together:

International software and consulting company Structure Group has started an alliance with Energy Services Group (ESG). The alliance is to assist utilities and energy retailers entering competitive markets in the US and Canada to exchange electronic and billing data. Structure, it says, has participated in wholesale deregulation at every major market operator and participant in North America. ESG manages electric and gas data processing and CIS operations for more than 30 companies and provides access to more than 90 energy markets.

Dynegy steps gently into leadership role

Chuck Watson glad he didn't make all those mistakes

With Ken Lay gone, who is going to lead the energy industry?

Chuck Watson, who built Dynegy from scratch over the past 17 years, would seem to be next in line.

Modest, an Oklahoman-turned-Texan, Watson is in some ways Lay's natural successor to carry the competition banner in the post-Enron world.

But Watson doesn't see himself in that role. It's not his style.

"There are a lot of leaders in this industry and there are several stepping forward," Watson told us in an interview last week.

"I certainly want to be one of those and I want our company to continue to lead and frankly show the world that we can get things done and we can get them done right in a manner that you can respect ...

"That's been the way we've grown this company for 17 years and I don't want to stop that now."

Dynegy arose from Natural Gas Clearinghouse — a company that built itself into a giant energy marketer by pleasing its customers and making smart deals.

At one time it was unique for being the only energy marketer in its peer group — the top 10 — that didn't leverage its way there with a pipeline or a giant utility.

Now it's a world-class energy company with pipelines, storage companies, utilities, telecom companies, a successful web trading portal and merchant generation worldwide.

It trades electricity, gas, gas liquids and coal -- a company that has grown rapidly and surefootedly and expects to grow even this year by 15%.

Over the last six to eight years the company's compound annual growth rate has been over 40%, Watson notes.

"That's kind of what we do. And we've been able to do that because ... I put together some damn good assets that allow us to be a leader in the marketplace."

Watson identifies as key to Dynegy's success its ability to gauge the impact of events and respond well to them.

"We know what we're doing. We're disciplined. We don't have a lot of failures. And as long as the market's moving and there's good volatility" the company grows.

Why the slowdown in growth this year?

"The reason we're not expecting that kind of growth this year frankly is that with the demise of Enron and the rethinking of balance sheets we've had to decrease our capital and issue some stock to fortify our balance sheet."

That means less money to grow with.

Watson may end up selling some assets that are producing, a prospect that displeases him.

"I find it kind of interesting that people say 'well I'm going to sell an asset that's not performing.' Frankly I don't have very many of those so when I sell assets I also sell earnings."

The post-Enron economy frustrates him because it's not a good time for Dynegy to use its capital to expand.

"I personally believe there are zillions of dollars sitting on the sidelines this year because of the overreaction to Enron. One company goes down and it's like everybody was infected."

The new imperative to fortify balance sheets means "capital sitting on the sidelines that could be working and investing and creating jobs."

Watson worries idle capital may have "a chilling impact on our recovery as a country."

We asked Watson what it was in the days when Dynegy agreed to save Enron that had turned him off on the acquisition.

Watson tells of three fundamental issues that made Dynegy "pull the plug."

First, "the 10Q that they (Enron) filed after we did our merger (showed we were) dealing with a lot less cash and materially greater advanced maturities (on debts) than they had disclosed to us just a few days earlier and that really brought into question the liquidity of the thing.

It was "much more difficult, much more acute than any of us were aware."

After the 10Q "came an exodus of business counterparties." Dynegy had great confidence that with "our stepping in with our brand I thought they (the counterparties) were going to stay with us."

Second, the market "kind of liked this deal until we and everyone else got continually surprised by bad news.

"When that happened we started looking at it and OK, we'll reduce the price and we'll reduce the price and we'll reduce the price and sooner or later you have a significant equity balance-sheet issue.

"There's no equity value there to support the price so short-term it was liquidity, long-term it was just the viability of the company.

Third, "when somebody is not honest with you and continually surprises you and continually doesn't work and cooperate with you and continually wanted to do things that are outside your scope and what's fair, you get to the point where you get very uncomfortable about the culture that was permeating that company.

"I just didn't think we could change it. You really shouldn't be in the position of surprising your merger partner almost hourly."

"You know it's funny, people used to compare us to Enron ... and say we were too conservative or we didn't do these things. I'd say we chipped away and I'm pretty proud of our growth and where we are right now.

"There's been a lot of reason in the last 18 months and certainly the last six months for Dynegy to be diverted and not focused on what's important.

"But I'm really proud of the way we've executed over the last six months, over a time when there was a lot of noise around us. So I couldn't be happier with the performance of the company and where we seem to be headed in the short term and in the long term," Watson proclaimed.

TOMORROW: *The wholesale grid is 85% closed?*

China to add power industry competition

Asian markets reacted positively Friday to the plan unveiled a day earlier that China will break up its monopoly State Power Corp and introduce price competition.

If China can do it, why not Florida?

State Power owns most of China's grid and half of its power plants. The transmission in southern China will be separated into the Southern Grid Corp.

The rest will be formed into the National Grid Corp with five regional corporations while power plant assets would be split off to form three or four nationwide IPPs.

China created last month a State Power Regulatory Commission to oversee the newly competitive electricity market.

All power plants will bid to supply electricity to the grid, the commission said, with a pricing mechanism that gives priority to plants that produce the least pollution -- a big, big gain for all of Asia.

The commission plans to launch a pilot program that will allow large industrial users to bypass the grid and buy directly from power plants.

Wisconsin Energy picks new name: Wisconsin Energy subsidiary Wisconsin Electric-Wisconsin Gas (WEWG) has roots in Wisconsin Natural, Wisconsin Southern and Wisconsin Michigan Power. "This has proven confusing for our customers and employees," says COO Richard Grigg. The new name is Energies. It doesn't have a regional limitation in case the company decides to grow.

Tomorrow is the big fight on ANWR

Sen Frank Murkowski is expected to introduce an amendment tomorrow calling for oil and gas exploration of the Alaska National Wildlife Refuge (ANWR).

The action is expected to be the beginning of an acrimonious debate that could take up a good deal of the week.

But defeat last week of the Craig amendment stripping the electricity title from the energy bill and another "test vote" on ethanol showed that the language approved so far in the Energy Policy Act of 2002 has the votes to go to conference, a committee source asserts.

The Senate last week voted overwhelmingly to create a Consumer Energy Commission (RT, 4/2) to investigate energy price spikes and develop ways to prevent them.

And it was a good week for supporters of renewable energy.

Gaining passage through voice vote was an amendment submitted by Sen Ted Kennedy, D-Mass, requiring the National Academy of Sciences to conduct a two-year study of the potential for development of wind, solar and ocean energy off the Outer Continental Shelf.

Sen Kent Conrad, D-ND, gained approval for a DOE study of barriers to providing adequate transmission for renewable energy sources to current and emerging markets.

DOE should provide recommendations, the amendment requires, for removing barriers and gaining access to the grid that do not "unfairly disadvantage renewable or other energy producers."

The Senate last week approved an amendment submitted by Sen Jeff Bingaman, D-NM, requiring that **by October 2004, all federal buildings will have advanced metering or sub-metering that can measure hourly electricity use** and provide data on at least a daily basis. The Bingaman language requires the General Accounting Office, the Department of Defense and industry experts to set guidelines for the program.

Competitive grid people want owners not to dispatch

Transmission owners should not be allowed to operate RTOs, the Council for Competitive Transmission (CFCT) asserts in a response to FERC's first standard market design (SMD) working paper.

The possibility that FERC would allow an entity to administer electricity markets and participate in those markets is their "greatest concern" and "the equivalent of handing over market power with regulatory approval," CFCT maintains.

The dual role, CFCT argues, will create the types of "perverse incentives" that would "doom the industry."

FERC accepted the transco concept when it approved the Alliance business plan initially and approved DTE Energy's proposal to operate its ITC under the umbrella of the Midwest ISO (RT, 12/20).

If a market participant wants to be granted market-based rate authority, CFCT proposes, "then it cannot direct the operation of the market."

FERC should implement a plan to use only financial transmission rights, reduce state and federal barriers to transmission entrepreneurs and only give RTOs backstop authority over grid upgrades if there is a market failure, CFCT advocates.

Locational marginal pricing (LMP), CFCT adds, is a "critical element" in congestion management and price discovery for investments.

"At present, there is no superior alternative to LMP that allows the same level of fairness and transparency," CFCT maintains.

FERC should continue on "the right track," CFCT suggests, by making its market rules technology and fuel-neutral, expanding approval of privately funded transmission investments and granting permanent property rights to companies that invest in transmission.

Marketers seek exemption from FTC phone list

The National Energy Marketers Assn (NEM) and NARUC are urging the Federal Trade Commission to tread carefully while setting rules for a national "do-not-call" list.

The FTC is taking comments through today on its proposal to create a national registry of people who don't want to be called by sales people.

Calling them would be illegal.

Applying the proposed rule to energy marketers "could impose significant burdens on the nascent competitive energy industry," NEM says in arguing for an exemption from the plan.

Calls by energy marketers educate consumers about competition while attempting to make sales, NEM points out.

The FTC should not infringe on states' efforts to protect consumers, NARUC contends.

Strengthening consumer protections is commendable, NARUC thinks, "so long as these protections do not pre-empt state regulations that provide greater protection to consumers."

Telemarketing sales should be a matter of state and local jurisdiction, NEM asserts.

About 22 states already have do-not-call lists and 18 others are planning for them, NARUC noted.

Companies can use advertisements and direct mail to educate customers, supporters of a national registry argue.

PJM, MISO & SPP continue talks

A decision on the future of Alliance RTO is still a few weeks away, a National Grid official told a market design forum of the PJM Interchange, the Midwest ISO (MISO) and Southwest Power Pool (SPP) in Philadelphia last week.

"They still expect to be part of the regional marketplace," Mike Gehagen, MISO chief strategic officer, told reporters after the meeting.

"They said they're going to join in some way (but) they're still not even sure if the Alliance will stay together," he added.

The forum was one in a series being held to allow stakeholders to decide how the combined PJM, MISO and SPP markets will work.

Participants at the forum "went a long way in developing characteristics of the market," reported Ken Laughlin, PJM vice president of market services.

"We did a comparison and concluded that our market design aligns with the FERC standard market design in theory and detail," Laughlin said.

The parties agreed, Laughlin said, there would be financial transmission rights, day-ahead and real-time markets and voluntary markets for bilateral transactions.

Issues such as transmission pricing, allocation of transmission rights, imbalance trading, market monitoring and metering would be addressed on the local level, said Nick Brown, SPP senior vice president.

Issues to be resolved jointly, Brown reported, include energy offers, price signals, financial transmission rights and construction of new transmission.

Stakeholders are looking at PJM's version of LMP (above) for the common market, Laughlin reported.

It may be "calculated on a five minute basis with approximately one minute lag time from each five minute interval, after the fact and based on the actual dispatch of system resources."

Energy Security Analysis has been hired to conduct a cost benefit analysis and with the aid of state and regional officials, the company hopes to have preliminary results out in June.

PJM, SPP and MISO are planning to open their joint market in 2005, reporters were told.

Conn Gov Rowland uses monkeywrench to lure generation

Less than a month ago ISO New England announced an RFP to place emergency generators in Southwest Connecticut and to beef up its load response program.

It warned that no permanent solution to the area's chronic electricity shortages would be found until the transmission system is upgraded.

Now Connecticut Gov John Rowland, R, is throwing a monkey wrench into the ISO's plans to solve the problem with Executive Order 26 that effectively halts power line construction in the state until a new task force hands in its findings next year.

Rowland asked FERC not to approve any "future or pending projects in Connecticut or between Connecticut and any adjoining states" until the task force reports. And he directed state agencies to delay final approvals of "large-scale gas or electric transmission expansion projects" until Jan 15 2003.

The governor called the halt because with all the changes in electric and gas utilities and a federal move to create RTOs "these conditions demand that we make wise choices that balance the necessities of sufficient utility resources to provide safe, reliable service to our people while preserving our environment."

The ISO was quick to respond.

"We stress that any delay continues a reliance on measures which are short-term in nature and do not solve the core problems of transmission inadequacy," said ISO New England COO Stephen Whitley.

Whitley urged the governor to:

- Expedite the transmission system upgrade to ensure a reliable supply of electricity for Southwest Connecticut;
- Encourage conservation, and
- Allow older power plants to continue to operate by setting a more realistic time frame for them to meet emissions standards.

Standard & Poor's calls credit picture bleak

Standard & Poor's credit Analyst Barbara Eiseman looked over the utility industry and called the credit picture "bleak."

The bleakness was traced to weakening financial profiles, increasing business risk related to investments outside the traditional regulated utility business, stock repurchases and faltering regulatory support.

These trends, in turn, reflect companies' strategies to deal with an increasingly competitive market, while seeking to enhance shareholder value in a more uncertain environment, she added.

While the credit quality for the US industry remains negative, the number of actual ratings actions diminished somewhat in the first quarter as 19 companies (16 downgrades and three upgrades among holding companies and operating subsidiaries).

All that compares with 44 downgrades and seven upgrades in the first quarter of last year.

Calif summer looks OK to Henwood

An energy consultant has declared California's power supply adequate for the summer and beyond. Henwood Energy stuck its neck way out last spring by predicting California would make it through the summer without blackouts -- a forecast that clashed with the prevailing view at the time.

In its WSCC Power Market Forecast Report, Henwood in Sacramento concludes that the state's power shortages are over and the region has adequate power reserve margins thanks to increasing supply, the impacts of the recession, a normal hydro year and substantial conservation.

Although several major power plant projects were canceled in the state, Henwood found that more capacity is being constructed than originally projected.

Even so, "against this background of healthy reserve margins and depressed prices in the WSCC Henwood sees opportunities for developers who can operate below average costs," said Mark Henwood, CEO.

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