...Storm Warning: Merger madness in utilities

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shown no stomach for interfering with holding companies that want to use their utility subsidiaries as cash cows: "FERC has, under its deregulation experiment, uniformly granted blanket approvals under the Federal Power Act for all stock issuances and loan guarantees based on utility assets for all electricity sellers that sell at market-based rates."

Residents of California remember how reluctant FERC was to intervene in the energy crisis of 2000-2001. "California trusted that the Federal Energy Regulatory Commission would step in and regulate if necessary, which was a huge mistake — the FERC has never shown any ability to regulate on a state-by-state basis, much less the political will to do so," former California Public Utilities Commission (CPUC) President Loretta Lynch said in an interview last year with UC Berkeley News.

The state hemorrhaged $40-70 billion before FERC finally stepped in and imposed price caps on wholesale power.

Even if FERC had the will and resources to act as enforcer, mandatory reliability standards may not be a powerful enough tool to get the job done. FERC could levy fines on individual utilities for having too many outages, but will the prospect of such fines be enough to persuade utilities to make the investments needed to keep the system reliable?

Schneider, the former EPRI director, is skeptical. What's left out of the reliability standard, he says, is the long-term adequacy of the workforce.

"Having a commitment that five or 10 years from now your staffing is going to be well-trained and of sufficient size is not included" in any standard, he says.

Last Line of Defense

State regulatory commissions may be the last line of defense for customer service. In California, any takeover of a regulated utility would have to be approved by the state Public Utilities Commission, which also has legal standing to address service quality issues. To what extent that authority will translate into actual power is one of the big unknowns in the post-PUHCA world. Consumer advocates often complain that state regulatory commissions, in terms of staffing and resources, are outmatched by the utilities they regulate.

But today's utilities are shrimps compared to the supersized holding companies expected to emerge from the coming consolidation of the industry. How will state commissioners stack up against a huge holding company with operations in dozens of states and countries? Schneider believes regulators will have less influence over the highest levels of executive management.

The staff of the CPUC knows where to find executives of Pacific Gas & Electric, headquartered just a few blocks away in downtown San Francisco. "But what if the headquarters is in Texas, or worse, Tokyo?" asks Schneider. "Where are the big financial institutions — Tokyo, London, Hong Kong."

Some state regulators are growing concerned. The California Public Utilities Commission — one of four state commissions examining the impact of PUHCA repeal—started rulemaking in November to reexamine the relationship of the state's major utilities with their holding company parents and their affiliates.

"With the repeal of PUHCA the commission's responsibility to protect the ratepayers becomes even more paramount," the CPUC said.

One model that state commissions could consider is the Wisconsin Public Utility Holding Company Act, or WUHCA. Enacted in 1985, WUHCA limits the amount a Wisconsin holding company may invest in non-utility ventures, protecting utility customers from risky investments that go bad. WUHCA also requires that the state's Public Service Commission approve any sale of more than 10 percent of the holding company.

"WUHCA trumps PUHCA," says Dave Poklinkoski, business manager of IBEW Local 2304, which represents employees at Madison Gas & Electric and has actively battled against utility deregulation. He's confident that Wisconsin's law will prevent Exxon Mobil or some investor group from taking over that state's utilities.

Unions like IBEW Local 1245 can play a role in keeping the focus on service reliability in the states where its members work. The union can explain to employers, to regulators, to legislators and to the public what it takes to keep the lights on today, and the investments in manpower that are needed to make sure the lights are on 10 years from now.

But the storm gathering on the horizon is of a size and character it has not faced before. The Enron fiasco was bad enough, but Enron was limited by PUHCA to owning just a single regulated utility. Now PUHCA is gone. Just as Enron's bright young hot-shots felt compelled to exploit every conceivable chink in the regulatory armor, an army of corporate takeover artists is now circling the utility industry with one thought in mind.

You can be pretty sure it's not "service reliability."

(Editor's Note: Eric Wolfe is communications director of IBEW Local 1245 in California. This article was posted for re-publication by the International Labor Communications Association.)