

What Transition? The Electric Industry in 2003

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1) **There Can be No Coherent Transition Without a Unified Electricity Policy**

a) On at least six major regulatory issues, we lack clear answers.

i) Competition vs. regulation vs. mixed markets

- (1) The ideology-efficiency spectrum
- (2) The problem of incumbency
- (3) The future of wholesale competition
- (4) The future of retail competition
- (5) The role of transmission

ii) Reliability

(1) Operational responsibilities

- (a) Individual utilities
- (b) Regional transmission groups
- (c) National and regional reliability organizations

(2) Legal responsibilities

- (a) State role
- (b) Federal role

iii) Industry consolidation

(1) Merger policy today

- (a) State level
- (b) Federal level

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- (2) Repeal of PUHCA
 - (a) Wholesale markets
 - (b) Retail markets
 - (c) Acquisitions of U.S. companies by non-U.S. companies
 - (d) Acquisitions of non-U.S. companies by U.S. companies

- iv) Utility performance
 - (1) Operational Efficiency
 - (2) Product Innovation

- v) Alternative energy sources
 - (1) Alternative energy policies since 1978
 - (a) Public Utility Regulatory Policies Act of 1978 (PURPA)
 - (b) Subsidies
 - (c) Integrated resource planning
 - (d) Renewable portfolio standard

 - (2) Post-PURPA Options

- vi) Distractions in nonutility markets
 - (1) Utility investments in non-utility businesses
 - (2) Financial separations between utility and nonutility businesses

- b) Satisfactory resolution of these six issues will take research and compromise, among many players at the state and federal level, in legislative bodies and at commissions, in government and in the private sector.

- c) There is no coherent process by which this resolution can occur.

2) **Serious Obstacles Remain to the Development of a Unified Electricity Policy**

- a) Continued reliance on incumbent, vertically integrated monopolies as the sole means for delivering efficient electric service
 - i) Four reasons for skepticism
 - (1) global pollution
 - (2) nuclear power
 - (3) interconnection of small and renewable generators
 - (a) seeking repeal of PURPA
 - (b) fighting for preferences under state siting statutes
 - (c) drawing out interconnection negotiations in a manner reminiscent of transmission disagreements before Order 888
 - (4) "independent transmission companies"
 - ii) Those concerned about overreliance on the vertically integrated monopoly over the years have proposed three solutions
 - (1) retail competition
 - (2) regional transmission organizations
 - (3) municipalization
- b) Continued struggle by regulators to find some way to bring efficiencies to the system
 - i) IRP
 - ii) wholesale competition
 - iii) management audits
 - iv) reliability policy
 - v) merger policy
 - vi) bankruptcies

3) At the Same Time, There are Reasons for Optimism About National Unity

- a) FERC acknowledges its past and present shortcomings
- b) FERC is now focused on economic efficiency and consumer protection
- c) FERC does not support industry proposals reflexively
- d) After "California" and "Enron," the public is better educated about the limits of regulation.

4) Given These Uncertainties, Now is the Worst Possible Time to Repeal the Statutory Protections Against Utility Consolidation and Utility Distraction

- a) The central themes of PUHCA remain relevant today
 - i) preventing utility acquisitions that are not justified by operational efficiencies
 - ii) limiting speculative investments
 - iii) prohibiting interaffiliate transactions
 - iv) restricting unsound financial practices
- b) Repeal is not the answer to those arguing for "competition."
- c) What about PUHCA's role in blocking "entry"?
- d) The correct solution: acquisitions need to be conditioned upon findings that they --
 - i) are the product of a competitive market,
 - ii) produce measurable, guaranteed benefits for ratepayers of both the acquirer and acquiree,
 - iii) do not weaken the financial strength of the acquirer or acquiree, and
 - iv) do not deprive existing utility customers of benefits associated with their past cost contributions.

5) **Problems in the State Regulatory Community**

- a) The risk of rejecting the physical and economic premises of efficient transmission service
 - i) state-by-state reliability regulation is not a physical possibility
 - ii) loop flow, congestion and pancaking are all multistate problems with multistate victims
- b) The risk of favoring state jurisdiction over FERC jurisdiction
- c) The risk of not using the jurisdiction states do have
 - i) mergers
 - ii) utility investments in nonutility businesses
 - iii) utility retention of appreciated generation values
 - iv) absence of customer choices in pricing plans, billing and payment methods, financing of energy efficiency, distributed generation

6) **Conclusion: We Must Develop a Comprehensive Plan for Effective Regulation**

- a) The regulatory appointment process
- b) Regulatory staffing and resources
- c) Regulatory authority
- d) Regulatory management
- e) Jurisdictional relations
 - i) Ratemaking: the wholesale-retail relationship
 - ii) Regionalization of transmission policy
 - iii) Implementation of wholesale competition
 - iv) Implementation of retail competition
 - v) National security
 - vi) Nuclear power issues