Electric Utility Deregulation
(Two Front-page Dreams)

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"If you don't have a dream, how're you gonna make that dream come true" crooned an old Rodgers and Hammerstein musical number. **"Talkie, talkie, talk…"** was the chorus.

This describes, precisely, Washington's approach to electric deregulation. If there is a dream, however, Washington does not appear to be where the dream is being dreamt.

Some months ago, on the same day, two stories appeared on the front pages of both *The Wall Street Journal* and *The Washington Post* (an ominous sign for any industry) that tells it all:

Journal: **"Gloom and Doom"**
"New Rules, Demands Puts Dangerous Strain on Electric Supply… Partial Deregulation Breeds Confusion in Industry… Summer Shortage Feared"

Post: "Utilities Secretly Lobbied Congress… Electric Firms Gave Millions to Left and Right to Halt Deregulation"

We sleuths are left to muddle over two theories regarding these articles:

(1) Perhaps they are causally linked, i.e. the cause of the first is, in significant measure, the reason the events described in the second article are happening; or

(2) Perhaps they are tactically linked, i.e. the persons responsible for the events described in the second article are responsible for the placement of the first article.

In any case, the high points of the articles are worth mulling, at the stratospheric heights level of the economy and the power brokers (old style), so we can appropriately assess the reported efforts of the more Lilliputian players on the inside-the-beltway stage: the Congress, the FERC, the Energy Department.

The past months were "The summer of our discontent": The forecast for them, *brownouts*. The accused (per the *Journal*): deregulation. Instead of competition and efficiency, it has provided confusion. It has yielded us "a national electric system that is vulnerable to disruptions caused by equipment breakdowns and human error as newly established regional grid operators assume responsibility for more much larger areas than those formerly overseen by individual local utilities… The incomplete nature of deregulation has produced planning paralysis that could have long term consequences."

One result: major transmission-constrained islands like San Diego, in which generators seek higher prices since they can't sell outside of them, and from outside to which power cannot be imported except at high prices. Also fortress islands, like Florida, where monopolists have fought off deregulation and outside merchant plant suppliers despite looming shortages.

Segue to the *Post* article, which discloses that some of the nation's largest electric utilities have secretly funneled millions of dollars through two front groups—one headed by leading conservatives and the other affiliated with unions—to stop Congress from deregulating their industry. They believed "using seemingly independent surrogates made their case more believable and shielded them from political risk." The goals of the program were to bottleneck legislation, demonize federal utility regulators and use debates about nuclear power as a provocative wedge issue.

Against this background, it's hard to take seriously the struttings and posing on the public stage of "officials." Secretary Richardson of DOE has been barnstorming the country warning of shortages and proposing that FERC take the lead, stripping some powers over the transmission of power from state legislators.

(Message: it will be the Republican's Congress' fault, not the

Democratic Administration's, when the foreseeable happens.)

Comes then at the technical level, the new Rambo: the FERC. Evidently stung by a contrast to his more muscularly "dirigist" colleague Massey, Chairman Hoecker has now observed that FERC may have to "find the guts" to come down harder on transmission-owning utilities to form optimal regional transmission organizations.

At least he's got the problem right: "When I look at existing ISOs and the early formulation of new RTOs pursuant to [Order 2000], I see fortresses, gerrymanderers, and Swiss cheese… illogical agglomerations of territories and arrangements that may actually act to disrupt markets."

But the newly T-patched Chairman forgets one thing: the reason for the tepid nature of Order No. 2000 is that it was never clear legally that FERC could act as a kind of "uber-regulator." Which leads to the fact (again presumably unrelated to the *Post* article) that the Edison Electric Institute has filed a legal challenge in the D.C. Circuit to FERC Order No. 2000, charging that the Federal Power Act forbids FERC to grant RTOs the exclusive right to set rates, terms and conditions of transmission service, on the grounds that it breaks the connection between setting costs and determining cost recovery.

Or, to put the matter in business peak: to provide sufficient recovery to stimulate needed transmission investments.

Fortunately, our Congress is on the job, making sure a disconnect (no pun intended, of course) will not happen. Senator Murkowski—bolting ahead of the House Committee (the former staffer for which is now heading the utility effort documented in the *Post*)—has a "spreadsheet" highlighting differences and similarities of the eight bills circulating in his committee—other than his own—and has proceeded to the hearings stage.

Remarkably, he predicts there may only be agreement on reliability. Doggedly, he continues to seek a comprehensive bill, on which there is no consensus. At the least, he has earned an honorary Brooklyn Dodger Fan Club membership. ("Wait 'till next year…").

What seems lacking from the tactical maneuvering of the players is any overall model of how the deregulated system should operate, as a benchmark against which to measure the impacts of proposals. In that regard, it was with interest that I read the "Energy Web" model for the year 2010 which the Bonneville Power Administration published.

The house lights dim and… "It is now the year 2010. The integrated power system of large power-plants and a regional gird [for the Pacific Northwest] has been supplemented by a wide array of providers of energy products and services. Central plants and dispatchable small scale generation, dispatchable demand side management (DSM), energy storage, energy management control systems, and telecommunications networks are linked in an Energy Web that is adaptable, self regulating and remarkably stable.

BPA's Energy Web Model goes on to envisage powerco and transco utilities—central players in its version of the deregulation passion play—doing things like applying new energy technologies such as fuel cells, diagnostics, controls and related ideas; hard wiring the system with information and control technologies; promoting energy efficiency; and embracing an increasingly environmentally friendly power supply.

Bonneville's "Energy Web Model" show how deregulation would serve a broader public interest—and, not incidentally, deal with the issues surfaced by the *Journal*. What is refreshing about it is its contemplation of the multiple roles both evolving energy and cyber-technology could play in resolving the power crises bearing down upon the industry.

It appears that neither this vision—nor any more modest variant thereof—is what the players, privateers or power barrons are striving for. That's not the business they are in. But absent the articulation of such a vision, there is a limited amount to commend the particular solutions which the players put forward to enough of the public. **Gridlock is the result.** The next time the *Journal* and the *Post* run electric power stories on the same day, they could well be these:

(1) ***Journal***—Power shortages trigger industry move to self-help power islands/Utilities leave retail service for trading businesses/ How much will my bill be next month?

(2) ***Post***—Congressional hearings spotlight on-going power crisis/ Proposals for national transmission supply company countered by calls for dismantling of federal deregulation laws.

If you don't have a dream…
you can dream about these kinds of future headlines.

ABOUT THE AUTHOR

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With over 30 years of practical legal experience, public service as deputy administrator of the Federal Energy Administration and on the Environmental Protection Agency's Financial Advisory Board, and Washington editorship of the *Merchant Power Monthly* (previously *Cogeneration Monthly)* and *The Construction Business Review,* Mr. Feldman brings significant capabilities to energy project transactions of all types. He is an editorial board advisor for *Cogeneration and Conpetitive Power Journal*. He is a graduate of Brown University, Yale Law School and Harvard Business School.

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