# Restructuring in the Rearview Mirror – a 10-Year Retrospective of California's Doomed Experiment with Electric Deregulation. By The Energy Overseer

## Consumer Protection in the Competitive Environment

As the instigator of electric industry restructuring, the California Public Utilities Commission maintains a responsibility to ensure full and fair competition in the marketplace, to create and enforce rules governing entry to the marketplace for buyers and sellers, and to work in coordination with other agencies that are charged with elements of consumer protection to make sure that people are not unduly taken advantage of during this great change.

The CPUC cannot do this all by itself, and the very nature of a competitive market demands that some of the regulatory paternalism of the past be put aside. But the commission simply cannot adopt a laissez-faire approach to the market it has spawned.

Probably the biggest component of the commission's new responsibility is to gather and disseminate information, because information is the primary tool for consumers to be able to protect themselves against fraud--and open access to information is the most effective way to discourage gaming among competitors.

Earlier this month, the CPUC hosted a "roundtable" to address the basic questions of consumer protection in the competitive marketplace--not just for energy, but also telecommunications, water and common carrier transport services, all of which fall under the agency's jurisdiction.

Certainly, the commission took a large amount of criticism for restructuring policies that, to some, appear to be more geared to protecting competitors than consumers. Regulators also felt the pinch from those of us who give them less-than-stellar grades for the amount of time it takes the bureaucracy to deal with emerging problems. No one seemed especially pleased with the expensive consumer education campaign tied to electric restructuring.

To be fair, there were also positive words for the commission's recent efforts. Probably the most constructive action the CPUC has undertaken is to finally put forth a set of consistent rules for new energy service providers, thus fulfilling most of its duty to carry out terms of SB 477. The ruling comes seven months after passage of the law, and four months after ESP registration commenced, but at least it went into effect prior to the start of the new market. Secondarily, the Energy Division has taken a lead in contacting ESPs to make sure they know what their new responsibilities are. The division has been a bit loose on enforcing supposed deadlines, but to borrow a phrase from one of our long-time information sources, trying to corral new market entrants must be like herding a bunch of cats.

The most important of these new rules is for ESPs to prove that they are equipped to actually deliver energy as promised--that they have reached interconnection agreements with the utility distribution companies, and that they have arranged for power supplies and scheduling coordinator services. ESPs must provide the commission with materials that specify terms of service and expected prices for energy--the same materials they are supposed to make available to potential customers. New viability standards such as posting a $25,000 bond may be a financial burden for some; but in truth, if an ESP cannot afford to insure its activities, it simply should not be in this business.

If even as many as 200 of the 300 prospective firms who initially registered as ESPs disappear, I for one will not miss them. Most ESPs were sadly deluded about the real opportunities for boundless riches afforded by restructuring. Then, I suppose, 99 out of 100 prospectors went bust during California's first big gold rush.

By promulgating these new ESP ground rules, the commission has taken a big step toward collecting the information we all need to determine which prospective players are real and which are not. The next steps will be to organize the information in a meaningful way, to make it available for public consumption, and to clear off the charts those players who are not viable.

Despite criticism from Jim Conran, who represented the California Small Business Association during the roundtable, the CPUC actually acted with amazing dispatch in the Boston-Finney matter. Unfortunately, it has not followed up by publicly addressing the problems posed by other multi-level marketers. FutureNet, Big Planet and other firms claim varying degrees of legitimacy in selling cosmetics or cleaning products, vitamins or WEB-TV, but they have specious grounds at best for being in the electricity business.

If CPUC staff has issued a "cease and desist" order against FutureNet, as we have heard, where is the public notice? Where is the CPUC's "consumer alert" that informs California residents about possible pyramid schemes? I believe there needs to be a serious inquiry about network marketing's role in electricity sales, and a close scrutiny of such companies charging money for individuals to become power distributors.

In addition, community aggregation is an issue that seems to fall through the cracks of jurisdiction. SB 477 appears to exempt from its registration requirements public agencies such as Palm Springs Energy Services or the Association of Bay Area Governments. But we know for a fact that at least one private firm, Astrum Energy Services, is trying to sign rural communities to aggregation contracts without having ever bothered to register as an ESP, claiming to be just an "agent." A clarification of jurisdiction is in order.

One of the problems faced by the CPUC is that everything happens so fast in a changing market and scams occur with lightning speed--people get ripped off, slammed, crammed or gridnapped and don't even realize it until the bill comes in the mail.

Of course, there is no way that regulators can predict and prevent all types of consumer frauds. At best it can set rules and enforce them with dispatch when violations occur, or refer criminal cases to appropriate enforcement agencies--such as the Securities & Exchange Commission, the Federal Trade Commission, local district attorneys or the state Attorney General's Office. I was glad to learn that CPUC staff has been working with district attorneys offices to share information about possible scams. More of that needs to occur.

But most of all, the CPUC needs to effectively publicize its efforts and warnings so that Californians understand that somebody is still looking out for their interests **[Arthur O'Donnell].**

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