

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

Time to Put the Evidence on the Table

The lowest point in American politics came in February 1950, when US Senator Joseph McCarthy stood on the Senate floor and declared, “I have in my hand a list of individuals who appear to be either card-carrying members or certainly loyal to the Communist Party.” McCarthy had been making the same speech for several weeks, although at each stop the number of names on the list changed--sometimes it was 205, sometimes 57--but in the Senate, he claimed “81 of those whom I consider to be Communists in the State Department.” Of one of the never-identified individuals, McCarthy offered this assessment: “There is nothing in the files to disprove his Communist connections.”

McCarthy earned banner headlines for his investigations, but during his four-year anti-Red campaign in coordination with the House Un-American Activities Committee, no one ever looked very deeply into the truth behind his alleged lists.

To question McCarthy was taken as proof that you were a Communist sympathizer.

Over the past several weeks, California’s anti-generator drum beating has gotten louder and more intense. In an interview with the Los Angeles Times, California Public Utilities Commission president Loretta Lynch alleged the existence of an energy cartel that purposely drove California’s electricity prices through the roof. She claimed to have gathered enough evidence to pursue “legal actions” against individual generators but shied away from admitting any proof of collusion or illegal activities.

And yet, the existence of an “energy cartel” has now found its way into the text of CPUC rulings without any basis in fact or record of evidence.

Attorney General Bill Lockyer last week publicly joked about personally escorting Enron CEO Ken Lay into a jail cell and introducing him to a tattooed roommate named Spike. Though Lockyer said he is usually more cautious and “careful about these sorts of accusations or claims,” he felt it was necessary to “find some colorful way” to put his message in print.

When asked by a reporter about evidence, Lockyer admitted, “While we’re still in the legal analysis of whether it’s legal or illegal greed, it’s clearly immoral. There’s no debate about that.”

At the top of the chain of command, Governor Gray Davis not only has endorsed Lockyer’s actions; he has adopted the rhetoric of his charges. Recently the governor declared, “California is in a war with energy companies who will use any tactic possible to manipulate the market and drive up prices. To me, there is strong evidence that people are manipulating the market.”

Davis later said he would consider power plant seizures and windfall taxes as ways to punish generators.

Is anybody else getting a really bad feeling about this? Once again, it appears to be enough to allege a crime without proof because “nothing in the record disproves it.”

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Who are the alleged perpetrators in this crime against California? In some accounts, it’s Enron; in others it’s Reliant, or perhaps Dynegy and Mirant. What do they have in common? They are based in Texas. “If the boot fits...,” suggests Davis’ press secretary Steve Maviglio.

Duke Power, which fails the Texas test, has been tarred in local newspapers for having nuclear operations and running dirty coal plants as if all coal plants aren’t. Even Calpine, the homegrown company that has made new development of power plants in California its top priority, has been lumped in with the “power pirates” for the crime of achieving record earnings last year. Each company, separately and individually, has denied any illegal actions. They are quoted in the media but suspected of covering up something because of their special interests.

At the risk of being labeled a “capitalist sympathizer,” I say it is time to put up or shut up. The CPUC has for nearly nine months been investigating power plant operations and, in a covert action this February, extended its “health and safety” jurisdiction over generators in order to justify the on-site inspections it had been conducting since last December.

To the CPUC: If you have evidence, put in on the table for all to see. By pinning a host of recent decisions on politics rather than legitimate findings of law, you are trying to assert control at the risk of losing due process and legitimacy.

Lockyer has been at it since last August as well, issuing subpoenas for extensive information demands from power suppliers and members of trade groups. He has even offered rewards for whistle-blowers.

To the AG: Don’t make slanderous accusations you cannot back up. If you have proof of criminal activities, it’s time to show your hand.

Governor Davis expects to be able to shame generators into cooperating with the state by signing contracts and forgiving past debts. If not, he says, he will commandeer assets. The federal government won’t act, he says, because President Bush and VP Cheney are protecting their “Texas buddies.”

To the Governor: Declare an end to your pointless “war.” You cannot serve the interests of California behaving like a bully boy. You’ve already sabotaged negotiations aimed at stabilizing the market, and you’ve let your appointees subvert other attempts through poor regulatory decision making.

In a letter to CPUC president Lynch this week, the Independent Energy Producers association demanded proof of her media accusations. “Either there is hard evidence of specific legal wrongdoing, by specific persons warranting further action by the government, or there is not,” Jan Smutny-Jones wrote.

I couldn’t agree more. The time has come to make your case and let the accused respond to the specific details. To continue making unsubstantiated claims would be un-American [**Arthur O’Donnell**].

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