

# Restructuring Today

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*Promoting markets in some areas, hurting in others?*

## Market people react to FERC post-9/11 secrecy rules

Many in the energy business support FERC's post-9/11 rulemaking on protecting critical energy infrastructure information (CEII), but FERC may be opening up Pandora's Box, raising issues of the public's right to know, states' rights and creating another barrier to efficient markets.

Just a month after the September terrorist attacks FERC removed from its website and public reference room previously public detailed maps and specs for energy facilities that might fall into the wrong hands.

Then in January FERC opened an inquiry to write new rules on keeping information on critical infrastructure out of hostile hands while still giving access to those with legitimate goals.

FERC noted that the mechanics of handling Freedom of Information Act (FOIA) requests was "not well suited in the long run for handling most requests" for these data.

EPSA likes FERC's idea of creating a critical energy infrastructure information coordinator who would review all information requests and OK disclosure but wants to make sure requests are handled "expeditiously."

The commission "should consider reviewing its decision to require requestors to submit separate requests" in different

proceedings and "establish generic clearance procedures" to cut paperwork and time, the merchant generators said.

PJM wants stronger rules including the protection of location information FERC exempted because anyone could see pipelines, transmission towers and power plants.

It thinks FERC should tap the FBI, Office of Homeland Security and other law enforcement agencies to establish criteria for releasing information and strengthen protection of commercial information through non-disclosure agreements.

"The commission should release CEII only on a need-to-know basis and then only the information that pertains to a specific request or project," PJM commented.

"This approach, if implemented properly, should not hinder competition and would help to assure security."

BPA questions whether FERC can exempt from mandatory FOIA disclosure and think courts will have to decide which data can be withheld.

The federal power agency thinks FERC should protect data that reveals the location of key communications facilities, control centers and switching facilities not obvious by visual inspection. BPA has taken this information off its website.

But new rules may hamper some

businesses, GE Power Systems noted in its comments.

"We have experienced a direct impact on our ability to support the clients we serve," GE noted, saying it was among the 138 entities who have been denied access to information under FOIA.

GE maintains that the grid is pretty robust and many facilities require two or more independent failures to disrupt service.

The grid is protected as well by its complexity and attacks would have to be targeted at specific weak points in order to have the greatest impact.

**QUOTE OF THE DAY:** One of the inexorable factors of engineering is Murphy's Law. If something can possibly go wrong, it eventually will. Murphy might be the particularly dedicated and knowledgeable terrorist who understands the grid well enough to know or deduce where the weak points are and who has the patience and focus to plan multiple attacks at enough weak points to have a widespread impact. If a determined group of terrorists can arrange for a group of fanatics to receive enough ...

*(Continued on page 2)*

## EPSA, Exelon brief Hill staffers on SMD

FERC's effort to forge an SMD is "a grind-it-out regulatory process," Exelon Senior Vice President Betsy Moler told a meeting of House and Senate staffers on Capitol Hill Friday.

"Expect to see an evolutionary process," Moler said.

"Anybody who talks about the SMD as a complete package is wrong," Gene Peters, EPSA lobbyist, agreed.

The meeting, sponsored by EPSA, was aimed at selling the SMD to the people who will be explaining it to their members of Congress who, in turn, might return next year -- egged on by ultraconservative lobbyists -- with an eye towards getting caught up in the rulemaking (RT, 9/27).

What can Congress do to help, one staffer asked.

Moler hopes Congress doesn't act on the SMD.

"The SMD is not something that lends itself to legislation," Peters said.

Is there still a relationship between the SMD and FERC's Order 2000 calling for the formation of RTOs?

The SMD has "eclipsed" the RTO initiative because it's no longer voluntary, Moler replied. "You either have to join an RTO or turn your transmission assets over to an independent operator," Moler interpreted.

Is it still logical to focus on regions if the SMD is intended for the entire country?

"The SMD has one set of rules and the rules will be implemented by a series of regional organizations," Moler replied.

"Business development will dictate regions that work well together," predicted Craig Roach, partner at the consulting firm Boston Pacific, and "the best partners will come together."

Regions with summer peaking periods can be linked with areas that have winter peaking periods, Roach suggested, while areas with ample supplies of gas can be coupled with those that have abundant coal reserves.

What impact will the SMD have on boom-bust business cycles?

The SMD "contemplates resource planning," Marji Philips, PSEG senior vice president reminded, and should reduce "artificial interference in the market."

When regulators seriously ...

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## Market people react ... (from page 1)

... training to fly suicide missions in commercial airliners then it is equally possible for them to arrange to have another group get the technical education needed to interpret grid data and plan an intelligent attack.

*GE Power Systems comments to FERC on grid security.*

Limiting access is needed but "the key here is balance. How can the critical data be kept out of the hands of those who might use it for terrorist purposes, while still making it readily available to those who have ongoing legitimate needs to access this information ... to support orderly planning and operation functions of a competitive energy market?" GE asked.

GE urged a pre-qualification process so transmission owners, operators and planners, generation operators, technical consultants, academic researchers and equipment manufacturers can get data fast.

And for those who don't need the data often enough to justify pre-qualification, "we believe that the interests of the market would be served best by a process that insures that applicants having a legitimate need be able to access the requested information with relatively little delay," say

within 10 business days.

But state laws give the public the right to participate in energy siting decisions and for that they need the information FERC wants to lock up, commenters said.

The Massachusetts Energy Facilities Siting Board has to hold public hearings in the community where the proposed facilities are to go then act on "difficulties and problems" that pop up relevant to environmental issues.

FERC's intention to protect CEII from release under federal FOIA, and its "apparent readiness" to allow utilities to use Exemption 4 that protects trade secrets and financial or commercial information that is privileged or confidential, would withhold data that historically have been made public, thus hurting the state's commitment "to the development of a fully competitive electricity market throughout New England and extending into New York and eastern Canada," the Massachusetts board wrote.

"This market can function only if detailed data on the daily functioning of New England's electric grid is made available on a transparent basis to all potential market participants," the board noted, and urged FERC to consider whether it is creating a precedent that could undercut its own work to foster

competitive markets.

The board and other state agencies need the data to fulfill their mandates to "provide for a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost."

FERC has to make clear, the board urged, that its rule can't be used by project planners to withhold or seek confidential treatment state agencies need for their task.

The commission needs as well to go above and beyond commercial aspects in weighing the role openness plays in a democracy by assuring government accountability and citizen participation.

OMB Watch, a nonprofit research and advocacy group, cautioned FERC to consider how "information collected and disseminated by government agencies, such as FERC, provides enormous benefits to the public and should be withdrawn lightly."

FERC "gave the public no opportunity to comment before it withdrew tens of thousands of documents, and provided only limited explanation for this removal and almost no criteria for the selection of information removed," but at least it's the only agency, OMB Watch noted, that has begun a formal proceeding to study the benefits of securing critical information.

## Ont generators try to pick up pieces

The Ontario government's actions last week to promote green energy and conservation will fall short of beefing up generation needed now in the province.

And if looming shortages are "left unaddressed, the situation will likely get worse," said John Brace, president of the Independent Power Producers' Society of Ontario.

His members generate 95% of the power consumed in Ontario.

IPPSO wants the government to work closely with stakeholders to develop "further modifications" that would allow companies to finance and build new plants

and do it in a way that "ensures all players have an opportunity."

The Independent Electricity Market Operator (IMO), Brace noted, has an important role to play in "constructing a realistic system" for getting capacity built.

"Generators are disappointed that after years of collaborative effort by a large number of Ontario stakeholders at development of an open and competitive market in Ontario, overall these changes appear to be moving us backwards," Brace noted.

He's referring to Premier Ernie Eves' decision last week to command distributors

to drop their prices to pre-competition levels and refund to consumers what they paid over the US 2.9¢/kwh since the market opened May 1 (RT, 11/13).

The government did clearly commit itself, Brace reminded, to observe the sanctity of contracts and to keep the market open.

But government action is needed "in short order" to ensure market conditions remain strong enough to lure participants, he added, to give consumers meaningful price signals at peak times and establish mechanisms that allow companies to finance and build plants.

## Smart thermostat mart to reach \$564 million

The US home market for programmable and communicating thermostats and other control gadgets will blossom to \$564 million by 2007, a technology think tank predicts.

The annual market is about \$204 million now, said Allied Business Intelligence (ABI) in *Home Automation Systems & Control Networks* ([www.alliedworld.com](http://www.alliedworld.com)).

Growth in smart HVAC controls is being driven by the installation of AMR technology and the introduction of real-time pricing in the residential market, in turn boosting the powerline communications market as well, said Suzanne Betts, the author.

The major difference in cost between plain-Jane AMR meters and real-time meters is the communications

network they require and technology advances are bringing costs down (RT, 11/13).

"Emerging wireless solutions -- such as ZigBee, backed by Philips electronics and Honeywell, and proprietary technologies from companies like Zensys -- are worth watching," she said.

## EPSA, Exelon brief ... (from page 1)

... suppress prices, Philips contended, marketers "start pulling out of the market."

The New York ISO's independent market monitor reported that "anyone who wanted to build in New York City would absolutely not recover their costs," she quoted.

"That's why we see folks canceling plants," Philips asserted.

SMD will help in periods of glut, Roach added, "because the glut will work its way through in an equitable way and people will take their lumps fairly."

The SMD plan "will show Wall St that ... when standard rules are in place there will be a fair chance to win or lose once again," Roach predicted.

Should munis and co-ops be threatened by the SMD?

No, said Moler, because "they can play if they want to play."

Public power customers need the benefits of "price discovery" and will

want power from other regions, Moler added.

Will FERC need a larger staff to help implement the SMD?

The former FERC chair doesn't expect as huge a workload "as they have with all the crazy quilt cases being filed now."

Exelon has about 300 cases pending at FERC, Moler noted.

Will savings under the SMD be uniform across the country?

Savings will vary by region, predicted John Stout, Reliant Energy senior vice president, and even regions with lower prices will benefit.

Determining whether the current system is broken, Stout said, "depends on whether you're the driver or the passenger."

Will regions get exemptions from the SMD?

"If you start to get pockets, it won't work," Philips replied.

"That [allowing regional opt-out] would be a sure loser in court," Moler predicted.

Would phasing in the SMD be acceptable?

"The most critical piece of the SMD is non-discriminatory transmission access," Philips replied, but PSEG is recommending the real-time market be implemented before the day-ahead.

Exelon is not advocating a phase-in, Moler said, but the SMD has core elements.

Will there be legal challenges to the SMD?

"No question," said Moler, but once FERC approves a rule, it goes into effect.

"It depends on how carefully FERC writes the rule," Moler maintained, but the SMD should be approved and accepted.

"It's not some crazy idea that Pat Wood came up with at FERC," Moler assured.

## US marketers write Ontario's Eves

NEMA President Craig Goodman wrote Premier Ernie Eves (above) about his action plan, saying he is "deeply concerned" about impacts the plan will have on North American energy markets.

A cap less than US 3¢/kwh "while obviously well intentioned" as witnessed in California particularly for extended periods of time, will create "enormous economic dislocations and undermine our mutual goals of conservation, load shifting and adequate supplies."

Taxpayers and small consumers over the long term will have to pick up the tab for the damage, Goodman noted.

"Given the billions of dollars and significant time and resources devoted to helping Ontario prepare what has become known as a model market design for all of North America, NEMA and its members would appreciate the opportunity to work with your government to mitigate the possible damage that many believe will result" from this plan.

The Ontario market design in effect has substantial rebates to consumers to offset higher prices in times of scarcity, Goodman wrote.

Extending these rebates will undermine the significant investments that have already been made and erode investor confidence in putting money into generating and demand capacity.

Goodman got the message that the

plan is designed to address "unacceptable" situations where families and businesses face bills they couldn't afford.

Ultimately, a fully functioning competitive market should benefit all consumers through lower prices and the introduction of innovative products, he wrote, but to get the benefits the market must be allowed to evolve and function for a sustained period and send price signals.

Plaintively, he noted that competitive suppliers and customers worked with that measure and the market flourished in the six months it's been open.

Fixing the price for everyone for four years will eliminate competition, undermine DSM and investment in new capacity, he predicted.

Put another way, "the social welfare goals of protecting low income and small consumers can efficiently be addressed within the current rebate structure."

But extending these rebates in time and to all consumers will "exacerbate generation scarcity and encourage indiscriminate consumption without regard to price, precisely at a time that the provincial government is concerned about encouraging alternative energy sources and additional supplies," Goodman wrote.

Tax credits, holidays and other incentives are worthwhile policies but the US has learned that such credits for

wind, solar and other energy sources haven't gotten the long-term success intended because of "inadequate pricing signals to sustain those investments."

If the government does go ahead with price caps, NEMA urged the government "at a very minimum," to allow C&I customers to see and respond to real-time hourly price signals and be subject, without subsidies, to the wholesale marketplace.

That helps the C&Is to respond to price signals with load shifting and conservation, freeing up power needed to minimize the impact on smaller customers.

Goodman urged the premier to consider his decisions in light of the government's intention to implement interval metering for all consumers.

Marketers worry about the negative impact price caps will have on the intended benefits from that technology.

### Restructuring Today's mission

To show where the converging energy and communications industries are headed as they create America's biggest industry, focusing especially on the opening up of competitive wholesale and retail markets.

## Calif has 27 days to exit Williams settlement

Thus the governor and aides are reviewing documents that the FERC staff thinks suggest Williams may have cooperated (RT, 11/15) with AES Corp to manipulate power prices.

Gov Gray Davis is reconsidering last week's deal with Williams (RT, 11/13) for new terms on a 10-year contract for \$4.3 billion worth of electricity.

California is aware that Williams

settled a case with FERC in April 2001 by waiving \$8 million in payments it was owed by the state's grid operator, said Steve Maviglio, aide to Davis, but certain details in news reports were unknown to the state.

"It's fair to say California was aware of the FERC settlement. This is not a new issue," said Kelly Swan, Williams spokesman.

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## Balkanizing grid seen as good move

In this case it means everyone working together.

Representatives from eight southeast European countries signed an accord Friday to link their electricity grids by 2005.

That's Albania, Bosnia, Bulgaria, Croatia, Greece, Macedonia, Rumania, Yugoslavia and United Nations representatives from Kosovo.

The agreement is an attempt to forge closer ties between the Balkans and the

European Union (EU) and "a first step in a long process towards a closer cooperation which will ensure peace and stability in this region" said EU Energy Commissioner Loyola de Palacio.

Participating countries are to open up their electricity markets, adopt EU power production and distribution rules, and will be able to trade electricity with each other as well as with the EU.

Italy, Hungary and Turkey signed as observers to the new system.