Weighing Effects of a Major Legal Change

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In June 2007, the Utilities Industry Council made a presentation at the LERA National Policy Forum on significant changes occurring in the utility industry. The session (moderated by this author) featured Chris Johansson of the International Brotherhood of Electrical Workers, J. Joseph "Max" Curran III of Saul Ewing LLP, and Thomas J. Schneider of Restructuring Associates. Most of the industry's recent changes were prompted by the 2006 repeal of the Public Utilities Holding Company Act (PUCHA), federal consumer-protection legislation passed in 1935. The law:

- Required SEC approval for utility mergers or acquisitions by holding companies;
- Prohibited non-utilities, such as oil companies or investment banks, from owning utilities;
- Regulated parent or holding companies so that rates could not be raised by charging high fees to utilities for services from affiliates; and
- Prohibited holding companies from speculating in riskier businesses with ratepayer's money.

The repeal of PUHCA is expected to result in an increasing number of mergers and acquisitions in an industry that has already seen significant consolidation. In recent years, large European companies like National Grid and Scottish Power have acquired utilities on both coasts. Earlier this year, private equity firms KKR, Texas Pacific Group, and Goldman Sachs announced their intent to purchase Texas Utilities (TXU) in a $45 billion leveraged buyout.

The Need for Change

Utility executives across the country are recognizing that change is necessary for a number of reasons. These include the need to:

- Avoid being an acquisition target;
- Adapt to the global market place and keep pace with the industry;
- Address concerns with deregulation and municipalization; and
- Meet increasing customer expectations around quality and timely service, cost, efficiency, and environmental concerns.

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Many of the utilities are undergoing a business transformation to introduce new technology and work procedures in virtually every aspect of the business. Some, like California-based Pacific Gas & Electric Company (PG&E), have engaged their unions and bargaining-unit employees in the transformation process by including union-represented employees on initiative teams developing the new procedures.

PG&E recognized that centralizing positions, along with making technological and process changes, would eliminate several hundred union-represented positions, but the company also recognized that union and employee support was critical for a successful business transformation.

PG&E got some help in its transformation efforts from Restructuring Associates Inc. (RAI), a nationally known consulting company based in Washington, D.C. RAI specializes in helping companies and unions work together to achieve superior results and has been the primary consultant for Kaiser Permanente's national bargaining, which covers over eighty-one thousand employees represented by over thirty local unions.

PG&E got the support of its unions for full employee engagement by offering the unions a neutrality agreement and a workforce transition plan for affected employees. That plan provides enhanced rights beyond those provided in the collective bargaining agreement. Today, more than five hundred bargaining-unit employees among PG&E's fourteen thousand unionized workers are actively involved on transformation teams.

In late 2007, the Utilities Council will be conducting a survey to determine whether the repeal of PUHCA and increasing merger and acquisition activity are having a significant effect on the utility workforce. The survey will also examine how companies and unions are managing the process.

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