

Restructuring TODAY

Friday June 23 2000

RESTRUCTURING DIGEST:

Circuit court rules PSC can be sued for telecom settlement

The US Court of Appeals for the 10th Circuit found that the Utah PSC can be sued in federal court over settlement decisions the regulators make in telephone interconnection cases, *The Salt Lake Tribune* reported yesterday.

The case started with a fight between MCI and US West over plans to light dark fiber.

The PSC decided MCI could only get access to US West's dark fiber if US West could get to MCI's dark fiber.

Allegheny strikes accord with stakeholders

Allegheny Energy is hoping to separate its generation business and go public, CFO Michael Morrell told *Reuters*.

Allegheny Power, its Ohio utility, reached an agreement with stakeholders on opening up for competition. It would get stranded costs through a competitive transition charge and transfer about 325 mw of generating capacity to the unregulated generation subsidiary by Jan 1 to give that unit 6,000 mw for open markets.

Allegheny could collect \$3 million over five years through a transition charge to cover environmental law costs and some taxes.

Residential customers would get a 5% rate cut on the generation portion of their bill starting Jan 1 and frozen for five years. Commercial and industrial generation rates would be frozen for three years.

Signers are the Ohio PUC staff, the Ohio Consumers' Counsel, Industrial Users-Ohio, the Ohio Manufacturing Assn, the Ohio Council of Retail Merchants, the Ohio Marketer's Coalition, Columbia Energy Services and Columbia Energy Power Marketing, Exelon Energy (PECO), PP&L Energy Plus, American Municipal Power-Ohio, Ohio Rural Electric Coops, Buckeye Power, Kroger and the Mid-Atlantic Power Marketers Assn.

AT&T wins right to keep competitors off broadband

Portland, Ore, cannot make cable companies open their networks to competing ISPs as a condition for getting a local cable franchise, the US Court of Appeals for the 9th Circuit ruled yesterday.

"This is a struggle for control over access to cable broadband technology," wrote Judge Sidney Thomas.

The City of Portland and Multnomah County had required merger partners AT&T and TCI give non-discriminatory access to their cable model platform and AT&T refused.

The court found that cable regulations are not fit to govern two-way, internet communications because "the transmission of internet service to subscribers over cable broadband facilities is a telecommunications service under the Communications Act.

"Applying the carefully tailored scheme of cable television regulation to cable broadband internet access would lead to absurd results, inconsistent with the statutory structure," Thomas wrote.

AT&T plans to introduce internet services in Portland very soon.

The ruling "clarifies decisively the limits of local authority when it comes to the provision of high-speed internet access over cable," said Jim Cicconi, AT&T's general counsel.

Another view was this one from Jamie Wimberly, vice president of the Consumer Energy Council of America.

"With the Portland decision, AT&T won some time. That's it. The larger question is when — not if — broadband services over cable will be treated like a telecommunications service."

He sees a parallel to Bell Atlantic's treatment when supplying the same service but over a different platform. "AT&T would do itself a great service by putting in writing its own open access policy before being forced to do so."

Duke names Bates

mergers chief: Duke Energy named Richard Bates as managing director of mergers and acquisitions, a new position. He was CEO of Energyrunner Inc, a Birmingham, Ala e-commerce company focused on energy commodity transactions on the internet.

Is it time for a federal probe?

Gaming Calif ISO price caps for fun and profit

Avista Corp went into the spring of 2000 expecting business as usual but those who make the rules -- and those who game those rules -- created a radically different world for those relying on Northwest power markets.

So says Tom Matthews, Avista CEO, and one of the first victims. But how is the world now changed?

First, the BPA took the Grand Coulee Dam, the area's biggest, out of generation in May to refill the reservoir. Instead of selling power, BPA was buying.

The Centralia plant Avista had owned part of, when sold became a merchant plant but the power was signed up right away creating power shortages.

Matthews' view is that:

Some people have learned how to game the system between the Northwest and the California PX markets to certain benefits depending on their position. That gaming was not allowed until you might say this year in the changes of the PX price cap rules and some of the transmission rules.

Add to that commercial decisions in Canada to send gas east as new capacity opens which impacts pricing of gas for power generation in the West, he noted.

Add too the changed availability of power under BPA's new subscription agreements.

But then the market was complicated by the impact of southern California prices being transported instantly several thousand miles to the Northwest in the second week of May, Matthews related.

"So if we're going to be forced by the state to remain an integrated electric utility, the only way we can do that is to be power long on an actual basis," Matthews observed in a call with security analysts.

Matthews was asked about the outlook for next year. That depends, he

replied, on whether or not power will cost \$100 to \$150 next year.

"In June historical prices have averaged \$20. They'll probably be about \$118 this year. Will they be that high next year?"

"I don't know. If it is -- that's the bogey we have to manage through our PCA and rate case."

Since 1995, Matthews added, June prices have averaged \$18-19/mwh. Will the state see the situation as a fundamental change?

"Or are we going to have to get into a very aggressive litigative mode with the state to make sure they understand that the market is changing."

Imagine if you were relying on buying wholesale in the mid-Columbia River market!

These are authenticated wholesale prices we've reported from PricewaterhouseCoopers:

Prices for date:	Weighted average
April 25	24.67 \$/mwh
May 1	34.47
May 1	45.79
May 2	171.22
May 3	80.16
June 2	63.45
June 7	75.64
June 8	94.27
June 9	78.45
June 13	244.29
June 14	314.83
June 15	382.65
June 16	180.22
June 19	104.85
June 21	61.52

Avista had indexed its supply agreements to the market price expecting normal prices.

When the above prices developed they got badly hurt.

"Next year we're not going to do that," Matthews added.

"The fundamentals of power pricing in this part of the country have changed forever ... so much more rapidly than we could have anticipated or did anticipate and now we're going to deal with that," Jon Eliassen, Avista Corp CFO told security analysts yesterday.

"I've been in this business for almost 30

years ... I've never seen anything like we've faced this quarter in terms of power prices and impacts on the company," he reported.

The weather forecasts, stream flows and snow pack forecasts have turned out to be **dead on** including temperatures so far this year.

Avista Energy "is likely to be \$70 million of gross margin over and above plan" and that will partially offset the hit on Avista Corp's utility side.

Despite all the negatives (RT, 6/22), Avista Corp expects to break even for the second quarter including an \$8 million gain on the sale of its share of the Centralia generation plant.

They're assuming some rate relief from the Washington regulators later in the year.

How is it that Avista Energy, the unregulated marketing firm, did so well, an analyst asked.

Power marketing positions that Avista had with physical or synthetic generation supplies in the California markets made the difference, Matthews replied.

Avista Energy had become a marketing partner with Duke and Williams for generation they produced in plants bought from incumbent California utilities.

They have "made very attractive business out of the California PX."

The regulated market is being subsidized by the competitive market, Matthews observed.

What about the outlook for being able to manage risk, an analyst asked.

The regulated utility has been long on power and made contracts to sell and bought some to sell with that power.

Not only did the prices go crazy but they had a trader who was told to cover a shortage.

Instead he disobeyed and went short by a factor of four more than he was supposed to.

In normal times, his behavior would have created a \$10 million to \$12 million problem they could have fairly easily resolved.

What about controls on traders?

"The floor manager caught the trades and said:

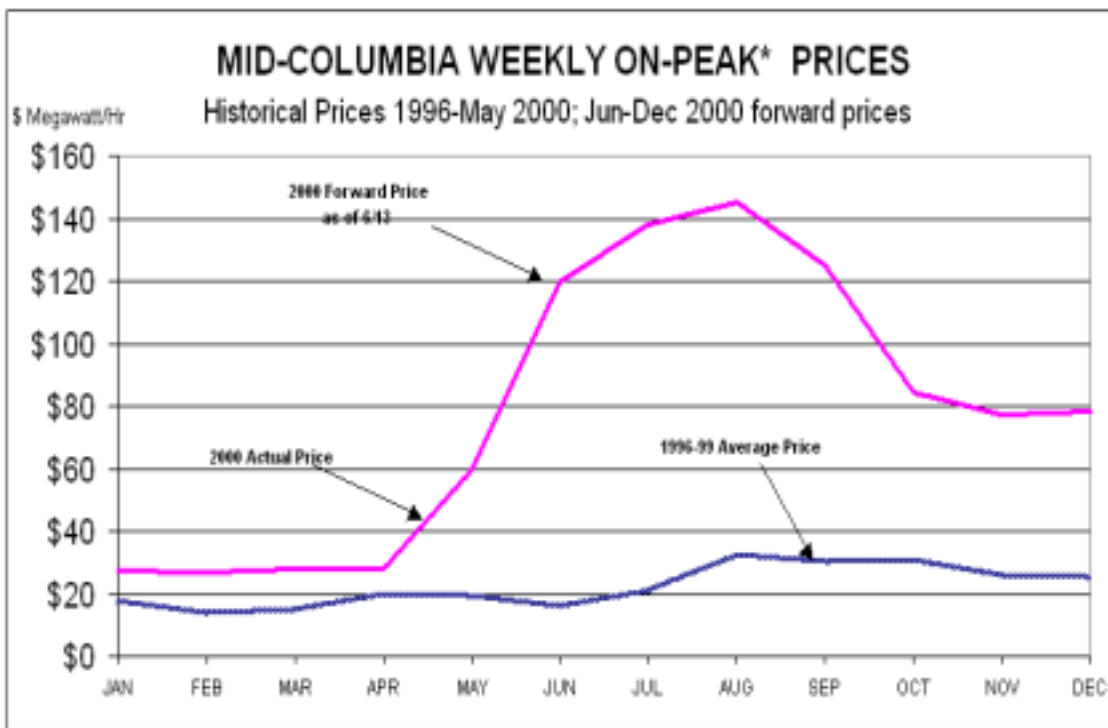
"Don't do it. Get out of them and cover these other positions," Matthews related.

"The trader not only did not get out of them, he went the opposite way and even doubled up. That was Friday and by Monday he was no longer living.

"The ultimate control is, we will no longer do this activity in the utility. That business is gone and it's stopped," Matthews assured.

"Business has changed. We're not short. We're not long in power. The state's not going to allow us to deregulate.

"We're going to be an integrated utility. We're going to be long on everything we do,"



*weekly on-peak: Monday through Saturday 6 AM - 10 PM

Forward Price Source: Megawatt Daily, NYMEX Futures Results for 6/13/00; California-Oregon-Border

Matthews related implying the public obviously will have to pick up the tab for that policy. Matthews stressed that Avista Energy will continue to speculate and trade.

"But the utility side was fundamentally in the **physical** business."

QUOTE OF THE DAY: When you take and do a **physical** contract, it locks in the price on one side of the deal and lets it float with index on the other side of the deal and when the index runs up to \$150 instead of \$19, all of a sudden you have a dumb deal and lose lots of money.

Matthews talking to security analysts Wednesday.

Why didn't the unregulated marketer share information with the utility, an analyst asked.

It's prohibited by the states, Matthews replied.

Bliley gets kudos and more requests

A large, diverse stakeholders group thanked House Commerce Committee Chairman Tom Bliley, R-Va, for working to move forward a comprehensive electric restructuring bill with a provision to have the transmission grid operate under one set of open access rules.

But the stakeholders told Bliley in a letter released today by the committee his draft does not "provide fully the jurisdictional framework for regulation of transmission facilities" they consider needed.

The stakeholders include EPSA,

ELCON, the Consumer Federation of America, NEM and a number of IOUs and munies.

A separate letter from Dominion Resources, Dynegy, MidAmerican Energy, PG&E Corp, TECO Energy, UtiliCorp and Wisconsin Electric urged Bliley to include repeal of PUHCA and the buying provisions of PURPA, extension of FERC jurisdiction to all grid owners, reliability language and affirmation of FERC authority to promote RTOs.

Congress allows online signature

What about NJ wet signature rule?

The digital signature bill passed last Friday by Congress could make New Jersey's pending internet sign-up pilot available to all consumers there, not the cap of 350,000 accounts envisioned by the Board of Public Utilities pilot program.

BPU President Herbert Tate is reading the law that President Clinton is expected to sign.

Tate wants to see whether it will preempt the state regulator's test plan to limit the number of consumers who could switch energy providers electronically.

"We're analyzing that," Tate said, adding that he started reviewing the bill Tuesday.

At issue is whether the pending federal law would apply to retail energy markets that have traditionally been regulated on the state level but are expanding with suppliers coming from across state lines.

"We're looking at this law to see what impact it would have on wholesale and retail," Tate said.

"The state may not be able to look at it on a limited basis."

New Jersey's Energy Competition Act required suppliers to get real (called wet) signatures from customers before switching, a rule marketers complained discouraged customers from shopping.

But the law, Tate reminded, calls for eventually implementing an online sign-up program for gas and electricity.

The BPU is to vote in July on setting up the pilot shortly after Labor Day.

The agency and a working group of utilities and marketers came up with a verification process for the internet pilot that may be superseded by the federal digital signature if it indeed "becomes the law of the land and becomes a way of business life," Tate explained.

The pilot would have marketers take customer orders online by getting account numbers and other information and then telling the incumbent about the order.

The utility is to generate a notice to customers informing them they will be switched in 14 days unless they protest.

BPU avoided use of third parties to confirm the switch as is done in long distance phone service switching, deeming the utility notification to be "less intrusive," Tate said.

The notice process is required with the wet signature too. Marketers expect the internet sign-up to speed things along.

Marketers with online sign-up experience in other states told the BPU it is much more expensive for them to enroll customers with paperwork. Many newcomers to New Jersey, such as Utility.com and Greenmountain.com, want to use the internet as a primary source of sales.

Utilities' distribution rate cuts coupled with wholesale price volatility the past two summers — anticipated for this summer too — compelled the BPU to cut marketers a break.

The distribution rate cuts are 5% for this first year of competition and an additional 10% for the next three years and then stop.

"They feel they are working on thinner margins," Tate said.

"That's why we're lowering the cost of customer acquisition."

The BPU wanted to limit the pilot to 10% of each utility's territory so it could keep an eye out for problems and fix them without it causing widespread damage, Tate said.

The cap is a high ceiling

Next Day PowerTrax Index, Friday, June 23, 2000

Index	Point	Contract Size (x16 hrs)	Total Contract Volume	Highest Executed Trade	Lowest Executed Trade	Weighted Average Index	End of Month Average
		m w	m w h	\$/m w h	\$/m w h	\$/m w h	Index
Cinergy		50	67200	48	40.5	43.25	43.99
Entergy		50	4800	66	50	56.58	54.82
TVA		50	22400	55	51	53.11	45.74
ComEd		50	7200	41	37	39.61	41.99
PJM West		50	52800	50	39	46.23	49.69
Palo Verde		25	10000	100	93	95.14	70.78
Mid Columbia		25	11200	102	89.5	95.38	60.12
COB		25	2000	101	92	96	59.51
Four Corners		25	800	96	95	95.5	71.68
Mead		25	400	99.98	99.98	99.98	45

For additional information contact PricewaterhouseCoopers at 877/363-6275.

considering it is three-and-a-half times the number of consumers who have switched in the six months that choice has existed, Tate noted.

Electricity shopping officially started in November and gas markets officially opened in January.

The BPU wants to make sure consumers are protected from slamming, Tate added, noting even with wet signatures some customers claim they were switched unwittingly.

A recent survey by BPU of consumers found that two-thirds favor the wet signature process while the remaining third want an alternative.

"We're not against it. We're certainly in favor of use of the internet. We wanted to have some time to look at it. We weren't going to take a long time to do that," Tate said.

The working group met with the BPU Tuesday to go over the pilot's rules before Tate and the two other commissioners vote on it.

Tate wanted to make sure they were "comfortable with it" before going ahead, he said. "That's kind of how we've been doing business since we embarked on deregulation," he added.

BPU's \$13 million/year consumer education program is to add TV and radio announcements to publicize the non-wet signature pilot.

(With this story RT changes the spelling of Internet to internet because a recent search of the web suggests that the internet is no longer treated as a proper name).

Residential marketer links to C&I website

UtilityGuide.com, an online energy, telecom and internet shopping guide for residential and small business shoppers, put a link on its site to an online energy exchange for commercial and industrial buyers.

UtilityGuide.com attracts users interested in getting industry information but it is geared to small loads so the company wanted a way to refer large users to a site made for them, Dan Young, content manager of UtilityGuide.com told us.

That is where American Direct Access eXchange (AMDAX) came in. AMDAX is in San Diego and focused on Western markets.

UtilityGuide.com expects AMDAX to refer individuals who are at AMDAX.com for institutional purchases back to UtilityGuide.com when shopping for themselves.

Clinton seeks action on power markets bill

President Bill Clinton urged Congress' leaders yesterday to take on his energy proposals that have languished, including the administration's Comprehensive Electricity Restructuring Act.

He listed favored measures to include a \$4 billion package of tax incentives to spur consumers to buy more energy efficient homes, cars and consumer products, \$1.4 billion in the fiscal year 2001 budget for DOE investments in energy efficiency, renewable energy, gas and distributed generation systems, reauthorization of the Strategic Petroleum Reserve, the establishment of a home heating oil reserve for the Northeast and replenishment of low income energy aid funds.

"I urge you to work closely with me to enact these critical energy proposals without further delay," Clinton wrote.

DOE Secretary Bill Richardson expressed disappointment with the Senate Energy & Natural Resources Committee's failure to move forward a comprehensive electric deregulation bill.

The reliability-only bill has few teeth by itself to address transmission congestion, the imbalance of generation and transmission capacity with rising demand, "spotty" development of open markets and decreased utility spending on energy efficiency programs, Richardson said.

"While the imposition of mandatory rules governing the conduct of utilities' operation of the bulk power system is needed, it will do little, if anything, to address the problems that have put us in this bind," he complained.

"I hope that the Senate Energy & Natural Resources Committee will reconsider and adopt comprehensive electricity restructuring legislation.

"Nothing less than the reliability of our electric grid is at stake," he added.

Richardson's relations with Capitol Hill are tenuous as Republicans blame the administration for skyrocketing gasoline prices and members of the Senate Armed Services and Intelligence committees have assailed Richardson over security lapses at the Los Alamos National Laboratory.

The increasing tension was exacerbated when Richardson did not go to a hearing on the Los Alamos issue last week. He took hits from senators at a hearing Wednesday who complained the Secretary had not done

enough to improve security at the lab since the Wen Ho Lee scandal.

"You've had a bright and brilliant career. But you will never again receive the support of the Senate of the United States for any office to which you might be appointed. It's gone. You've squandered your treasure," said Sen Robert Byrd, D-WVa, a 41-year veteran of the Senate.

"You've lost all credibility," Sen Richard Shelby, R-Ala, told Richardson.

Richardson responded that he has done more in the last two years to improve security than had been done in 20 years.

"It's unacceptable, incomprehensible to me what happened. I will not rest until I know what happened, when, where, why and by whom," he said.

Court Upholds EPA on No_x

The EPA's clean air plan for the Eastern US was upheld today by the US Court of Appeals for District of Columbia Circuit that rejected protests by some power companies in the Midwest and Southeast.

The decision stems from the 1998 EPA rule mandating a cut in NO_x emissions from 22 states believed to be causing pollution in downwind states.

The court ruled states must submit plans to EPA within four months on how they plan to cleanup coal-fired plants.

Enron Broadband helping Rice

Enron Broadband Services and Rice University formed a strategic alliance to work on educational communications services and network applications.

Rice got a \$5 million endowment from Enron and \$3 million from the Linda and Kenneth Lay family foundation.

Enron is to connect Rice and the International University of Bremen in Germany for the two to share research. Enron is to help out with the e-commerce curriculum and broadband technology research and development projects.

The grant from Enron will fund two new chairs in Rice's Jones School of Management. The Lays' contribution will start the Ken Lay Center for the Study of Markets in Transition.

3 stories in 1.5 minutes:

Power savers advance: International Rectifier of Los Angeles came out with

power chips that cut the amount of electricity used in household appliances and industrial motors. Motors account for more than half the energy used in the US, according to EPRI. Maytag is putting the chips in its Neptune washing machines and Electrolux, Frigidaire and others plan to use them. The chips can run at variable speeds.

Otter Tail Power named CFO John Erickson to be executive vice president. He's expected to succeed CEO John MacFarlane who may retire in 2002. Erickson, 42, has been with the highly-diversified IOU since 1980.

NY to get merchant

plant on Long Island: PPL Global plans to build a 600-mw, gas-fired peaking plant on Long Island in New York and that would help out with a seriously constrained transmission market there. Paul Champagne, president of PPL Global, noted that wholesale prices on Long Island are among the highest in the US because of transmission limitations.

Restructuring Today (ISSN 1522-7324) is published 247 times a year for those caught up in the restructuring and convergence of electricity, telephone and gas markets. It's issued on business days by US Publishing at 4418 MacArthur Boulevard, Washington DC 20007. Phone 1-800-486-8201 or 202-298-8201 and fax to 1-202-298-8210. One year's subscription is \$487 in US funds (plus 8% sales tax in the District of Columbia). Samuel Spencer, publisher; George Spencer, editor; Season Hawksley, marketing director.

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