Corporate Governance in Energy: Post-Enron

Corporate Governance Working Group
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Historical Context:
Utility Culture

- Risk-Adverse
- Engineering-Driven
- Long-Term focus
- Local community ties (reflected in board composition)
- Tight regulatory oversight
- Vertical integration
- “Old Boys Club” culture
Governance Triad

Management <-> Board

Regulators
Consumer Protection
Link to Corporate Governance

Nature of rate-of-return regulation
- Prudence reviews
- Regulatory accounting
- Service-quality requirements
- Operation of fuel clauses/purchases power
- Trading activities
- Cross subsidies
- Affiliate transactions (e.g., Columbia Gas)
Regulatory Regime

- State regulation
- Federal regulation
  - FERC – energy
  - SEC – corporate
PUHCA

- A response to Insull scandals
- Filling in gaps to state regulation of multi-state utility holding companies
- Compels integration
- Straitjacket on affiliate and other transactions
- Influence on corporate structure (e.g., avoid holding companies; seek single state exemptions)
PUHCA Evolution

- Ohio Power case
- Lax enforcement by SEC
- Increase in number of registered holding companies
Emergence of Competitive Markets: Utility Culture Change

- Vertical disaggregation
- Market, rather than regulatory orientation
- Greater reliance on trading
  - a. to serve customers
  - b. for own portfolio
- Mergers and acquisitions
- Reduction in community ties
- Loosened regulation
- New entrants and counterparties
Changed Economics

- Altered risk/reward scenarios
- Greater opportunities to diversify
- Shorter-term focus
- Altered revenue sources
- More sophisticated markets and instruments (e.g., hedges)
- Controls more difficult
Regulatory Changes

- Reduced importance of governance triage
- Revenue and power shift from state to federal jurisdiction
Post-Enron: Regulatory Climate

- Greater suspicion of behavioral controls
- Stricter service quality regulation
- More oversight of mergers and acquisitions (e.g., new state laws)
PUHCA

- Enron/Portland General Electric case
  - Trading implications
  - Erosion of state ring fencing
  - Adverse siting implications
Internal Corporate Governance

- Problems similar to other companies
  - With regulatory overlays
  - With fundamental cultural change
- Dominance of the CEO
- Questioning a board’s competency
- Implementing effective controls and accountability