

Corporate Governance in Energy: Post-Enron

Corporate Governance Working Group
Regulatory Policy Program
Center for Business and Government
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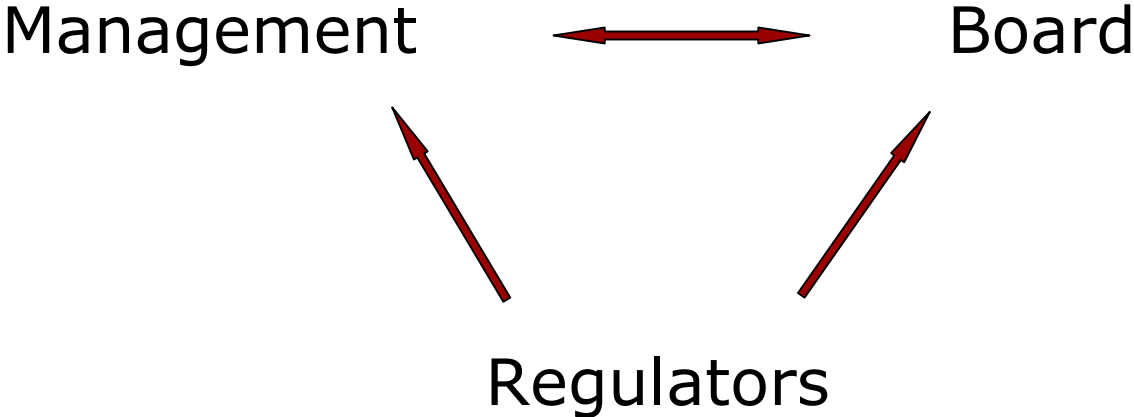
Of Counsel, LeBoeuf, Lamb, Greene and MacRae

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



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