

BOOK REVIEW

THE NEW RULES: A GUIDE TO ELECTRIC MARKET REGULATION by Steven Ferrey (PennWell Corp. 2000).

Reviewed by

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The New Rules is a well-written guide by Steven Ferrey, who does double duty as a professor at the Suffolk University School of Law, and as an energy practitioner. At the outset, *The New Rules* suffer from a disability, which (and I am guessing), is the product of the marketer's artifice and not the author's art. Professor Ferrey struggles mightily to fulfill the promise of delivering what is "new". Much of the contents probably could not be "new", given the length of the writing/publishing process and, more importantly, the speed of change in the electric power industry. However, *The New Rules* can be a useful compendium of information for new entrants, including lawyers, to the electric power business.

The New Rules contains 370 pages, is divided into fourteen chapters with two appendices¹, and includes a list of acronyms and a valuable glossary. The author writes: "[t]his book takes you through the new rules shaping and governing power markets at the millennium. It is written for professionals in the power business."

The fourteen chapters of *The New Rules* discuss energy technologies², distributive generation, wholesale power and transmission rules, EWG, QFs, PURPA, mergers and acquisitions and power contracts. The last chapter is provocatively entitled, "The New Risk Paradigm." What is not included in any of the chapters is analysis of RTOs and ISOs, the role of nuclear power, greenfield generation and hedging and risk management. *The New Rules*, however, can not be faulted for not describing the California implosion or predicting the Enron debacle. However, Professor Ferry is prescient when he writes:

Transmission access is an essential resource that impacts the type of rules required to manage the system, and it is often overlooked in the competitive market.

Chapters 2 and 3 are a discussion of wholesale power sales, and FERC Order Nos. 888 and 889. There is no reference to creeping federalism, interconnection or the plethora of issues surrounding the governance and operations of ISOs or RTOs. Chapter 4 is a quick review of EWGs,

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1. Appendix A is a history of the electric industry beginning in 1878. Appendix B, which is of less value, is a report on retail competition in Massachusetts circa 1997.

2. Reference is made to technologies such as deep-discharge battery storage, compressed-air energy storage, super industry magnetic energy storage and "thyristors" which can be used to increase transmission system capacity.

PUHCA and SEC Rule 58.

Chapters 5, 6 and 7 are an extended discussion of QFs and PURPA. Apparently, the author feels very comfortable with the subject having authored *The Law of Independent Power*.

It is not until Chapter 8 that *The New Rules* touches on a more current issue – deregulation of retail markets. The discussion is neither detailed or incisive (other than an extended analysis of what is labeled the “hangover” of stranded costs). Professor Ferry reaches no conclusion either as to the benefits or disadvantages of retail unbundling.

Chapter 9 is an eleven page (without endnotes) discussion of mergers and asset acquisition. Professor Ferry correctly observes:

Divestiture of both hard and soft utility generating assets offers new strategic opportunities.

Regrettably, there is no expansion of that observation. On the other hand, Chapter 9 makes a classic comment on “greenpower”:

A utility’s claim that it sells 100% renewably-generated electricity does not mean that the electrons generated by a renewable energy plant will supply its customers; rather, it means simply that the utility has put into the pool as much electricity from a renewable plant as its customers have purchased.

Chapter 10 is a too brief discussion of competition issues, including the state action immunity doctrine. What is concluded is that, “[k]ey rules . . . will be evolving antitrust rules.” The reader would be better served if this observation had included the author’s forecast for antitrust enforcement.

Chapter 11 briefly discusses the role of municipals in retail restructuring and then notes a variety of taxes (gross receipts, corporate franchise, property, sales, user, etc.) that may be relevant. The next Chapter (Electricity: Good or Service?) is characterized by the author as a “sleeper” issue. This reviewer is not so persuaded, especially when the answer was quickly provided by Professor Ferrey: “Most states tend to identify electricity as a ‘product.’”

The final two chapters discuss Massachusetts’ retail unbundling and international energy transactions. Professor Ferrey concludes as to the latter:

Deregulation and privatization will not create an environment without rules or regulations. Rather, regulations will remain and change to form a more complex, diverse, and vibrant power market. Private contracts will replace state regulation as the arbiter of the power market.

Hopefully, he is right because in this new environment where contracts will be king, there will be a role for lawyers.

There is much in *The New Rules*. How can you not like it, when the author writes, “[t]ransmission . . . used to be the unglamorous part of the utility business”?