Fourteen clues that FirstEnergy is for sale

Events

1. The 'successors' loophole in the FirstEnergy rate case

This is described fully in Shari Weir's March 24 analysis.

2. A golden parachute for Mr. Alexander

"The SEC document also reveals that the company's board of directors last week beefed up the severance package for [FirstEnergy CEO Anthony] Alexander in the event the company merges with another utility and he is forced out. The new severance package, commonly called a golden parachute, adds three years to his service with the company. Pension benefits, payable at the age of 55, will be calculated from the adjusted age. The changes are aimed at making certain that Alexander, who is 52, and other executives stay focused on what is best for shareholders rather than on their own compensation packages, the company said. The new plan will become effective for other top executives Jan. 1, 2006," Confusion continues over bonus program, John Funk, Cleveland Plain Dealer, February 26, 2004.

3. Poison pill

NEW YORK, NY -- "U.S. power company FirstEnergy Corp. on Wednesday said it would terminate its poison pill plan on March 31, more than three years ahead of schedule, potentially removing obstacles to an acquisition. The Akron, Ohio-based utility company said its shareholder rights plan, designed to make unsolicited takeovers prohibitively expensive, was scheduled to expire on Nov. 28, 2007,'" *Reuters*, February 18, 2004. FirstEnergy release.

A "poison pill" is a "strategy used by corporations to discourage a hostile takeover by another company. The target company attempts to make its stock less attractive to the acquirer. There are two types of poison pills: A 'flip-in' allows existing shareholders (except the acquirer) to buy more shares at a discount. The 'flip-over' allows stockholders to buy the acquirer's shares at a discounted price after the merger," *Investopedia*.

4. Staggered terms

"FirstEnergy's board will ask shareholders at the company's annual meeting in May to approve: Declassifying the board of directors starting in 2005, so that all directors are eventually elected annually. Directors elected to three-year terms in 2004 would continue to serve until the terms expire. Staggering the election of directors makes it more difficult to replace the board at one time," FirstEnergy dissolves `poison pill' defense; Shareholders vote to drop anti-takeover measures, Jim Mackinnon, *Akron Beacon Journal*, March 8, 2004.

5. Supermajority

In its February 23 preliminary proxy statement filed with the U.S. Securities and Exchange Commission, FirstEnergy management proposed the weakening of the company's "supermajority" voting rules from 80% to 2/3. In arguing for the change, management acknowledged that the 2/3 rule will make a takeover of the company easier:

"In addition, an 80 percent Supermajority voting requirement encourages potential acquirers to negotiate with the Board of Directors rather than just a few large shareholders, thereby enhancing the Board of Directors' ability to maximize value for all shareholders. Furthermore, while 80 percent Supermajority provisions do not preclude an unsolicited takeover offer, they can make it more likely that all shareholders will be treated fairly in the takeover process," FirstEnergy Preliminary Proxy Statement, Schedule 14A information.

6. Anthony Alexander's promotion

FirstEnergy's former CEO, Peter Burg, died on January 13, 2004. The next day, the *Akron Beacon Journal* noted, "FirstEnergy Corp.'s board of directors could take months to name a new chief executive to succeed H. Peter Burg at the struggling Akron utility, some analysts and management experts said. That's because the company -- under the national spotlight for its role in last summer's massive blackout and problems at its Davis-Besse nuclear plant -- needs to think hard about who can lead it forward, they said. 'I think the board will want to consider all its options,' said Paul Fremont, an analyst with Jefferies & Co. in New York. 'There's no need for a rush. I'd be surprised if there were an announcement out immediately,'" John Russell, FirstEnergy can take time filling CEO post, *Akron Beacon Journal*, Jan 14, 2004.

Instead, within 24 hours of Mr. Burg's funeral, the board voted to give the Chief Executive Officer job to Anthony Alexander.

Why the unseemly haste? And why Alexander, the one man most closely associated with FirstEnergy's string of blunders?

This is all explained if, at the time of Mr. Burg's death, the board was already committed to selling the company. In that case, they wouldn't need time to think, because they wouldn't need a Chief Executive Officer with competence and vision. And in the takeover, as CEO, Anthony Alexander would be more likely to be 'taken care of' financially.

7. The vacant Chief Operating Officer job

Anthony Alexander left the job of Chief Operating Officer on December 12, 2003, when he became Acting Chief Executive Officer during Mr. Burg's illness. Why -- fourteen weeks later -- is there no sign of progress on filling the crucial post of Chief Operating Officer? As above, if the FirstEnergy Board and top executives are in the midst of selling the company, they don't need a Chief Operating Officer at all.

The degree of attention FirstEnergy is devoting to hiring a Chief Operating Officer was made clear at FirstEnergy's February 19, 2004, financial presentation. Richard Marsh, Chief Financial Officer, described the company's search, and as an afterthought, said, "Nuclear experience would be a plus."

8. Bonus disparity

"While none of FirstEnergy Corp.'s 14,000 employees received a short-term bonus in 2003, the Akron utility's top five executives got raises ranging from 3.1 percent to 10.3 percent, according to a document the company filed Monday. The executives also received hundreds of thousands of dollars as part of a long-term incentive plan, though a lot less than was paid out in 2002, the Securities and Exchange Commission document shows," Five executives get 2003 raises at FirstEnergy, Jim Mackinnon, *Akron Beacon Journal*, February 25, 2004.

This is classic pre-sale nest-feathering.

9. Hiring officials from potential suitors

Last September, FirstEnergy hired an Exelon executive, Joseph Hagan, to oversee the nuclear engineering functions at FirstEnergy's Perry, Beaver Valley and Davis-Besse nuclear plants. The next month, it hired an Entergy executive, Barry Allen, to be the Davis-Besse plant manager, FirstEnergy names new FENOC Senior Vice President, FirstEnergy Corp. names new Davis-Besse plant manager, releases, *FirstEnergy*, September 23, and October 16, 2003, respectively.

10. No comment from Exelon, Dominion, or FirstEnergy

"The two most often mentioned utilities last week that may have an interest in acquiring First Energy are Chicago-based Exelon Corp. and Richmond, Va.-based Dominion Resources. Both have fleets of nuclear power plants. Exelon's main companies are in Chicago and Philadelphia, on either side of FirstEnergy's territories. Dominion is already in Ohio as a gas company. Spokesman for both companies last week declined to comment, quoting company policy and SEC regulations concerning mergers and acquisitions. But the speculation that FirstEnergy is a target, if not rampant, is now common among Wall Street types," John Funk, Former CEO Burg's death adds bad news to bad year for floundering FirstEnergy, *Cleveland Plain Dealer*, January 18, 2004.

"FirstEnergy itself is mum. The company does not discuss the possibility of mergers and acquisitions, spokesman Ralph DiNicola said," FirstEnergy dissolves `poison pill' defense; Shareholders vote to drop anti-takeover measures, Jim Mackinnon, *Akron Beacon Journal*, March 8, 2004.

Of course, there is no SEC regulation prohibiting any of the three companies from ending the speculation by saying "We have no interest." Each company decided not to say that.

11. Suddenly settling the Perry lawsuit

On October 20, 2003, FirstEnergy suddenly settled a lengthy tax battle with Painesville. "Perry schools and some Lake County agencies will get a $23.7 million tax windfall over the next five years that will settle a nine-year dispute over the tax valuation of FirstEnergy's Perry nuclear power plant. . . . [Lake County Commissioner Robert Aufuldish] said the nine years of negotiations were tough on many officials and agencies and involved some compromises. 'This very well could have lasted another nine years,'" FirstEnergy, Perry settle, Maggi Martin, *Cleveland Plain Dealer*.

Why did FirstEnergy suddenly reverse its legal strategy, and spend $23.7 million now, when it could have dragged it out for nine more years?

Potential buyers don't like picking up the potential liability of outstanding lawsuits. The settlement made FirstEnergy a more attractive takeover target.

Persistent reports and rumors

12. Fire sale

FirstEnergy employees in Pennsylvania and New Jersey tell us that the company is hurriedly confiscating equipment and selling vehicles -- similar to what GPU did just before it was bought out by FirstEnergy.

13. Open house

Rumor has it that FirstEnergy hosted a special Davis-Besse tour on Saturday, February 28, for representatives of three potential suitors -- Exelon, Entergy and Dominion.

14. What did Lew Myers mean?

On March 1, 2004, the *Port Clinton News Herald* reported this statement: "FirstEnergy executive Lew Myers said the plant probably employs 50 percent more workers than a typical, similar facility. 'There'll be combinations of everything over the next few years,' Myers said of the Davis-Besse workforce. Davis-Besse is Ottawa County's largest employer. About 800 workers are on the payroll, FirstEnergy spokesman Richard Wilkins said. Wilkins softened Myers' comments, saying no long-term Davis-Besse employment strategies have been drafted. 'I don't even know if we've got that far, to tell you the truth,' Wilkins said. 'We're going to look at a lot of different programs across all three (FirstEnergy nuclear) plants,'" Too many Davis-Besse workers?, *Port Clinton News Herald*.

Why did Myers say this? And why didn't Wilkins want him to say it? Coming as it did coincident with Clue 13, above, this observation sounds more like a sales pitch to a potential buyer, than the prudent judgement of a long-term manager.

For more information:
Shari Weir, Cleveland Area Program Director, Ohio Citizen Action, (216) 861-5200.