# it's time to bury plausible deniability

**Nancie Poppema**, CCA

In preparing executives to take the stand—whether it's in front of Congress, the state utility commission, FERC, or judge and jury—the first thing our team of consultants here at the Communication Counsel of America does is research. In researching for a utility rate case recently, I asked for some routine system operations information.

The answer I received from the company was startling.

"I don't mind CCA having that information, and I'll get it for you," my briefer said. "But, our CEO asked for it a couple of days ago, and we decided not to give it to him.

"It's not information he would normally have," the manager added. "And, on the stand, we think he should be able to say he doesn't know."

Needless to say, I was incredulous. The CEO had asked for it, and, if he wanted information, why shouldn't he have it?

What is equally incredulous is this is not an isolated incident. It's happening in utilities across the country. I would expect the opposite in this post-Enron environment. I would expect, actually, that the CEO would be given more information, not less.

Unfortunately, plausible deniability—at one time a veritable staple for an executive's safety—no longer exists. Today, without solid information, an executive will have a very difficult time establishing and maintaining credibility on the stand (or anywhere else, for that matter), and will be left defending from a naked position—not a good place for anyone to be, especially someone with corporate responsibility.

## history

Long, long ago in a regulatory galaxy far, far away, it was acceptable—and even expected—for an executive (CEO, CFO, CAO, CIO, EVP, SVP, and all the other 3-letter execs) to be knowledgeable of issues and daily information only on a "big picture" basis. In fact, if an executive knew too many details or at too deep a level, that executive was seen as a micro-manager and not a good leader.

Now after the past few years of scandals, including Enron and WorldCom, and reactive regulations like Sarbanes-Oxley, the utility executive's job has gotten much tougher, and an executive's role as witness has become, at times, excruciatingly painful. Under these conditions, credibility is harder to achieve. I call it the "mom factor": If your mom won't believe you, who will?

Remember the reaction of Jeff Skilling's mother to his defense? She didn't buy his statement that he didn't know what was happening down in his organization. "When you are the CEO and you are on the board of directors, you are supposed to know what's going on with the rest of the company," she told *Newsweek* in the February 18, 2002, issue.

Today, no one else is buying it, either—not mom, not Congress, not state regulators, not stockholders, not juries.

We used to describe an executive's role on the stand as giving the 50,000-foot-level picture; managers had the 30,000-foot; and "fact witnesses" had the 10,000-to-ground-level information. Today, executives have to go down to ground level at times, and managers have to be able to demonstrate they know the details—plus see where they fit in the big picture. There's quite a bit of overlapping. If executives do not know critical information and cannot demonstrate they know it on the stand, the trier of fact will see no basis for executive decisions—and therefore, the witness and the company lose credibility.

If executives lose credibility on the stand, the case could be lost.

This is not to say the executive needs to know every single detail down to ground level; it simply means that the executive needs to know the right level and the right details—especially about controversial, high priority issues. It is not enough to know pricing strategies or what the newest technology is; executives need to know what exactly is happening in each area of the organization. Too much detail can mean micromanaging, and it's also true that too little detail can spell disaster.

My advice to today's utility executives: If you want to survive on the stand, in front of stockholders, the media or employees, know more than you think you need to know.

## three cases in point

**case #1:** *corporate governance reforms still haven't changed human nature.*

Sarbanes-Oxley (and SEC) has mandated several reforms, many of which are designed to hold executives personally accountable—such as having the executive verify and sign the corporate annual financial statements. Along with those reforms, corporations have embarked on training programs for their employees in accounting and ethics. Recently, while working with a company wrestling with some financial cases, we were told by a supervisor that two months prior to our visit his team discovered their balance sheet was

Reprinted with revisions to format, from the November/December 2004 edition of **ELECTRIC LIGHT & POWER**
Copyright 2004 by PennWell Corporation

"off" by about $1.7 billion dollars, and they were trying to figure out how that happened. My immediate question was whether they had alerted their CFO and SEC of this discrepancy. The answer was "No, not yet." His reasoning was that until they knew how it happened they didn't want to tell the CFO because she would demand to know the root cause.

The executive had just signed the corporate financial records and filed them with SEC two days before.

In the end, the cause of the $1.7 billion error was in data collection and software glitches, and eventually the SEC was satisfied with a re-filing. However, the CFO barely escaped some unpleasant legal proceedings.

**case #2:** *go after the issue—not the motive.*

A new CEO's company was faced with litigating a whistleblower claim of intimidation and harassment because the employee raised concerns about the quality assurance (QA) program, treatment of inspectors and unsafe conditions in the field. The operations management team assured the CEO that this was a disgruntled, poor-performing employee who was just trying to hold on to his job. The CEO bought into the motive, and a great deal of time and money was spent (not to mention media coverage and Congressional interest) defending a case which was indefensible. Others began filing whistleblower cases, until the company was faced with 19 open cases.

Finally, a brave soul (the CEO had a reputation for killing the messenger) laid out the facts to the CEO, in which it was clear that at least 18 of the 19 cases were substantive. The executive studied the facts, ordered the cases to be settled, and sent a clear signal to the culture by hiring two of the whistleblowers back to help solve QA problems. He also set about changing the culture to one looking for precursors, focusing on the issue—not the motive—and bringing forward bad news before it hit the street.

**case #3:** *make no claim without proof of same—or you're sunk.*

A CFO was having lunch with two very influential senators. The issue was the contemplated closing of two large military bases within the company's service territory. The executive wanted to persuade them to fight to keep them open. The company would be harmed by this loss of load, he figured, and would leave the company with excess capacity and no market for it. He asked his team for the capacity and load forecasts for the next three years with and without these bases.

The internal analysts stalled, saying they needed more time to run the numbers. They knew the numbers would not bear out his theory due to an unexpected commercial growth boom in another part of their service territory. Time ticked away. He went to the meeting with no data, and tried to convince the senators to fight for the bases—his logic was sound. The senators listened to him, then one pulled out data which his own staff had uncovered.

While the bases closing did not harm the company's financials, the lack of data most assuredly harmed the CFO's reputation with the senators.

## your swamp guide through the "allegators"

How do you foster a culture that breaks down executive isolation and gets real information coming to you? There are several ways we've seen—more than can be put into one article—but here's a simple way to get started: Go on "allegator hunts."

"Allegator" comes from the word "allegation." It represents allegations that could be leveled at your company or issues that will come up to bite you if you don't take care of them first. An "allegator hunt" is a brainstorming session with key trusted employees across the company and at all levels of the organization. Ask them: "Knowing everything you know, where and how could you attack the company?"

If you have trouble getting people to give you allegations, ask them: "What are we doing that you would have trouble defending to our customers, SEC, the commission, legislators or reporters?"

If an "allegator hunt" is a bit intimidating, you can start smaller by asking each of your direct reports in your regular meetings to bring to the table a potential emerging issue—a precursor—they see brewing. You may have to make it clear they are not to come to the meeting without one to put on the table. With each one, explore the worst-case scenario. What would the headlines say? What could this lead to if left unchecked? The purpose is not to kill the "allegator" or solve the problem in the meeting; it is to identify it so you can develop a plan to get more information and/or deal with it quickly.

Remember to reward those who bring you "allegators." It helps you avoid being blissfully ignorant until you step on its tail and it bites you.

*Poppema is executive vice-president with the Communication Counsel of America, which prepares organizations—including utilities and power companies—to address high-risk controversy and pursue high-stakes opportunities. She can be contacted at nancie.poppema@cca-consulting.com.*

CCA, Inc.
972.713.7474
www.cca-consulting.com