



Utility Mergers and Acquisitions

Navigating Regulation and the Role of the States

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What are the Drivers?

- Combine Adjacent Service Territories
- Expand Geographic Reach
- Diversification
- Synergies
- Infrastructure Investment
- Create a Stronger Energy Company

The State Regulatory Framework

- State Public Utilities Acts
- Representative Statutory Language:
 - The Illinois Commerce Commission “shall not approve any proposed reorganization if the Commission finds ... that the reorganization will adversely affect the utility’s ability to perform its duties under this Act.”

(Illinois: 220 ILCS 7/204(b))

The State Regulatory Framework, (Cont.)

- A proposed merger will require a certificate of public convenience which may be granted by the Commission “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”

(Pennsylvania: 66 Pa. C. S. §1103(a))

The State Regulatory Framework, (Cont.)

- The Commission is also to consider whether the proposed merger ... “is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power”

(Pennsylvania: 66 Pa. C. S. §2811(e)(1))

The State Regulatory Framework, (Cont.)

- “No person shall ... acquire control of a public utility ... without ... approval of the Board of Public Utilities ... [T]he Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers ... on the employees of the affected public utility or utilities ... and on the provision of safe and adequate utility service at just and reasonable rates”

(New Jersey: N.J.S.A. 48:2-51.1)

The State Regulatory Framework (Cont.)

- Application of the Standard
 - No Harms Test – Customers will be no worse off as a result of the merger
 - Net Benefits Test – There will be a demonstrated benefit to customers
- Burden of Proof

What Are the Issues in State Regulatory Proceedings?

- Impact on Rates
- Cost Savings – who benefits?
- Cost to Achieve – who pays?
- Impact on the State
- Management; Jobs; Headquarters; Charitable and Civic Commitments
- Service Reliability
- Market Power

The Stakes are High – Many Utility Mergers Fail Due to State Regulatory Issues

- An Informed Assessment of Regulatory Risk is Critical
- Is the Deal Aligned with State Interests?
- Where Do Key Stakeholders Stand?
- What Will Be the Timeline for Approval?

Navigating the State Regulatory Process

- State Regulatory Approval Can Be Difficult
- Understand the Process and Issues
- Meet with Key PUC and Stakeholder Personnel Prior to Filing
- Identify Issues Around Which to Build Consensus
 - Structure Portions of Transaction So As To Acquire Allies

Presenting the Case

- Prepare a Comprehensive Filing
- Participation by Senior Management is Essential
- Address Cost Savings and Market Power Issues with Outside Expert Testimony
- Expect Extensive Discovery
- Stakeholders Will Have Their Own Agendas

Winning the Case

- Demonstrating the Deal Logic
 - Stronger Financial Platform
 - More Efficient (Lower Cost) Operation
 - Better Management
 - System Investment
 - Improved Business Operations
 - Public Interest
- Be Prepared to Negotiate with Stakeholders
- A Negotiated Settlement Can Be Advantageous

Advantages of a Negotiated Settlement

- Certainty
- No Appeal
- Establishing A Framework for Cooperation
- Stakeholders Become Invested

Litigating the Case to Conclusion

- Possible Outcomes: Approval; Rejection; Approval With Conditions
- Conditions For Approval
 - Rate Freeze and/or Reduction
 - Assignment of Benefits of Synergy Savings and of Costs to Achieve
 - System Investment/Performance Benchmarks
 - Financial Restrictions
 - Community/Charitable Commitments

Strategic Considerations

- Be Realistic in What You Ask For
- Maintain Process Control
 - Importance of a Project Manager
- Establish Credibility
- Be Willing to Compromise
- Keep All Jurisdictions Informed
- Know When to Walk Away