

Regulators OK with Mega-Deals

BY WENDELL F. HOLLAND

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act of 2005 and the repeal of the Public Utility Holding Company Act of 1935, many in the industry saw an opportunity to rekindle merger and acquisition activity. Several deals were announced and approved. Yet, two significant ones that did not close – Exelon and PSE&G, and Florida Power & Light and Constellation – received considerable media attention. Many blamed state regulators in those states as the cause. Hence, the broader question became whether consolidation has been held hostage by state utility regulators. The Pennsylvania experience provides evidence to the contrary.

In Pennsylvania, as in many jurisdictions, the legal standard asks whether an affirmative public benefit will result from the consolidation. Public benefit is defined typically as protecting the public interest, encouraging economic development and safeguarding the environment. We also ask whether the proposed merger is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power.

Since I have been chairman in Pennsylvania, about five major energy mergers and four major telecommunications mergers have been approved. Some merger applications involved foreign owners or nontraditional equity owners. We have decided our cases fairly and in a timely manner within six to nine months.

The commission thoroughly and comprehensively reviews each application, which typically consists of reams of documents. With the combined legal and technical efforts of the commission's multi-faceted resources, we are

presented with a high-quality assessment and recommendation. The Pennsylvania Commission has approved about seven out of 10 mergers during the last 10 to 15 years – some with conditions. To date, none of our decisions have been reversed on appeal. In the end, I recognize that appropriate combinations can significantly increase operating efficiencies and have both shareholders and customers benefit from performance-based rate plans.

In the Commonwealth, we take a business approach to policy issues while striving to send clear regulatory signals to our jurisdictional utilities. We expect that customers would benefit from increased operating efficiencies resulting in lower rates for service while enabling the utility to maintain adequate and reliable service. Shareholders could benefit from earnings and dividend growth. Our decisions have generally been supportive of good credit quality.

Nevertheless, I worry that increased M&A activity could result in dire consequences for ratepayers in the short and long run when it comes to quality of service. I have placed these concerns on the record during the relevant proceedings and received answers and assurances from the companies. The commission also has promised ongoing monitoring of these acquisitions to ensure the promised positive benefits materialize. Most importantly, the overarching goal is to protect ratepayers.

From a national perspective, it can reasonably be said that regulators have significantly approved more major acquisitions than were disallowed. State regulators have examined the proposed mergers though their respective state standards, such as the no harm test, the net benefit test or the affirmative benefit test. The data suggest that during the last decade or two, about 70 percent of all proposed mergers have been approved after close scrutiny, and when appropriate, with conditions. M&A activity has increased over the last two years: 10 major deals have been announced and four deals have been completed. Moreover, the Federal Energy Regulatory Commission recently amended its 1996 merger policy statement to give more clarity on its merger and corporate review policies while

protecting consumers from unauthorized cross subsidies of utilities and their affiliates.

Hence, with the increase in applications for the consolidation of the utility industry, the record shows state regulators are not hostile to big mergers. But I will emphasize that in reviewing these mega-mergers, state regulators continue to balance all interests to ensure that customers are protected and the company has an opportunity to earn a fair return on its investment.

Wendell F. Holland is chairman of the Pennsylvania Public Utility Commission. The opinions expressed in this column are his own and not the commission's.



Wendell F. Holland

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