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August 30, 2021

Via Electronic Mail

Luly E. Massaro, Commission Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888
luly.massaro@puc.ri.gov

RE: Docket S-21-09 – Petition to Transfer Ownership and Related Approvals

Dear Ms. Massaro:

Please find the following document enclosed herewith for filing and docketing in the above-entitled petition:

1. Motion for Reconsideration of Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and XOOM Energy Rhode Island LLC (collectively, "the NRG Retail Companies" or "NRG").

Thank you for your attention to this filing[1]. If you have any questions, please do not hesitate to contact me at 617-342-6890.

Very truly yours,

/s/ Craig R. Waksler

Craig R. Waksler

cc: Docket D-21-09 Service List

[1] NRG will also provide the Commission Clerk with the original and four (4) hard copies of the enclosure via First Class Mail.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below on August 30, 2021.

/s/ Craig R. Waksler
Craig R. Waksler, Esq.

Docket No. D-21-09 PPL Corp., PPL RI Holdings, LLC, National Grid USA and The Narragansett Electric Co. – Petition to Transfer Ownership and Related Approvals

Service List Updated 8/18/2021

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STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

IN RE: Petition of PPL Corporation,	**:**	
PPL Rhode Island Holdings, LLC,	**:**	
National Grid USA, and	**:**	**Docket No. D-21-09**
The Narragansett Electric Company	**:**	
for Authority to Transfer Ownership	**:**	
of The Narragansett Electric Company	**:**	
to PPL Rhode Island Holdings, LLC	**:**	
and Related Approvals	**:**	

MOTION FOR RECONSIDERATION OF DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY BUSINESS MARKETING, LLC, DIRECT ENERGY SERVICES, LLC, RELIANT ENERGY NORTHEAST, LLC AND XOOM ENERGY RHODE ISLAND LLC

Pursuant to 815-00-00 R.I. Code R. § 1.31, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and XOOM Energy Rhode Island LLC, (collectively, "the NRG Retail Companies" or "NRG") moves for reconsideration of the Order of the State of Rhode Island Division of Public Utilities and Carriers ("Division") to deny NRG's intervention in the above-captioned proceeding. In support of this Motion, NRG avers as follows:

INTRODUCTION

1. On May 4, 2021, PPL Corporation ("PPL"), PPL Rhode Island Holdings, LLC ("PPL Rhode Island"), National Grid USA (National Grid"), and The Narragansett Electric Company (collectively, "Petitioners") filed a Joint Petition with the Division seeking approval for the transfer of ownership of Narragansett to PPL Rhode Island pursuant to Rhode Island General Laws §§ 39-3-24 and 39-3-25. Under the proposal, PPL Rhode Island would assume management and control of all gas and electric distribution service in Rhode Island that is

currently owned and operated by Narragansett Electric Company d/b/a National Grid ("Narragansett").

2. In accordance with R.I. Gen. Laws § 39-3-25, the Division may approve such transactions between utilities if the Division is satisfied that the prayer of the petition should be granted; that the facilities for furnishing service to the public will not thereby be diminished; and that the purchase, sale, or lease and the terms thereof are consistent with the public interest.

3. On June 25, 2021, NRG filed a Motion to Intervene in this proceeding, pursuant to 815-RICR-00-00-1.17 ("Rule 17"). The NRG Retail Companies operate as nonregulated power producers and/or as registered natural gas suppliers ("energy suppliers") in Rhode Island. Through its Motion, NRG satisfied the standard for intervention because it possesses a public interest which may be directly affected,and which is not adequately represented by existing participants, and as to which NRG may be bound by the action of the Division in the proceeding.

4. On July 9, 2021, the Petitioners filed responses to NRG's Motion to Intervene, opposing intervention by NRG.

5. On August 19, 2021, the Division issued an Order addressing the Motions to Intervene of the various parties ("August 19 Order"). In its August 19 Order, the Division denied the intervention of the NRG Retail Companies. Important to this Motion, the Division approved the limited interventions of the following environmental groups: Acadia Center, the Conservation Law Foundation, and the Green Energy Consumers Alliance, Inc. (collectively, the "Environmental Groups"). The Division limited the intervention of the Environmental Groups to seeking assurances that there will be no deterioration in any of the existing programs or commitments related to the promotion of clean, renewable, and efficient energy production and heating. The primary distinction in denying the NRG's intervention and in granting the

intervention of the Environmental Groups appears to be that the hearing officer views the environmental groups as advancing a "public interest," while he views NRG (along with the other three interveners whose interventions were denied) as seeking to promote private interests.[1]

6. The Division should reconsider its decision to deny NRG's intervention because the General Assembly has already determined that electric competition is in the public interest, and NRG's intervention would support the continuation of that legislative declaration. As retail energy competition is an issue of public interest, it is similar to environmental issues and, therefore, NRG's intervention should be viewed in the same vein as the Environmental Groups. NRG is the only potential intervener that has expressed any concern about preserving the competitive energy supply market. Importantly, absent the implementation of a business continuity plan that smoothly transitions interactions with competitive energy suppliers from Narragansett to PPL, the competitive market will be adversely affected. Of particular note, customers may be harmed by having fewer opportunities to participate in the market or by experiencing a decrease in the effectiveness of the market as a result of the ownership transfer. Through permitting NRG's intervention, the Division can ensure that the interests of energy suppliers' customers or prospective customers are adequately considered and protected.

ARGUMENT

7. The General Assembly has specifically determined that electric competition is in the public interest. Specifically, pursuant to R.I. Gen. Laws § 39-1-1, the legislature finds and declares, in pertinent part, as follows:

> (1) That lower retail electricity rates would promote the state's economy and the health and general welfare of the citizens of Rhode Island;
>
> (2) That current research and experience indicates that greater competition in the electricity industry would result in a decrease in electricity rates over time;

[1] *See* August 19 Order at 71-76 and 85-88.

> (3) That greater competition in the electricity industry would stimulate economic growth;
>
> (4) That it is in the public interest to promote competition in the electricity industry and to establish performance-based ratemaking for regulated utilities […].

As such, the General Assembly has made clear that electric competition is in the public interest.

8. NRG's intervention would support the continuation of that legislative declaration. As discussed, NRG seeks to ensure that this transaction (and any proposals advanced by parties to this proceeding) will not alter the current state of the competitive market, particularly from a business and operational perspective. While PPL asserts that this transaction will not impact the competitive market, NRG has no ability to evaluate this commitment without being able to participate in this proceeding. NRG is the only intervener that can offer a perspective on competition from the standpoint of an energy supplier and its customers. Further, neither the statutes establishing the competitive market, nor the rules and tariffs governing competition, can provide insight specific to the impact of this proposed transaction on competition, as the August 19 Order suggests.[2]

9. Through its proposed intervention, NRG is seeking assurances that, through the implementation of a comprehensive business continuity plan, the status quo will be preserved on business and operational issues that are critical to the proper functioning of the competitive market. Specific examples include billing and the underlying billing systems system platform(s); the implementation of billing enhancements related to the Narragansett Purchase of Receivables program and associated administrative cost recovery;[3] staffing levels and other resources that can

---

[2] August 19 Order at 87.

[3] *See* National Grid's Response to Record Request No. 4 in the Commission's Docket No. 5073 in the proceeding initiated by the Retail Energy Supply Association's Petition for the Implementation of a Purchase Receivables Program. This response is attached to this Motion as Appendix A.

affect customer service; communications between energy suppliers and the utility; the assignment of customers; electronic data interchange protocols; access to customer usage information; enrollment procedures; availability of electronic bulletin boards and the posting of nominations. Narragansett is familiar with the Rhode Island competitive electricity and natural gas markets, and NRG knows Narragansett's existing systems, procedures, methods and protocols for handling important operational issues that will directly impact existing and prospective customers of energy suppliers. It is in the public interest to ensure that market stability and the level of operational readiness that Narragansett has demonstrated continue after the transaction and that all of these day-to-day interactions and sharing of information between established business partners, which are vital to the effective functioning of the market, remain in place.

10. Of note, a highly respected legal authority, Scott Hempling (who is now an Administrative Law Judge for the Federal Energy Regulatory Commission) recently authored a book criticizing regulators for having ignored the effect of utility mergers on retail competition. He called the lack of consideration of the issue "a dropped baton."[4] This astute observation provides further support for NRG's intervention.

11. As such, NRG respectfully requests that the Division grant this Motion and grant NRG full party status in this proceeding.

12. Alternatively, if the Division has concerns that NRG will attempt to use this proceeding to advance positions outside of the scope of this case, NRG proposes that the Division limit its intervention, much as it did with the Environmental Groups, to seeking

[4] Scott Hempling, *Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* (Elgar: 2020), pp. 214-16. As this book is not available online, an excerpt of the relevant portion is attached as Appendix B.

assurances that there will be no deterioration to the existing competitive markets as a result of this transaction.

13. Finally, NRG requests that if its intervention is not granted, on even a limited basis, the Division hold this proceeding in abeyance so that it may seek interlocutory review of the Order denying its intervention.

CONCLUSION

For all of the foregoing reasons, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and XOOM Energy Rhode Island LLC, hereby respectfully request that the Division grant this Motion for Reconsideration and grant NRG's Motion to Intervene in this proceeding.

Respectfully submitted,

/s/ Craig Waksler

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Date: August 30, 2021

Attorneys for Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and XOOM Energy Rhode Island LLC

APPENDIX A

Andrew S. Marcaccio
Senior Counsel

June 25, 2021

VIA ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 5073 – Retail Energy Supply Association (RESA)
Petition for Implementation of Purchase of Receivables Program
Responses to Record Requests

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company") enclosed please find an electronic version[1] of the Company's responses to the record requests issued at the Commission's evidentiary hearing in the above-referenced matter.

Thank you for your attention to this filing. If you have any questions or concerns, please do not hesitate to contact me at 401-784-4263.

Sincerely,

Andrew S. Marcaccio

Enclosures

cc: Docket 5073 Service List
Jon Hagopian, Esq., Division
John Bell, Division

[1] Per Commission counsel's update on October 2, 2020, concerning the COVID-19 emergency period, the Company is submitting an electronic version of this filing. The Company will provide the Commission Clerk with five (5) hard copies and, if needed, additional hard copies of the enclosures upon request.

280 Melrose Street, Providence, RI 02907
T: 401.784.4263 ■ andrew.marcaccio@nationalgrid.com ■ www.nationalgrid.com

National Grid
Record Request No. 4

Request:

RR-4 (Grid) The proposal is for billing system upgrades for a POR to be recovered through a three-year administrative cost factor in the POR rather than over one year. Assuming the PPL acquisition of National Grid is approved, please explain for current/future billing system investments prior to the PPL transition, how these costs are recovered and tracked.

Response:

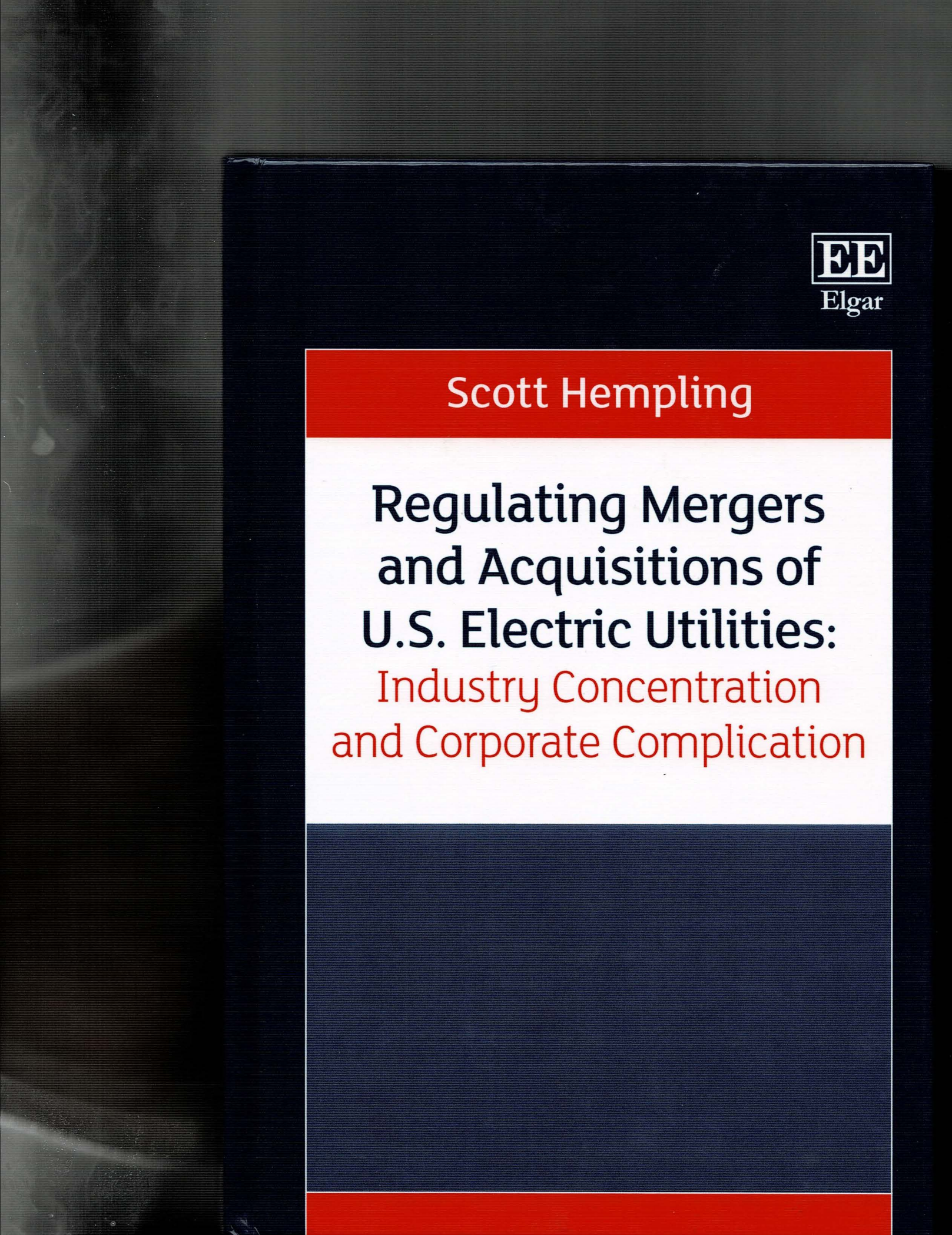
Upon approval by the Public Utilities Commissions ("PUC") of a no-recourse purchase of receivables ("POR") program, National Grid will create an investment plan project ("INVP") for the implementation of the program in National Grid's billing system. The title of the project will include language indicating that the costs are not customer recoverable. The work order(s) which are created to track costs will not be classified as recoverable from customers and will be manually removed from all reports utilized to track customer recoverable costs. A similar method was successfully utilized when the Company's Massachusetts affiliate implemented a POR program.

Given the proposed 180-day period to implement a POR program, duplicate billing system implementation costs may likely be unavoidable should the PPL acquisition of the Company be approved. As explained above, National Grid would be responsible for the initial implementation of the POR program in its billing system and would incur those costs.[1] PPL would then have to update its systems assuming the PPL acquisition of National Grid is approved. The Company anticipates that its implementation costs will be recovered from non-regulated power producers participating in the POR program through the three-year administrative cost factor component of the Standard Complete Billing Percentage.

[1] National Grid is likely to incur implementation costs both before PPL's acquisition of the Company takes place, assuming approval of the POR program is prior to the sale transacting, and after, as the Company will likely be providing billing services to PPL until such time as PPL has programmed its billing system to accommodate the Company's electric and gas rates.

Prepared by or under the supervision of: Donald Kirley

APPENDIX B


EE
Elgar
Scott Hempling
Regulating Mergers and Acquisitions of U.S. Electric Utilities:
Industry Concentration and Corporate Complication

dancy.[250] Resilient redundancy insures against the risk of ending up with N - 1 competitors. That risk exists because N "is always an unknown number. The best anyone can ever conclude is that it is very likely to lie within a range of values. Moreover, both N and the number of significant competitive firms in a market can change over time, often quickly."[251]

The argument against preserving N + 1 is that the N + 1 merger will bring efficiencies. But as Chapter 4.4 explained, electric utilities' efficiency arguments are usually only arguments; they come with few guarantees about future savings and no data on prior mergers' savings.[252]

6.4.4.4 Retail competition: ignored

The Federal Power Act assigns to the Commission "consumer protection responsibility."[253] Section 203 requires mergers to be "consistent with the public interest." Because "consumers" are ultimate consumers, and because section 203 makes no distinction between wholesale and retail customers, the public interest necessarily includes both customer categories. FERC has acknowledged its duty to address each merger's effects on retail competition.[254] But it has declined to carry out that duty, unless a state commission both (a) lacks state statutory authority to consider a merger's retail competition effects, and (b) asks FERC for help. So in the following plausible scenarios, FERC would do nothing:

1. A state commission has state statutory authority to address a merger's effects on retail competition but never addresses the subject—because of lack of expertise, resources or curiosity; or because the utility has pressured the commission to approve the proposal regardless of its retail competition effects.

[250] *Id.* at 786–89 (citing Thomas J. Horton, *Efficiencies and Antitrust Reconsidered: An Evolutionary Perspective*, 60 ANTITRUST BULL. 168, 174–78 (2015)).

[251] Carstensen & Lande, *supra* note 98, at 787. *See also* Peter C. Carstensen, *The* Philadelphia National Bank *Presumption: Merger Analysis in an Unpredictable World*, 80 ANTITRUST L.J. 219, 220 (2015) ("Markets are dynamic and the future is notoriously unpredictable. How such mergers might specifically adversely affect competition over a period of years can be answered as well by use of a dartboard as by high-priced economic experts.").

[252] For examples of studies demonstrating the paucity of evidence on merger efficiencies, see Carstensen & Lande, *supra* note 98, at 801–805, 809, 815–22 (concluding that "most studies have found that mergers do not on average increase net corporate efficiency").

[253] *New York Independent System Operator, Inc.*, 135 F.E.R.C. ¶ 61,170 at P 15 (2011).

[254] *1996 Merger Policy Statement*, *supra* note 124, at 68, 604–605.

2. The state commission lacks state statutory authority but does not understand or appreciate the potential for adverse effects (either due to lack of expertise, resources or curiosity), so never asks FERC to help.
3. The state commission lacks state statutory authority, the state commission understands the adverse effects, but because the merging utilities have offered a temporary rate freeze or short-term rate credit at retail, the state commission decides that getting the rate credit for current ratepayers is more important than preserving retail competition for future ratepayers.
4. The state commission has state statutory authority, but dismisses concerns as "speculative" without investigating the facts.

The "speculation" argument deserves special attention. In approving the merger of Louisville Gas & Electric and Kentucky Utilities, the Kentucky Commission dismissed retail competition concerns as "highly conjectural and theoretical"; it held that the absence of authorized retail competition "makes implausible any attempt to prove market power and obviates the need, at this time, to consider this issue."[255] Contrast the Maryland Commission: in approving the proposed (later withdrawn) Pepco-BG&E merger, it said that though "the retail competition picture is too undefined to weigh the impact of the merger on it now," retail competition "is sufficiently possible to cause us to take steps adequate to assure that the merger does not disadvantage the public interest should retail competition materialize." But the Maryland Commission then took no real steps, merely promising to "retain [its] full jurisdiction to mitigate" the merger's later effects on any future retail competition.[256] In legal and practical effect the Maryland and Kentucky decisions were identical: both commissions approved a merger that would affect future retail competition while taking no action to protect that competition. Indeed, eighteen years later, after Maryland had authorized retail competition, its Commission approved the merger of Pepco and BG&E—companies whose affiliates would be the two most likely retail competitors—without ever mentioning retail competition. Common to all three decisions? FERC inaction.

The Federal Power Act does not allow FERC to delegate its duties to state commissions. On retail competition FERC commits a double error: it delegates

[255] Louisville Gas & Electric-Kentucky Utilities Merger, 1997 Ky. PUC LEXIS 274, at *12.

[256] Baltimore Gas & Electric-Pepco Merger, 1997 Md. PSC LEXIS 205, at *32. In the Maryland situation, the FERC-state handoff failed. FERC had found that retail competition concerns "merit[ed] consideration" because in any new retail electricity market the merged company would control "100 percent of the market for firm energy and between 80–88 percent of the market for non-firm energy." *Baltimore Gas & Electric-Pepco Merger*, 79 F.E.R.C. ¶ 61,027, at p. 61,115 (1997). FERC deferred the issue to the Maryland Commission—which did nothing.

without authority, and it delegates without ensuring that its delegatee acts. There is no handoff to the states; there is only a dropped baton.[257]

6.4.4.5 Consummation before compliance

In several mergers FERC found problems but allowed consummation before they were fixed. Public Service of Colorado and Southwestern Public Service accompanied their 1996 merger proposal with a "centerpiece": a new transmission line allowing trade between the Western and Eastern Interconnections.[258] The Commission approved the merger but left the applicants with "unilateral discretion to abandon the effort to complete the line if for economic or various other reasons they choose to do so." For FERC, it was enough that the applicants agreed "to timely and in good faith pursue the processes necessary to build the line." If the line never got built, or got delayed, FERC did say it would "consider appropriate remedial steps if necessary to mitigate market power" resulting from the merger.[259] But the new transmission line was needed not only to prevent market power but also to allow efficient trades—trades that

[257] The situation therefore differs from FERC's logical and permissible reliance on a state commission's finding of retail cost imprudence as a basis for eliminating the utility's rebuttable presumption of wholesale cost prudence. *See Southern California Edison Co.*, 8 F.E.R.C. ¶ 61,198, at p. 61,680 (1979) (shifting burden of going forward to the utility on prudence of nuclear construction costs, due to state commission's finding of imprudence; utility had offered FERC only "vague generalizations about the problems inherent in all building projects"), *aff'd sub nom.* Anaheim v. FERC, 669 F.2d 799 (D.C. Cir. 1981).

[258] The U.S. electricity network comprises three main Interconnections: the Eastern Interconnection, the Western Interconnection and the Electric Reliability Council of Texas. The three Interconnections "operate largely independently from each other with limited transfers of power between them." *See The U.S. Electric System is Made up of Interconnections and Balancing Authorities*, U.S. Energy Info. Admin. (July 20, 2016), https://www.eia.gov/todayinenergy/detail.php?id=27152. One of my Georgetown Law students cited this fact in class, out of the blue. Surprised and impressed by his knowledge of this obscure fact, I asked him how he knew. The emailed response:

> I believe that I learned it while playing the game *Fallout: New Vegas*, which is set in a dystopian future where a nuclear war in the 1950s led to freakish mutations and societal breakdown. The main plot of the game is a struggle between a new Californian democracy and an autocracy based on ancient Rome, specifically over which side will control the Hoover Dam, electricity for the region, and the fate of civilization. I believe that somewhere in the 80-hour long game, there was a pre-war map of the US power grid, or the three segment regions are mentioned in some of the dialogue. However, I wasn't able to find the exact reference, so don't quote me on it!

[259] *PSColorado-Southwestern Public Service Merger II*, 78 F.E.R.C. ¶ 61,267, at p. 62,141, 62,138 n.6 (1997).

would produce economic benefit to offset the consolidation's costs. Allowing consummation before compliance exposed the public to those costs without ensuring the benefits.[260]

Similarly, FERC allowed UtiliCorp, St. Joseph Light & Power and Empire District to merge without determining whether integrating the companies' generation operations would cause transmission congestion—congestion that could "hamper competitors' ability to reach certain customers."[261] FERC conditioned its approval on the Applicants submitting a competition analysis after the merger but six months before integrating their operations, with the submission to include remedies for any adverse competitive effects. Again—merge first, assess damage later.

* * *

The Federal Power Act's "history … indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest."[262] In addressing mergers, FERC doesn't insist on competition "to the maximum extent possible consistent with the public interest," because FERC has not defined the public interest. The Commission has failed to define the public's interest in performance. It has defined harm too narrowly, ignored incipiency and cumulative effects, and rarely assessed a merger's effects on the retail markets that comprise the most electricity sales.

6.4.5 Current Conflict: Distribution Franchise Consolidation vs. Distributed Energy Competition

In electricity mergers, competition analysis has historically focused on bulk power—power produced by large generators, and the transmission services that bring the output to loads. While the inputs might differ—generating capacity, transmission capacity, firm wholesale energy, non-firm wholesale energy, retail bundled electricity, ancillary services—the ultimate retail product has been the same: electric current needed to run industrial equipment and residential refrigerators.

Retail electricity product markets are now diversifying. New companies offer thermostat controls, two-way smart meters, electricity prices based on hourly production costs, energy efficiency services and renewable energy

[260] The line did get built. It's called the Holcomb-Finney to Lamar 345 kV line. There is a 200 MW high-voltage direct current tie at Lamar, Colorado.

[261] *UtiliCorp United-St. Joseph Light & Power Merger*, 92 F.E.R.C. ¶ 61,067, at p. 61,232 (2000).

[262] Otter Tail Power Co. v. United States, 410 U.S. 366, 374 (1973).

Regulating Mergers and Acquisitions of U.S. Electric Utilities:
Industry Concentration and Corporate Complication

'Scott Hempling's important new book challenges us to think differently about purchases, sales, and mergers of electric utilities. Drawing on his vast understanding of this industry, he argues that utility franchises are public privileges intended to serve consumers but have become commodities batted around by private financial interests. He explains how this has come about, with what effects, and what now needs to be done to fix it. This book is a must-read for all who care—and should care—about the private exploitation of public interests.'

John Kwoka, Finnegan Distinguished Professor of Economics, Northeastern University, USA

'Scott Hempling does what few in the utility regulatory sphere do. He challenges the regulator to deeply and fundamentally evaluate the public policy that underpins their decision making. Here he has chosen one of the most important areas of regulation to issue that challenge—utility mergers. As this carefully researched and meticulously documented analysis is widely read by current and future commissioners it will, no doubt, transform that process for the good of all consumers.'

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What happens when electric utility monopolies pursue their acquisition interests—undisciplined by competition, and insufficiently disciplined by the regulators responsible for replicating competition? Since the mid-1980s, mergers and acquisitions of U.S. electric utilities have halved the number of local, independent utilities. Mostly debt-financed, these transactions have converted retiree-suitable investments into subsidiaries of geographically scattered conglomerates.

Written by one of the U.S.'s leading regulatory thinkers—a litigating attorney, regulatory advisor, expert witness and law professor—this book combines legal, accounting, economic and financial analysis with insights from the dynamic field of behavioral economics. With a clear assessment of the 30-year march of U.S. electricity mergers, the author describes the economic losses that result when merger promoters and their transactions face neither the discipline of competition nor the rigors of regulation.

This work is essential reading for regulatory practitioners, consumer advocates and investment advisors—as well as citizens concerned with concentration of economic power. The principles explored are relevant anywhere regulated utility monopolies have the legal right to merge, acquire or be acquired.

Scott Hempling is an attorney, and an adjunct professor at Georgetown University Law Center, USA.

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