

AFTER PUHCA

The Merger Deluge

**Indiana Energy Conference
Mergers and Corporate Transactions
Consumers' View
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OWNERSHIP

After PUHCA is repealed, there will be no limits on what type of business can own utilities. Conflicts of Interest are not only possible, but likely with:

- oil and gas companies
- investment banks
- private equity funds
- hedge funds
- insurance companies
- equipment manufacturers
- construction firms
- foreign companies
- foreign countries

All of these kinds of firms will be able to own utilities.

AFFILIATE ABUSES

- 101 Volumes in 1930s
- Enron added a few.
- States can have tough restrictions on cross-subsidization
- Get FERC to enforce

SIZE, GEOGRAPHIC SPREAD

- **After PUHCA, no limits on either.**
- **APPA/NRECA filing in Cinergy merger tries to get FERC to address.**

FINANCIAL INTEGRITY

- Ring Fencing
- Bankruptcy protection
- No loans to parent, etc.

No diversifications, foreign ventures

CORPORATE COMPLEXITY

No limits on number of holding companies.

BOOKS AND RECORDS

New books and records review meaningless?

Under new Energy Act, States can't even require holding companies to maintain records; FERC can only require records relevant to FERC's ratemaking and to cost. (FERC no longer does cost of service for wholesale generation sales; never had jurisdiction over retail sales or distribution, so no records for those.) Can only try to get full access through conditions on merger approvals.

CONSOLIDATION v. COMPETITION

- Opposite theories employed
- FERC has deregulated wholesale rates on the theory of competition
- PUHCA repeal will result in massive consolidation.
- Percentage of wholesale sales.

WILL THE CAVALRY (FERC) COME?

- Don't count on it; FERC never met a merger it didn't like.
- Secret pre-meetings; refusal to hold hearings even at request of states, etc.
- Chairman Kelliher bragging about how fast FERC will approve mergers.

STATES MUST FORCE FERC TO DO ITS JOB

- **FERC RULEMAKINGS**
 - What can you ask for?
 - What can you get?
 - What do you do if FERC ignores you?
- **Just Say No to Diversification? Mergers?**
- **Generation: Now is the time to insist on a definition; power marketers.**
- **FERC PROCEEDINGS**
 - New role for state consumer advocates
 - Have to go to FERC
 - Strength in numbers.
- **Tough State laws**
 - standards for approving mergers, including substantial and tangible benefits, and conditions on mergers.

CONCLUSION

Unless States take up the slack from PUHCA repeal, Consumers (and investors, national economy) are toast