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The Evolving Public Interest—Recent Decisions in Utility Merger Proceedings

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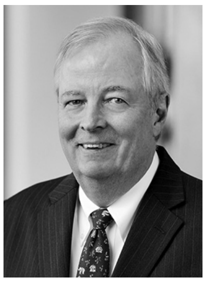
In December 2008, the Washington Utilities and Transportation Commission (WUTC) approved the acquisition by a group of long-term infrastructure investors, known as Puget Holdings LLC, of Puget Energy, Inc. and its wholly owned utility subsidiary, Puget Sound Energy Inc. (PSE).[1] In approving the transaction, the WUTC determined that the appropriate standard under the state statutory requirement that any approved transaction be "consistent with the public interest" was the so-called "no harm" standard.[2] This standard required that the applicants before the WUTC show that the terms of the transaction not harm the public interest.[3]



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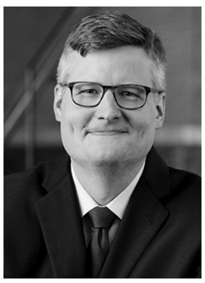
In its approval under the no harm standard, the WUTC established the paradigm for defining the public interest in the context of utility merger applications. The WUTC's decision approving the acquisition was based on a multiparty settlement stipulation that contained sixty-three commitments on the part of Puget Holdings and PSE. These commitments related to a variety of topics, among the most important



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of which dealt with capital requirements, financial integrity, and regulatory and ring-fencing commitments. In addition, the settlement and the WUTC order contained commitments relative to staffing; local presence; rates, including $100 million in rate credits; low-income assistance commitments; and environmental and energy efficiency commitments. The Puget Holdings order set the standard for give-backs to earn regulatory commission approval for merger transactions.

This article will examine how the precedent established in the Puget Holdings decision has been adapted by certain other jurisdictions in contested merger approval proceedings.

NSTAR

Northeast Utilities and NSTAR announced on October 18, 2010, that the boards of both companies had approved a definitive merger agreement.[4] NSTAR, headquartered in Boston, is an energy delivery company that serves customers in Massachusetts. Northeast Utilities is the parent company of regulated utility subsidiaries The Connecticut Light & Power Company (CL&P) and Yankee Gas Services Company.

In November 2010, NSTAR and certain of its subsidiaries

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Evolving Public Interest

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filed a petition seeking approval of the merger with the Massachusetts Department of Public Utilities (MDPU). In June 2011, the Connecticut Public Utilities Regulatory Authority (PURA) declined to hold hearings on the merger, a decision it was urged to reverse by Connecticut Attorney General George Jepsen, among others.[5]

On February 15, 2012, the companies reached separate agreements with the Massachusetts Department of Energy Resources and the Massachusetts attorney general, paving the way for approval of the proposed merger before the MDPU.[6] Under the agreements, NSTAR would buy 27.5 percent of the output from the 130 turbine Cape Wind project, issue a 10 MW solicitation for long-term contracts with solar projects, increase its energy efficiency efforts, conduct an electric vehicle pilot program, and fund an audit by an independent accounting firm of the utility's annual returns from 2012 through 2015. In addition, the utility agreed to freeze rates for four years in Massachusetts and grant a $21 million rate credit to customers.[7]

In its decision approving the merger, the MDPU noted that it had recently modified its historical "no net harm" test to a "net benefits" test.[8] The MDPU stated that to be "consistent with the public interest," the applicants must show that the benefits of the merger outweigh the associated costs.[9]

As proceedings progressed in Massachusetts, a variety of Connecticut stakeholders called on the PURA to reconsider its position. On January 18, 2012, the PURA ordered that it did have regulatory jurisdiction to review and approve the proposed $4.7 billion merger.[10] On March 13, 2012, the companies reached a comprehensive merger-related agreement with the Connecticut attorney general and the Connecticut Office of Consumer Counsel. Among other things, the settlement agreement called for:

- a one-time, $25 million rate credit and the freezing of base distribution rates until December 1, 2014, for CL&P customers;
- the investment of $15 million to be set aside to fund energy efficiency programs for low-income customers and projects associated with the development of electric vehicle infrastructure, microgrids, and renewable energy;
- CL&P's submission to the PURA of a multiyear plan and cost-recovery mechanism for a $300 million investment in additional resiliency;
- CL&P forgoing recovery of $40 million of the approximately $260 million of costs it incurred as a result of the two major storms in 2011 and deferral of storm recovery until after the company's next rate case;
- Northeast Utilities maintaining, for no less than seven years, principal board and executive offices and functions in Hartford;
- Northeast Utilities maintaining the headquarters of CL&P, Yankee Gas, and Northeast Utilities' transmission business and call center operations in Connecticut for no less than seven years; and
- Northeast Utilities establishing, within twelve months of the merger close, an irrevocable preservation land trust and agreeing to work with Connecticut's Department of Energy and Environmental Protection to explore opportunities to expand public access to Northeast Utilities properties for passive recreation where such use is appropriate and consistent with the company's business activities.[11]

In their application, Northeast Utilities and NSTAR provided the PURA with a "net benefits analysis" of the proposed merger.[12]

In April 2012, the PURA approved the acquisition by Northeast Utilities of NSTAR.[13] Based on the various commitments in the settlement agreement and the satisfaction of statutory mandates relating to financial, technological, and managerial suitability and ability to provide safe, adequate, and reliable service,[14] the PURA held that the transaction was "in the public interest."[15] The PURA also determined that the proposed transaction would result in increased financial strength, potential synergy savings, and technological benefits that would accrue to the ratepayers. Additionally, the structure for the transaction provided for CL&P and Yankee to remain independent subsidiaries under the jurisdiction of the PURA.

Entergy Mississippi, Inc. Transmission

In December 2011, Entergy Mississippi, Inc. and ITC Holdings Corp. (ITC) announced an agreement under which Entergy Mississippi would divest, and then merge, its transmission business into a newly formed entity, which would in turn merge with a subsidiary of ITC.[16]

In October 2012, Entergy Mississippi and ITC filed for approval of the transaction with the Mississippi Public Service Commission (MPSC).[17] In December 2013, the MPSC denied the application, noting that with the transmission facilities fully unbundled from Entergy Mississippi's generation and distribution facilities (1) ITC would receive a Federal Energy Regulatory Commission (FERC) approved rate of return on those assets, which was expected to exceed the current MPSC allowed rate of return and (2) the MPSC would no longer have jurisdiction over those transmission facilities or the ability to determine cost of transmission service.[18] The MPSC viewed the proposed transaction as an attempt by Entergy and its shareholders to monetize its transmission assets and extract value of the assets under the higher rate structure available to ITC, resulting in potentially significant costs to the rate payers and complete loss of

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MPSC's rate jurisdiction over the transmission assets.

The MPSC had recently approved Entergy Mississippi's joining MISO, which was expected to provide benefits similar to the proposed transaction while allowing the MPSC to retain jurisdiction over the transmission costs borne by the retail customers. Consequently, the MPSC found very little incremental value in the proposed transaction with ITC.

Under Mississippi Code Annotated § 77-3-23, the applicants were required to prove that . . . the transaction proposed is in good faith, that the proposed . . . transferee, is fit and able properly to perform the public utility services authorized by such certificate and to comply with the lawful rules, regulations and requirements of the commission, and that the transaction is otherwise *consistent with the public interest*.

The MPSC ultimately determined that despite a number of commitments, including initial rate mitigation, the prospect of higher customer rates, coupled with the MPSC's loss of jurisdiction over transmission cost of service, was not in the public interest.[19] The MPSC's determination that (1) Mississippi law places particular emphasis on the rates utilities charge for their services and (2) independence is contrary to the public policy supporting commission ratemaking authority created an insurmountable presumption that the transaction was not in the public interest.[20]

Pepco Holdings, Inc.

Exelon Corporation and Pepco Holdings, Inc. (PHI) announced on April 30, 2014, that they had entered into a definitive agreement to combine the two companies in an all-cash transaction.[21]

Required regulatory approvals from a number of affected jurisdictions were already in hand when the District of Columbia Public Service Commission (DCPSC) held hearings from February 9 to February 13, 2015, to determine whether the transaction was in the public interest.[22] On August 25, 2015, the three-member DCPSC unanimously rejected the utilities' application, having deemed it not in the best interests of ratepayers.[23]

The DCPSC was required to determine whether the merger was in the "public interest" pursuant to D.C. Code §§ 34-504 and 34-1001. This required the DCPSC to consider the effect of the merger on (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District of Columbia; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the applicants affiliated business operations, including nuclear operations; (5) the DCPSC's ability to regulate the new utility effectively; (6) competition in the local retail and wholesale markets that impacts the District and District ratepayers; and (7) conservation of natural resources and preservation of environmental quality.[24]

The DCPSC noted that it must "find that the [merger] benefits the public rather than merely leaves it unharmed, balancing the interests of shareholders and investors with the interest of ratepayers and the District community at large."[25] In making this determination, the DCPSC said it took into account (1) whether the transaction balances the interests of shareholders and investors with ratepayers and the community, (2) whether the benefits to the shareholders do or do not come at the expense of the ratepayers, and (3) whether the proposed merger produces a *direct and tangible benefit* to ratepayers.[26]

Among the tangible benefits noted by the DCPSC were the premium to Pepco shareholders and the creation of a $33.75 million customer investment fund. There were a number of effects the DCPSC considered neutral, including reliability improvements at a capped cost. But those positive and neutral aspects were outweighed by the potential negative effects of the merger, according to the DCPSC. In particular, the DCPSC concluded that while the merger would not change the regulatory oversight over Pepco, it would impact the manner in which the DCPSC's regulatory oversight would be administered. According to the DCPSC, the merger would make its regulatory tasks more complex, time-consuming, and costly.[27] The DCPSC also noted that Exelon's vertically integrated structure and its large generation fleet, with many old and unprofitable nuclear plants, could seriously inhibit the District's environmental goals. According to the DCPSC, "we cannot find that the District and its ratepayers would be benefited by having the Joint Applicants as a partner as the District moves forward to embrace a cleaner and greener environment and pursues its goals of having 50% renewable energy sources by 2032."[28]

On September 28, 2015, PHI and Exelon announced that they had filed an application for reconsideration with the DCPSC, requesting reconsideration of the DCPSC order rejecting the merger.[29]

On October 6, 2015, PHI, Potomac Electric Power Company, a wholly owned subsidiary of PHI, Exelon, and certain of their respective affiliates entered into a nonunanimous full settlement agreement and stipulation with the District of Columbia government, the Office of the People's Counsel, and other parties, and filed a motion with the DCPSC asking it to consider approval of the proposed merger on such terms and conditions set forth in the settlement agreement.[30] The settlement agreement provided another $72.8 million in benefits to the city, including $26.5 million in rate credits for residential customers. On October 28, 2015, the DCPSC announced that it had approved the companies' application for reconsideration and set a procedural schedule for its review of this matter.[31]

The DCPSC voted two-to-one to reject the settlement agreement on February 26, 2016, citing concerns that Pepco's business ratepayers would not share in the rate relief package for residential customers.[32] The DCPSC decision did provide that the merger could proceed without further DCPSC action if the parties to the settlement agreement agreed to proposed changes to the settlement agreement suggested in the February DCPSC order, including allowing the DCPSC to decide how to allocate

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the $26.5 million of rate credits. Not all of the parties agreed to the proposed changes.

A March 7, 2016, filing by Exelon asked the DCPSC to approve the merger by April 7, 2016, via one of three alternatives: reconsidering the DCPSC's February 26 rejection of the settlement agreement; approving the transaction with the terms proposed by the DCPSC in its February 26 order, absent support of all settling parties; or adjusting the DCPSC's proposed terms to preserve rate credits and grid modernization investments included in the settlement agreement.[33]

On March 23, 2016, the DCPSC approved Exelon's acquisition of PHI.[34] In doing so, the DCPSC effectively opted for the second of the three proposals set forth in the March 7 filing.

UIL Holdings Corporation

On February 25, 2015, UIL Holdings Corporation announced that it had entered into a definitive merger agreement with Iberdrola USA, Inc. under which Iberdrola would acquire UIL to create a newly listed U.S. publicly traded company.[35] Iberdrola, a subsidiary of Spanish energy company Iberdrola, S.A., is an energy services and delivery company serving customers throughout upstate New York and New England.

In March 2015, UIL, Iberdrola, and certain affiliates filed an application with the PURA requesting approval of the change of control of UIL.[36] On June 30, 2015, the PURA issued a draft decision that would, if adopted as final, deny the change of control of UIL.[37] The parties filed a joint motion with the PURA on July 1, 2015, requesting that the PURA suspend the procedural schedule and extend it for a two-month period and reopen the record so that the parties could file additional information to address concerns in the draft decision. The PURA denied the request for a two-month extension on July 1, stating the parties could file a revised proposal as a new application.[38] The parties withdrew their initial application to the PURA on July 7.[39] On July 31, the parties jointly submitted a new application to the PURA to initiate a new change of control proceeding.[40] The new application included $40 million in rate credits to customers, distribution rate freezes, commitments to fund clean energy and disaster relief, several capital improvement projects, a commitment to no change in day-to-day management, hiring 150 employees in Connecticut over the next three years, and improving customer service metrics, among other things.[41] On September 18, 2015, UIL filed with the PURA a settlement agreement with the Connecticut Office of Consumer Counsel.[42] The settlement agreement contained, among a number of provisions, a proposed partial consent order with respect to the environmental cleanup of the English Power Station in New Haven. Connecticut state officials estimated remediation costs at about $30 million.

The PURA approved the merger on December 9, 2015.[43] As noted in the NSTAR discussion above, pursuant to Conn. Gen. Stat. §§ 16-47, the PURA was required to, ". . . take into consideration (1) the financial, technological and managerial suitability and responsibility of the applicant, [and] (2) the ability of the [company] to provide safe, adequate and reliable service to the public through the company's plant, equipment and manner of operation if the application were to be approved."

In its final order, the PURA noted that Conn. Gen. Stat. §§ 16-22 provides that the burden of proving that a "transfer of assets or franchise is *in the public interest* shall be on the public service company." The PURA described several of the factors involved in making its determination that the transaction was in the public interest:

> In sum, the Settlement Agreement provides $40 million in ratepayer credits to the existing customers of the UIL Utilities, approximately $45.4 million in potential avoided cost recovery associated with increasing pipeline safety and storm resiliency activity and rate freezes, and approximately $39 million in public benefits associated with environmental remediation, charitable contributions and customer disaster relief. . . . In light of the above, the Authority determines that the proposed combination of direct and indirect rate payer benefits and public benefits agreed upon the proposed Settlement Agreement tip the scale in favor of finding that the Proposed Transaction is in the public interest.[44]

Oncor Electric Delivery Company LLC

Energy Future Holdings Corp. (EFH), the former TXU Corp., filed for Chapter 11 bankruptcy protection on April 29, 2014.[45] EFH's regulated transmission and distribution business, Oncor Electric Delivery Company LLC, serves customers across North and West Texas.[46] Hunt Consolidated, Inc. announced in August 2015 that it would file an application with the Public Utility Commission of Texas (PUCT) to buy Oncor in accordance with the ongoing bankruptcy proceeding.[47] The Hunt acquisition, if successful, would have placed certain of Oncor's assets into a real estate investment trust (REIT).[48]

Under the Texas Public Utilities Code, the PUCT must approve any merger of a transmission and distribution utility.[49] In making its statutory determination, the PUCT must find the transaction to be in "the public interest,"[50] considering the factors provided by Texas Public Utility Regulatory Act § 14.101:

1) the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, transferred, or consolidated;
2) whether the transaction will:
   a) adversely affect the health or safety of customers or employees;
   b) result in the transfer of jobs of citizens of this state to workers domiciled outside [Texas]; or

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c) result in the decline of service;
3) whether the public utility will receive consideration equal to the reasonable value of the assets when it sells, leases, or transfers assets; and
4) whether the transaction is *consistent with the public interest*.

On December 9, 2015, the PUCT staff filed testimony opposing Hunt's purchase of Oncor. The staff argued that the REIT structure would not provide "incremental service quality or other tangible benefits." In addition, in a later brief, the staff expressed concern that the proposed structure would place "severe liquidity constraints on [Oncor's] ability to provide reliable service and pay for any unexpected expenses."[51] One of the staff's principal objections was Hunt's proposal to continue collecting amounts from customers to pay income taxes that would never be incurred as a result of the REIT structure and use the amounts collected to pay additional dividends to shareholders.[52] In an open hearing on February 11, 2016, the PUCT Commissioners also indicated their concerns that too many of the tax benefits of a REIT structure would benefit shareholders as opposed to customers.[53]

In the process of pursuing its application, Hunt offered a rate credit of $100 million to Oncor's ratepayers to cover the period prior to the effective date of Oncor's rates to be established in a planned 2017 rate case.[54] Second, Hunt planned to propose in the next rate case a reduction in Oncor's currently effective depreciation rates by 30 percent.[55] Further, Hunt agreed to a change in Oncor's capital structure from the existing 60/40 debt to equity structure to a 55/45 debt to equity structure to help ensure that Oncor maintained a strong investment grade credit rating.[56] In total, Hunt estimated that the rate credit and the changes proposed for the upcoming rate case would total over $500 million between the closing of the transaction and 2021.[57]

Despite Hunt's offer to reduce rates through 2021, PUCT Commissioner Kenneth Anderson noted that he

> . . . finds these sorts of offers problematic for several reasons. First, I have a personal problem with applicants being encouraged to cough-up money to buy peace in change of control proceedings. While it may be standard operating procedure in certain other jurisdictions, I have always found it to be offensive. A transaction should stand upon its own merits and be approved or denied as such. Ultimately [the concessions] raise the purchase price and put more pressure on the new owner to extract from ratepayers more value in some other way later.[58]

On March 24, 2016, the PUCT issued an order finding the transaction to be in the public interest under applicable Texas law. The PUCT cited a list of factors in its determination, including (1) the transaction provided an opportunity to end the bankruptcy of EFH, (2) the transaction would allow a "well-regarded" Texas company to acquire operational control, (3) the transaction would greatly reduce debt held above Oncor, (4) the transaction would not adversely affect the health or safety of Oncor's customers or employees, (5) the transaction would not result in the transfer of jobs out of state, (6) the transaction would not result in a decline in service, (7) the combination of Oncor with Sharyland Utilities entities (also owned by Hunt) "is a benefit," and (8) the transaction would separate Oncor from its generation and retail electric provider affiliates.[59]

According to the order, the PUCT's public interest determination was also based, in part, on the possibility of sharing the REIT tax savings with ratepayers in the future.[60] Further, the order delayed the determination of the regulatory treatment of certain other key structural components of the Hunt proposal.[61]

Despite the approval of the PUCT, Oncor's majority owner, Energy Future Holdings Corp., filed an alternative Chapter 11 bankruptcy reorganization plan on May 1, 2016. The investor group led by Hunt on May 18 withdrew a request for the PUCT to reconsider certain terms of the approval of the group's deal to acquire Oncor and requested the PUCT to dismiss the proceeding.[62]

Cleco

On October 20, 2014, three private investment firms, Macquarie Infrastructure and Real Assets, British Columbia Investment Management Corporation, and John Hancock Financial (purchasers) announced their agreement to purchase Cleco Corporation and its wholly owned subsidiary Cleco Power LLC.[63] In February 2015, the parties filed an application for approval with the Louisiana Public Service Commission (LPSC).[64] The proposed transaction was structured as a leveraged buyout resulting in the change of ownership of Cleco Corporation. The application included seventy-seven regulatory commitments, including $125 million in rate credits over fifteen years, yearly cost of service rate reductions, consent to LPSC jurisdiction, ring fencing, distribution restrictions, limits on additional long-term debt, and mantenance of service quality.

The LPSC issued a General Order in 1994 to address mergers and acquisitions subject to its jurisdiction. The Order lists eighteen factors, the first of which is "[w]hether the transfer is in the public interest,"[65] that the LPSC takes into account in determining whether to approve a transfer of ownership. Although the proposed transaction satisfied a number of the eighteen factors, the LPSC determined that the transaction would result in substantial financial risk to Cleco Power and its ratepayers because of (1) the proposed "over-leveraging" as a result of placing the acquisition debt on the books of Cleco Corporation and the resulting impact on credit ratings, credit metrics, and interest rate risks; (2) the proposed tax structure; and (3) Macquarie's investment being held in a closed-end fund would result in substantial financial risk to Cleco Power and its ratepayers. The LPSC determined in February 2016

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that the regulatory commitments did not provide sufficient value to fully mitigate the financial risks.[66]

Subsequent to the LPSC's decision, the purchasers agreed to enhanced regulatory commitments, including an increase in the level of rate credits from $125 million over fifteen years to $136 million escrowed promptly after closing, a base rate freeze, submission to the LPSC opening industry-wide dockets examining double leveraging and tax structure issues for all utilities subject to LPSC jurisdiction, and extension of the duration of service commitments.[67] Additionally, to reduce the financial risk, the purchasers were able to provide confirmation from the rating agencies that post-acquisition the credit ratings of Cleco Power would remain unchanged and the credit ratings of Cleco Corporation would remain investment grade. In April 2016, the LPSC determined that the enhanced regulatory commitments, together with a reduction in financial risks, sufficiently mitigated the risks associated with the transaction and that the transaction was in the "public interest."[68]

Final Thoughts

Since the Puget Holdings decision, state utility commissions and affected stakeholders, such as environmental and consumer activists, have become more aggressive in using merger proceedings as a vehicle to pursue rate relief and other benefits for rate payers and other groups. As illustrated by the Oncor and Cleco proceedings, the analysis of transactions by stakeholders and state commissions, such as scrutinizing the financial engineering of transaction structures, has become increasingly sophisticated. To satisfy the "public interest" standard, companies considering potential merger and acquisition activities in the public utility sector should not only expect to be required to show tangible financial benefits flowing to stakeholders along with social and other non-financial benefits, but also to share with stakeholders the financial benefits of sophisticated tax and financial structuring.

Endnotes

1. *In re* Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. for an Order Authorizing Proposed Transaction, Docket U-072375, Dec. 30, 2008.

2. *Id.* at 48.

3. According the WUTC, the factors that should be weighed in evaluating the transaction's effect on the public interest are: "whether there are commitments by the purchaser to important public service obligations such as customer service, safety, reliability, resource adequacy (including energy efficiency and conservation), support for low-income customers, and environmental stewardship; whether customers are protected from rate increases that might result from the transaction and from financial distress that might occur as a result of the manner in which the purchase was financed or distress at other companies affiliated with the purchaser; whether the Commission's ability to regulate the utility in the public interest is fully protected, including preserving access to all necessary information; whether the purchaser has the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations; and last whether the commitments made in the transaction are enforceable." *Id.* at 49–50.

4. Rebecca Smith, *Utility Merger Aims at Clean Energy*, Wall St. J. (Oct. 19, 2012, 12:01 AM).

5. Press Release, Att'y Gen. of Conn., Attorney General Renews Call for State Review of Nu/Nstar Merger, Dec. 23, 2011, *available at* http://www.ct.gov/ag/cwp/view.asp?A=2341&Q=493346.

6. NSTAR Agrees to Buy Cape Wind Output in Massachusetts Merger Deal, Platts Elec. Util. Wk., Feb. 16, 2012.

7. *Id.*

8. Docket 10-170-B, Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96, Order, Apr. 4, 2012, at 4.

9. *Id.* at 30.

10. Press Release, Conn. Pub. Util. Regulatory Auth., PURA Final Decision Calls for Review of NU/NSTAR Merger, Orders NU to Submit Application Prior to Any Merger, Jan. 18, 2012, *available at* http://www.ct.gov/pura/cwp/view.asp?A=4144&Q=494480.

11. Press Release, NSTAR, NSTAR and Northeast Utilities Reach Comprehensive Merger-Related Agreements with Massachusetts DOER and Massachusetts Attorney General, Feb. 15, 2012, *available at* http://nstar.com/ss3/nstar_news/press_releases/2012/merger.pdf.

12. Decision, Docket No. 12-01-07, Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR, Apr. 2, 2012, at 23.

13. 2012 Conn. PUC Lexis 47 (Docket No. 12-01-07).

14. Conn. Gen. Stat. Ann. § 16-47(d).

15. Decision, Docket No. 12-01-07, Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR, Apr. 2, 2012.

16. Entergy Corp., Form 8-K (Dec. 6, 2011), *available at* https://www.sec.gov/Archives/edgar/data/65984/000119312511332031/d265558d8k.htm.

17. Entergy Mississippi, Inc., Form 10-Q for the quarter ended Sept. 30, 2012, *available at* https://www.sec.gov/Archives/edgar/data/7323/000006598412000214/a05512.htm.

18. 2013 Miss. PUC LEXIS 184; 309 P.U.R. 4th 339 (Docket 2012-UA-358).

19. Docket 2012-UA-358, *In Re*: Joint Application for the Transfer of Ownership and Control of Entergy Mississippi Inc.'s Transmission Facilities and Assets Together with Related Certificates, Franchises and Other Property Rights to Transmission Company Mississippi, LLC and Approval of Subsequent Transfers of Ownership and Control, Final Order, Dec. 10, 2013.

20. *Id.* at 36.

21. Press Release, Exelon Corp., Exelon to Acquire Pepco Holdings, Inc., Creating the Leading Mid-Atlantic Electric and Gas Utility, Apr. 30, 2014, *available at* http://www.pepcoholdings.com/library/templates/Interior.aspx?Pageid=87&id=644245881.

22. DCPSC Public Notice in Formal Case No. 1119, *In re* Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Co., Exelon Energy Delivery Co., LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction.

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23. The DCPSC has jurisdiction over mergers under D.C. Code §§ 34-504 and 34-1001.

24. Formal Case No. 1119, *In re* Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Co., Exelon Energy Delivery Co., LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction, Order No. 17947, at 2.

25. *Id.*

26. *Id.*

27. *Id.* at 128.

28. *Id.* at 157.

29. Pepco Holdings, Inc., Form 8-K (Sept. 28, 2015), *available at* http://www.sec.gov/Archives/edgar/data/8192/000113597115000029/sep28phi8k.htm.

30. Pepco Holdings, Inc., Form 8-K (Oct. 28,2015), *available at* http://www.sec.gov/Archives/edgar/data/8192/000113597115000033/oct28phi8k.htm.

31. *Id.*

32. Chris Holly, *D.C. Officials Reject New Exelon Bid to Salvage Troubled Pepco Acquisition*, Energy Daily, Mar. 14, 2016.

33. *Id.*

34. Formal Case No. 1119, *In re* Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Co., Exelon Energy Delivery Co., LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction, Order No. 18148, *available at* http://dcpsc.org/pdf_files/commorders/orderpdf/orderno_18148_FC1119.pdf.

35. Press Release, Iberdrola USA, Iberdrola USA to Combine with UIL to Create a Leading, Diversified Publicly Traded Company Based in the Northeast (Feb. 25, 2015), *available at* http://www.sec.gov/Archives/edgar/data/1082510/000110465915014105/a15-5457_1425.htm.

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