MULTI-JURISDICTIONAL MERGER INVESTIGATIONS:
A CASE STUDY OF
THE EQUITABLE-DOMINION RESOURCES TRANSACTION

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I. Proposed Transaction

- Proposed sale by Dominion Resources, Inc. (D) of two of its regulated gas utilities to Equitable Resources, Inc. for approximately $970 million
- Sale Agreement signed March 1, 2006
- Utilities were The Peoples Natural Gas Company (Western Pennsylvania/Pittsburgh) and Hope Gas, Inc. (West Virginia)
- Peoples (approximately 359,000 customers)
- Hope (approximately 115,000 customers)
- Dominion retained two related but separate businesses in Pennsylvania (1) its interstate gas transmission company and (2) its unregulated retail gas supply business that supplied gas to customers of Peoples and other Pennsylvania utilities

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- Required Regulatory Approvals/Clearances
  - Pennsylvania Public Utility Commission (net positive benefits)
  - Public Service Commission of West Virginia (no harm)
  - Clearance under Hart-Scott-Rodino (?)
- Buyer accepted "regulatory risk" of any terms imposed as conditions to approval, up to Material Adverse Effect
- FTC concerns focused solely on the industrial/commercial customer segments of Peoples service territory
- State regulatory review focused on effects of transactions on all customers within respective service territories

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II. Overview of Western Pennsylvania Gas Utility Market

- Western Pennsylvania market is unique in United States
- Only gas utility market where gas distribution utilities have overlapping service territories
- Five utilities operate in area to varying degrees. In some areas three utilities have gas lines under same streets.
- Distribution rates of all utilities are regulated; maximum allowable rates are capped by PAPUC
- Gas supply portion is unregulated; customers are free to choose separate gas supply and gas distribution service

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- At time of proposed sale, typical gas bill was 80% for supply, 20% for distribution
- Western Pennsylvania market is byproduct of Pittsburgh's former industrial era
- Excess distribution capacity built in early 1900s to supply steel industry
- In certain areas, utilities offered gas distribution service to industrial/commercial customers at less-than-allowable rates
- PAPUC allowed the costs of these "discounts" to be passed through to other customer classes
- In 1999 PAPUC had ordered deregulation of gas supply market

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- Customer Choice Program allows all customers to choose gas suppliers at unregulated rates. Gas utilities provide gas delivery service.
- Pittsburgh's industrial sector endured rapid decline in 1980s/1990s
- Pittsburgh Top 3 Population Decline for U.S. metropolitan areas from 2000-2006 (behind Detroit and Buffalo)

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III. Overview of HSR Process for Transaction

- Initial HSR filing made on March 13, 2006, and voluntarily withdrawn and refiled on April 10, 2006 to give the FTC more time to review with the goal of avoiding a second request.
- Second Request received on May 10, 2006, following several interim "document productions" in answer to FTC questions
- Pennsylvania process ongoing throughout
- "Custodian List" of individuals for document production identified on July 27, 2006
- Custodian List included individuals throughout Dominion organization, not just Peoples and Hope

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- Included Virginia Power Energy marketing employees, gas transmission employees, CEO of Company
- Requested documents included all e-mails, etc.
- To comply with scope of request, breadth of control group, Company employed data recovery firms to recover deleted electronic documents. Cost in excess of $2 million. 34 attorneys (including contract attorneys) and 48 days required to review recovered documents to identify responsive documents
- Ultimately reviewed 1.7 million pages of documents

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IV. Practical Effects on Transition Process

- Sale Agreement granted broad authority to Dominion to operate business in ordinary course
- Buyer consents required to enter into new material contracts involving $2 million or more
- Several transactions structured to avoid gun-jumping issue and economic waste

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- Example: Peoples had agreed to provide gas distribution service to existing Equitable commercial customers. To provide service, Peoples needed to install new service line in downtown Pittsburgh at estimated cost of $250,000. Equitable had existing service line. Equitable agreed to allow Peoples to use its line (for market fee) for as long as six months following any termination.

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- Avoided unnecessary duplication of gas lines, disruption of city streets
- Following termination of sale agreement, Peoples installed new line parallel to Equitable's to service customers
- Transition Planning/Implementation impacted by Second Request
- Eliminated any pre-closing data integration/ transfers
- IT clean rooms established to allow Buyer Consultants to work with data, prepare for integration, with no data transfer. Key functions (gas control, etc.) were not able to plan for transfer
- Upon termination Equitable announced transaction expenses totaled $21 million

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