PART II

The harms: economic waste, misallocation of gain, competitive distortion, customer risks and costs

Part I explained the transactions: sales of public franchises for private gain, undisciplined by effective competition, leading to a concentrated, complicated industry that no one intended. Thirty years of these transactions have brought four major harms.

**Permanent economic waste:** Effective competition aligns price with performance. Because franchised utilities don’t face competition, they choose acquirers based on price instead of performance. Chapter 4 explains that mergers undisciplined by competition necessarily under-produce value compared to couplings disciplined by competition. Non-competitive mergers preclude competitive mergers, causing permanent economic waste. Regulators accept this inefficiency when they require only no net harm rather than best benefit-cost ratio. They then define harm incorrectly—most importantly by ignoring opportunity cost.

**Diversion of gain from ratepayers to shareholders:** The acquirer pays a premium to buy control of the target utility’s franchise. Chapter 5 shows that although the franchise’s value comes largely from state government decisions mandating customer captivity, the premium goes largely to the target’s shareholders.

**Distorted competition:** Horizontal combinations increase the merging companies’ market share while reducing the number of competitors. Vertical combinations enable the combined companies to control inputs that non-merging competitors need. Chapter 6 explains that both merger types enable the combined company to act anticompetitively, by discriminating against or excluding competitors. But even without acting anticompetitively, the merged company will have unearned advantages over their competitors—government-granted advantages that prevent competition on the merits.
Hierarchical conflict, causing harm to customers: A multi-utility, multi-business holding company has strategic objectives that conflict with its utilities’ obligation to serve. Seated atop the corporate hierarchy, the holding company has the power and incentive to align the utility’s major decisions with the holding company’s business purposes. Chapter 7 describes the risks: rates exceeding the reasonable cost of service, utility subsidiaries weakened by the acquirer’s acquisition debt, and contagion from the non-utility affiliates’ business risks. Among the solutions: limits on business risks, ring-fencing, separation of utility from non-utility businesses, guardrails against holding company interference in utility decisions, service quality metrics and enforcement tools.