

ORDER NO.

01-778

ENTERED

SEP 04 2001

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1011

In the Matter of a Legal Standard for )  
Approval of Mergers. )

ORDER

**DISPOSITION: LEGAL STANDARD ADOPTED**

At its January 23, 2001, Public Meeting, the Public Utility Commission of Oregon (Commission) approved a Staff recommendation to open an investigation, pursuant to ORS 756.515, to determine the legal standard for Commission approval of mergers under ORS 757.511.

If a company wishes to acquire an investor owned utility providing heat, light, or power service in Oregon, the company is required to file an application seeking Commission approval pursuant to ORS 757.511. The language of ORS 757.511(3) states that the transaction must serve the public utility's customers in the public interest.<sup>1</sup> To date, the Commission has not adopted a legal standard for this public interest requirement. To establish a legal standard, the Commission would have to determine whether an applicant must show that consumers would experience net benefits from the transaction, or whether an applicant must merely show that consumers would likely not be harmed by the transaction. We note that in this order we merely interpret the statute as written to determine legislative intent. We consider this question purely one of law, not of policy.

While the Commission has not set a legal standard for merger approval, the Commission has only approved recent mergers after a finding that the transactions will result in net benefits to customers. *See, e.g., Sierra Pacific Resources*, UM 967, Order No. 00-702 at 6; *Scottish Power*, UM 918, Order No. 99-616 at 13; *Enron Corp.*, UM 814, Order No. 97-196 at 6.

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<sup>1</sup>That subsection provides:

(3) The commission promptly shall examine and investigate each application received pursuant to this section and shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

Under the schedule adopted at the prehearing conference held on March 14, 2001, opening briefs were due on May 7, 2001, and reply briefs on June 22, 2001. The Commission received and granted petitions to intervene from Industrial Customers of Northwest Utilities (ICNU), PacifiCorp, Avista Corporation, and Northwest Natural Gas Company (NNG), and received a notice of intervention from Citizens' Utility Board (CUB). The Commission received briefs from ICNU, PacifiCorp, Portland General Electric Company (PGE), NNG, and Staff.

**Applicable Law.** ORS 756.040(1) provides:

In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

ORS 757.506 provides:

(1) The Legislative Assembly finds and declares that:

- (a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental statewide concern;
- (b) Existing legislation requires the Public Utility Commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and
- (c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of the power to exercise any substantial

influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511 in order to prevent unnecessary and unwarranted harm to such utilities' customers.

ORS 757.511 provides in relevant part:

- (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015(1), (2) or (3).
- (2) The application required by subsection (1) of this section shall set forth detailed information regarding:
  - (a) The applicant's identity and financial ability;
  - (b) The background of the key personnel associated with the applicant;
  - (c) The source and amounts of funds or other consideration to be used in the acquisition;
  - (d) The applicant's compliance with federal law in carrying out the acquisition;
  - (e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;
  - (f) All documents relating to the transaction giving rise to the application;
  - (g) The applicant's experience in operating public utilities providing heat, light or power;
  - (h) The applicant's plan for operating the public utility;
  - (i) How the acquisition will serve the public utility's customers in the public interest; and
  - (j) Such other information as the commission may require by rule.
- (3) The commission promptly shall examine and investigate each application received pursuant to this section and shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory

performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

**Positions of the Parties.** All parties agree that the controlling case for statutory interpretation is *Portland General Electric Co. v. Bureau of Labor & Industries*, 317 Or 606 (1993) (*PGE v. BOLI*). In that case, the court held that if the plain language of a statute is clear, further inquiry as to its meaning is unnecessary. A reader derives the plain meaning by examining the text and context of the statute to determine the Legislature's intended construction. If text and context do not reveal the Legislature's intention, the reader moves to a review of legislative history. Finally, if text, context, and legislative history do not reveal the legislative intent, the reader resorts to maxims of statutory construction. *PGE v. BOLI* at 611.

Parties to this docket disagree, however, on whether the text and context of ORS 757.511 requires a no harm standard for mergers or a net benefit standard. ICNU and Staff argue for a net benefit standard; PacifiCorp and NNG argue for a no harm standard. PGE supports a no harm standard, but addresses that issue only peripherally.

***PGE's Position.*** PGE argues that the net benefit versus no harm standard should not be the issue in this case. PGE argues that both these standards imply an impossible quantification. Instead, PGE contends, the Commission should use this docket to identify the types of regulatory risks it will consider and those it will not, and identify a form of conditions that will meet the most common risks. According to PGE, this docket should serve to develop a review procedure for expeditious treatment of merger applications. PGE urges the Commission to begin a process that will result in adoption of rules clarifying and expediting approval of mergers.

This docket was not opened in order to begin a rulemaking procedure. This is an investigation to answer a single question: what standard should apply to merger applications under ORS 757.511? We will not broaden the docket as PGE suggests, but will use it to deal with the question as presented at public meeting and the question to which four of the five parties have responded.

We reject PGE's suggestion that we use this docket to list the types of risks we will consider in approving merger applications. We cannot anticipate what risks might emerge in the future and will not restrict our discretion in such a way.

We group our discussion of the other parties' positions by the standard they advocate.

***NNG and PacifiCorp advocate a no harm standard.*** Both NNG and PacifiCorp read the context of ORS 757.511 before they determined the meaning of the text. That is, they begin with ORS 757.506(2), which states the policy goal of preventing "unnecessary and unwarranted harm" to the customers of a utility subject to merger.

They then conclude that the ORS 757.511(3) requirement that a merger must “serve the public utility’s customers in the public interest” is equivalent to the policy goal of preventing “unnecessary and unwarranted harm.” They conclude that the legal standard for merger applications is a no harm standard.

NNG reads text and context of ORS 757.511(3) as follows: NNG believes that the statute establishes two standards for assessing merger applications (“serve the public utility’s customers”; “in the public interest”). The first, relating to customers, requires that the Commission determine that the merger will not result in unnecessary and unwarranted harm, as stated in ORS 757.506(2). If harm is not present or can be mitigated, NNG contends that the merger will serve the public utility customers in the public interest. If harm is not avoidable, the standard could require that harm be offset by customer benefits so the end result would be no net harm. This reading, according to NNG, is not compelled by the statute but is consistent with it. NNG contends that prevention of the unnecessary and unwarranted harm standard in ORS 757.506 limits the Commission’s regulation of mergers under ORS 757.511 to prevention and possibly mitigation of harm to utility customers.

NNG’s second standard is a determination that granting the application is in the public interest. The second standard depends on an applicant fulfilling the requirements set out in ORS 757.511(2) and supplementary rules.<sup>2</sup> However, NNG argues that the criteria for granting an application need not be quantified in economic terms. Instead, the Commission should be free to exercise its judgment and to balance objective and subjective factors in evaluating whether to approve a merger, under both the “serve customers” and the “public interest” standard. Conditions should be applied to the application, according to NNG, only to remedy a potential denial of the application. Any conditions on granting the application must remedy the basis for denial and must also be proportionate to the degree of harm created by the circumstances giving rise to the potential denial.

NNG maintains that the context of the merger statute supports its position on the meaning of the statute’s text. The statute in question here is part of a series of statutes requiring Commission approval of transactions involving utilities. ORS 757.480 and .485 govern the transfer of property, and OAR 860-027-0025(1) requires that these transactions be consistent with the public interest. NNG argues that this requirement equates to a no harm standard and that similar logic should govern the interpretation of “serve the public utility’s customers” in ORS 757.511(3). The public interest phase of the analysis is analogous to the language of ORS 757.495, “not contrary to the public interest.” NNG contends that the context of ORS 757.506 and 757.511 support its conclusion that the merger standard should be to prevent unnecessary and unwarranted harm (in other words, to serve the public utility’s customers) and to determine separate harm and benefit based on effects not directly related to customers (in the public interest). NNG also argues that ORS 756.040, which mandates that the Commission is to protect utility customers, is consistent with protection from unnecessary and unwarranted

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<sup>2</sup> NNG also assumes that this docket is a prelude to a rulemaking. It was not designed to be such.

harm, whereas the ORS 757.511 phrase “in the public interest” is consistent with the Commission’s charge in ORS 756.040, to protect the public generally.

NNG also makes policy arguments against a net benefit standard, because that standard is too rigid. For instance, a utility might be saved from bankruptcy by a merger, but the net benefit standard, on NNG’s understanding, would not permit the Commission to approve such a merger. The same is true for cases where the benefits might be substantial but not financial, or might be delayed. NNG contends that the net benefit standard presupposes that all mergers are inherently bad for ratepayers. However, the compelled financial charges under the net benefit standard may impair the efficacy of many transactions that are in the public interest. NNG argues that customers can be served in many ways apart from cheaper rates. NNG urges the Commission not to reduce the standard to an immediate financial benefit but rather to construe ORS 757.511 in such a way as to increase rather than decrease its flexibility. Finally, NNG contends that the net benefit standard is arbitrary and only places a patina of legitimacy on pure guesswork. The standard should be rejected because it is too subjective and gives Staff too much room to negotiate.

PacifiCorp agrees in the main with NNG’s reading of the text and context of ORS 757.511(3). PacifiCorp also makes a policy argument against a net benefit standard, because the standard provides no rational basis for distinguishing one level of net benefit from another. Further, PacifiCorp contends that the net benefit standard is vague, so that an applicant does not know what showing it must make to meet the standard.

PacifiCorp does not believe that the phrases “serve the public utility’s customers” and “in the public interest” call for two separate analyses, as NNG does, but this distinction makes little difference in the parties’ overall arguments. PacifiCorp believes generally that ORS 757.506 establishes the purpose of the statutory scheme governing mergers, and ORS 757.511 establishes the process for dealing with mergers. PacifiCorp contends that the public interest standard in ORS 757.511(3) is similar to “consistent with the public interest” in the Federal Power Act, which the Ninth Circuit Court has construed not to connote a public benefit, but to require merely “a showing that mergers of this sort will not result in detriment to customers.”<sup>3</sup> Like NNG, PacifiCorp argues that the standard in ORS 757.511(3) is analogous to the “consistent with the public interest” standard in ORS 757.480 and the “not contrary to the public interest” standard in ORS 758.460(1), both of which require the no harm standard.

PacifiCorp argues that “serve the public utility’s customers in the public interest” equates to “consistent with the public interest” and “not contrary to the public interest,” and that ORS 757.511 therefore requires a no harm standard for mergers. PacifiCorp contends that a merger should be approved if an applicant shows that after the merger, the utility will be able to satisfy the needs of customers (that is, to serve customers’ needs). According to PacifiCorp, this is an argument based on the plain

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<sup>3</sup> *Pacific Power & Light Co. v. Federal Power Commission*, 111 F2d 1014, 1016 (1940).



meaning of "serve." PacifiCorp's argument about the context of the statute at issue, the scheme that also governs sale and transfer of assets, is much like NNG's. PacifiCorp concludes that there is no principled difference between a showing required to approve a sale asset by asset or to transfer a service territory and that required to approve sale of the entire company.

Both NNG and PacifiCorp believe that text and context support their reading that the plain meaning of ORS 757.511(3) requires a no harm standard, but recur to legislative history in any case. Both parties contend that legislative history supports their position. Senate Bill 433 (SB 433), introduced in 1985 and codified as the statutes governing mergers, was passed to fill a gap in the statutory scheme and give the Commission jurisdiction over extrajurisdictional entities wishing to acquire Oregon public utilities. Both PacifiCorp and NNG cite to testimony by David Hayhurst, an attorney for NNG (the company that drafted the bill), who testified before the Senate Committee considering the bill. Mr. Hayhurst, explaining the purpose of the bill, stated:

The unprecedented increase in the numbers of corporate take-overs is a well documented phenomenon. The advent of innovative and highly speculative financing techniques, including use of so-called 'junk bonds,' has made it possible for very large corporations to be taken over with relatively small equity investments. In one way or another, the assets of the acquired company are used to service the acquisition debt. This could have a serious effect on the ability of an acquired utility to continue to provide adequate service to Oregon customers at reasonable rates. SB 433 will empower the Commissioner to consider these and other aspects of the acquisition to determine whether approval should be granted.

\* \* \* [W]e believe that the bill represents an important step in authorizing the Commissioner to protect Oregon utility customers from the harmful effects of ill advised acquisitions, irrespective of the identity of the acquiring party.

In colloquy with Senate Committee members, Mr. Hayhurst emphasized that "the thrust of the bill is to be sure consumers will be treated fairly in any acquisition." Mr. Hayhurst further testified that "any person, whether or not engaged in the utility business, and whether or not engaged in business in Oregon, is required to obtain approval, so that all acquiring parties would be on [the] same footing under the bill." Finally, Mr. Hayhurst responded to a question about who was covered under the bill, saying that PGE was not covered by the bill because PGE, as a regulated utility, was already subject to prohibitions in existing law. PGE "could not acquire another Oregon utility without Commission approval under existing law. What we are proposing is that the same procedures be made applicable to everyone, including Oregon utilities like PGE." (All testimony, David Hayhurst, Senate Committee on Utility Rate Relief [Special Committee] [SB 433], April 23, 1985.)

PacifiCorp concludes from these remarks that the legislative history of SB 433 shows an intent to protect consumers from harm. PacifiCorp argues that SB 433 was not intended to operate differently from or more stringently than ORS 757.480, which requires Commission approval of mergers between Oregon utilities.<sup>4</sup> According to NNG and PacifiCorp, there is no indication of legislative intent to set a net benefit standard in the legislative history of SB 433.

PacifiCorp notes, finally, that as a legislative agency, the Commission's discretion is bound by the purpose of the statute it is interpreting. PacifiCorp contends that the Legislature's purpose is clearly stated in ORS 757.506: prevention of unnecessary and unwarranted harm to customers. This policy must guide the Commission's discretion when it sets standards, and PacifiCorp argues that this standard translates directly into a no harm standard.<sup>5</sup>

**Staff and ICNU advocate a net benefit standard.** Staff and ICNU agree that the plain language of ORS 757.511(3) mandates a net benefit standard and contains two requirements, that a merger serve customers of the utility and that a merger be in the public interest. Citing *Webster's Third New International Dictionary* (1993) and *The American Heritage Dictionary of the English Language* (1996), Staff and ICNU argue that the verb "serve" means "to be of use," "to be favorable," "to promote the interests of." Staff and ICNU conclude that the provision at issue is not equivalent to "consistent with the public interest" or "not contrary to the public interest," which have been read to require a no harm standard.

ICNU contends that the net benefit standard recognizes that mergers pose inherent risks to customers that cannot be anticipated or fully investigated before the merger. According to ICNU, a net benefit standard protects customers who will ultimately bear the risks created by the transaction. ICNU argues for a standard that requires some tangible benefit for customers.

Staff reads the context of ORS 757.511(3) to include other provisions of the same statute and other related statutes. ORS 757.506(2) sets the policy goal "to prevent unnecessary and unwarranted harm." Staff argues that the specific language of ORS 757.511(3) controls the general language of ORS 757.506. That is, Staff contends that ORS 757.511(3) prevents unnecessary and unwarranted harm to ratepayers by requiring that applicant demonstrate net benefits to customers as a result of the merger. Staff maintains that this reading makes practical sense as well, because the potential harm from a merger is difficult to gauge. Staff supports its argument by noting that a maxim in

<sup>4</sup>PacifiCorp proceeds to a discussion of the general maxims of statutory construction. Because we find the statute's meaning accessible from text and context, we do not discuss this last recourse of deriving a statute's meaning. *PGE v. BOLI*, 317 Or at 611.

<sup>5</sup> PacifiCorp also argues that we have previously interpreted the same statute in a way consistent with PacifiCorp's no harm interpretation. In Order No. 86-106, we determined that under ORS 757.511 we had jurisdiction over the transaction under which Portland General Electric Company became a wholly owned subsidiary of Portland General Company. We did not enunciate a legal standard for mergers in that order. Our discussion there is therefore not dispositive as precedent here.



the first (text/context) level of analysis holds that if the Legislature used different terms in different provisions of a statute or related statutes, the court will infer that the terms were intended to have different meanings. Thus, one should not conclude that “consistent with the public interest” and “serve the utility’s customers in the public interest” are synonymous. Staff argues that the Legislature intended the different phrases to have different meanings, and that the intended meaning of the second phrase is that the applicant must show that the utility’s customers will be served, not simply not harmed, by the transaction.<sup>6</sup> ICNU makes a similar argument, noting that the Legislature uses the phrase “not contrary to the public interest” 11 times in the Oregon Revised Statutes, and could have used it in ORS 757.511 had it meant the same standard to apply.

Like PacifiCorp and NNG, Staff and ICNU argue that legislative history supports their position. ICNU argues that ORS 757.511(3) was passed to protect ratepayers from the actual and potential harms of utility mergers and takeovers. To that end, according to ICNU, the Legislature also supplied a stricter standard for merger approval than had been used with the predecessor statute, ORS 757.480. The Commission had interpreted that statute, although containing no explicit standard for approval of transactions, as requiring a “consistent with the public interest” standard for intrastate utility mergers. OAR 860-027-0025(1)(1).

Staff notes that the legislative history of SB 433 does not explicitly address the appropriate legal standard for mergers, but Staff believes that the legislative history suggests the appropriate standard. John Lobdell testified before the House Committee on Environment, June 5, 1985, that the applicants must demonstrate how the acquisition will best serve the public utility’s customers and the public interest. Staff contends that “best serves” requires the higher standard. According to this view, customers would be best served by requiring a net benefit, not by simply no harm.

**Discussion.** Under *PGE v. BOLI*, we first look at the statutory text and context of ORS 757.511(3) to determine whether they reveal the appropriate standard for mergers. We look first to the text. In ORS 757.511(3), the Legislature chose the term “serve the public utility’s customers in the public interest” to express the condition for approval of a merger. PacifiCorp and NNG conclude that the Legislature intended these words to indicate a no harm standard for merger approval. The reading that NNG and PacifiCorp propose subsumes the phrase “serve the public utility’s customers” under the ORS 757.506 mandate of preventing “unnecessary and unwarranted harm” or elide it with the no harm requirement imposed by OAR 860-027-0025(1)(1). PacifiCorp also substitutes a requirement that the *acquiring utility* serve customers for the statutory requirement that the *merger approval* serve customers.

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<sup>6</sup>Staff and ICNU both argue that the Commission has decided cases under ORS 757.511(3) (UM 814, the Enron merger, Order No. 97-196; the ScottishPower merger, Order No. 99-616; and the Sierra Pacific merger, Order No. 00-702) and determined that a net benefit standard was appropriate in those cases. We do not address these arguments, because we did not explicitly adopt a standard in those cases. That is the purpose of the present docket. ICNU also argues that other jurisdictions have required affirmative showings of a net benefit for merger approval. Those states do not have the same statutory language Oregon does and will not be addressed here.

A basic rule of reading statutes is to give effect to all provisions of a statute, where possible.<sup>7</sup> The reading that PacifiCorp and NNG propose nullifies the language “serve the public utility’s customers.” “Serve” in its common meaning, as Staff and ICNU point out, means “to be of use,” “to be favorable,” “to promote the interests of.” The Legislature’s choice of that verb indicates that approval of an application should be more than neutral with respect to utility customers. That is, absence of customer harm is not sufficient to satisfy the standard for approval. We read the verb “serve” to indicate a net benefit standard for merger approval.

Turning to the statutory context, we find that the statutory scheme is consistent with our reading. The policy statement in ORS 757.506 sets the goal of preventing unnecessary and unwarranted harm to utility customers. The more specific provision of ORS 757.511(3) controls the general provision. The more specific provision gives a way to prevent unnecessary and unwarranted harm: by making sure that the merger serves the public utility’s customers in the public interest.

The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a “not contrary to the public interest” standard (ORS 757.490, .495). From this we conclude that the Legislature had a specific purpose in mind with its use of the language “serve the public utility’s customers in the public interest.” That purpose was different from what the Legislature intended in the rest of the statutory scheme. In ORS 757.511(3), the Legislature imposes a higher affirmative duty on the Commission than in the rest of the statutory scheme. Therefore, it intended something more than a no harm standard for mergers. We take the context of ORS 757.511(3) also to indicate that the Legislature intended a net benefit standard for merger approval.

Staff, ICNU, PacifiCorp, and NNG all discuss legislative history. We have found the provision clear from its text and context; therefore, we do not reach a discussion of legislative history. We will comment on the parties’ discussion, however. We find that neither side has argued persuasively that legislative history supports its position. Mr. Hayhurst’s remarks go to the history of the bill and its general purpose to protect Oregon customers from the harmful effects of ill advised acquisitions, as well as its purpose to place all acquiring parties on the same footing. From Mr. Hayhurst’s remarks about placing acquiring parties on the same footing, PacifiCorp concludes that all acquiring parties should be subject to the same acquisition standard. We read the remark to mean that all parties are subject to Commission approval. There is no point in discussing the ambiguities of the testimony about SB 433. Suffice it to say that no one

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<sup>7</sup>ORS 174.010 provides:

In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

squarely addresses the standard for merger approval, and none of the testimony cited clearly speaks against the net benefit standard.

**Resolution.** We find, based on a reading of the statute in question, that the net benefit standard is the appropriate standard for merger approval. We do not believe that this standard is either rigid or arbitrary, as the opposing parties assert. We do not intend to reduce the net benefit standard to economic considerations as a matter of policy. We will consider the total set of concerns presented by each merger application in determining how to assess a net benefit. This allows us to retain flexibility in our decision making, a desideratum in today's uncertain climate. Because potential harm from merger transactions is often difficult to verify, recent orders have required monetary terms as a way to demonstrate that customers will receive a net benefit. This need not always be the case.

In ORS 757.511(3), the Legislature has given the Commission discretion in assessing whether to approve mergers. We do not propose to circumscribe that discretion, just as we do not propose to exercise our discretion in an arbitrary way. We cannot say in advance what showing a given utility must make to gain approval; such a determination would restrict the discretion the Legislature has given us. We will assess each merger on a case by case basis.

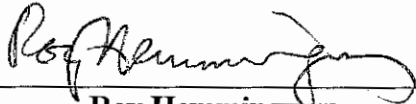
We agree with Staff and NNG that transactions under ORS 757.511 require a two step analysis: first, the assessment that utility customers will be served; second, the demonstration that granting the application is in the public interest. We base this conclusion on the language of the statute, "serve the public utility's customers in the public interest." If we give effect to each word of that phrase, "in the public interest" cannot be redundant with "serve the public utility's customers." We read this second step as setting a no harm standard as to the public at large. Therefore, in addition to finding a net benefit to the utility's customers, we must also find that the proposed transaction will not impose a detriment on Oregon citizens as a whole.

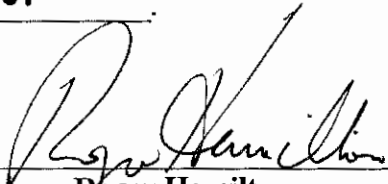
We would like to make clear that the conclusion reached here is compelled by the statutory language and is not the policy preference of the Commission. In fact, we believe that public policy for mergers and acquisitions should not require a "net benefit" for customers, so long as they are not affected adversely by the change of ownership of the utility. The role of a Public Utility Commission is to protect customers from unjust exactions resulting from the market control that utilities could exercise without state regulation. The form of business enterprise should be of no consequence to the Commission, as long as the utility obeys regulatory mandates and procedures, does not present conflicts with the interests of Oregon customers, does not expose customers to greater risks of higher costs or lower service quality, and is capable of economically and reliably providing the services offered to customers now and in the future. The current statutory standard puts the Commission potentially in the position of second-guessing business decisions of the companies we regulate, even when these business decisions do no harm to Oregon customers.

**ORDER**


IT IS ORDERED that the appropriate standard for approval of merger applications under ORS 757.511(3) is the net benefits standard.

Made, entered, and effective SEP 04 2001

  
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**Roy Hemmingway**  
Chairman

  
\_\_\_\_\_  
**Roger Hamilton**  
Commissioner



  
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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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