

## THE TALENT

### Dealmaker of the Week: Rick Burdick of Akin Gump Strauss Hauer & Feld

Posted by Julie Trieman

In early January, the president and CEO of FirstEnergy, the nation's fifth-largest electric power company, struck a handshake deal with the CEO of a smaller rival, Allegheny Energy. FirstEnergy planned to acquire Allegheny for \$4.7 billion, creating one of the nation's largest power companies, with some 6 million customers across seven states. The potential for money-saving synergies was obvious to both companies.

On January 7, FirstEnergy's general counsel reached out to Rick Burdick, the head of the international corporate transactions group at Akin Gump Strauss Hauer & Feld, asking if the lawyer could represent FirstEnergy on the matter, its first major M&A deal. Since the early 1990s, Akin Gump has served as primary outside counsel to the Akron, Ohio-based company, advising on several important transactional, regulatory and other matters. And Burdick, a deals veteran with 22 years of experience, had advised First Energy on corporate governance issues.

Burdick quickly assembled a team to work on the deal. Since both sides were getting stock, both Burdick's team and Allegheny's lawyers at Skadden, Arps, Slate, Meagher & Flom ran a rapid, intense, and extensive review and vetting of finances and assets, while regulatory lawyers worked to clarify the scope of approvals that would be needed. The goal was to announce the deal on February 10 to lessen the chance of a leak.

Last Thursday, there was an all-hands-on-deck meeting in Skadden's Washington, D.C., office to review a draft merger agreement and identify remaining issues. The FirstEnergy executive team flew back to Akron after the meeting, leaving the lawyers to work out the details. But just as negotiations were scheduled to begin, the first of two big mid-Atlantic blizzards hit the capital. That didn't stop the legal team. Burdick and his colleagues were on the phone with the client and with Skadden's attorneys for eight to 12 hours both Saturday and Sunday. Rooms were booked at neighborhood hotels for lawyers who lived in the suburbs. A number of others were unable to come in at all. "It was a logistical nightmare," Burdick says. "It was all very nerve-wracking."

By Monday, most of the team had made it into work. Burdick

planned to fly out to Akron on Tuesday to review the status of negotiations at a critical board meeting scheduled for Wednesday. Not so easy—snowmageddon 2010 meant that almost no flights were flying

out of Dulles or National airports, and the chances of making it onto a flight were slim. Still, Burdick did secure a seat on a departing flight and was able to make the meeting.

"We had white-out conditions," Burdick says. "People were trapped in the office. The Metro stopped working." Burdick and the FirstEnergy inhouse team hunkered down in Akron, coordinating efforts with the legal team in Washington on the last-minute checklist—the communications that needed to be vetted, the SEC filings, finalizing the schedules, and so on. By about 6 p.m. on Wednesday, signatures had been exchanged.

Despite the friendly nature of the transaction, closing such a deal remains a challenge. Domestic utility deals have proven difficult to pull off. Regulatory risk looms large. In 2006, Exelon's \$17 billion deal for Public Service Enterprise Group (PSEG) tanked after 19 months of regulatory wrangling. Analysts have been predicting a consolidation in the fragmented electric power company sector for years. The proposed merger is being watched with interest by other utilities struggling with razor-thin margins and a heavy regulatory environment.

A FirstEnergy/Allegheny union will have to be blessed by regulators in four states as well as by the Federal Energy Regulatory Commission. FirstEnergy estimates that regulatory approvals alone will take 12-14 months; several analysts have said that's overly optimistic. Akin Gump will continue to represent FirstEnergy for the FERC review.

For Burdick and his team getting this far is an achievement worth celebrating. "You go into a transaction with your eyes wide open," he says. "You pour yourself into it for 30-plus days, and you might not ever get to the signing."

