



March 17, 2011

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Docket No. RM11-14-000

FERC Seeks Comment on Horizontal Market Power Analysis

The Federal Energy Regulatory Commission (FERC) is seeking comment on whether to revise its approach to examining horizontal market power concerns to reflect guidelines issued by the Department of Justice (DOJ) and Federal Trade Commission (FTC).

The Federal Power Act requires FERC to approve a proposed disposition, consolidation, acquisition or change in control of jurisdictional facilities if it finds the transaction is consistent with the public interest. FERC's current merger policy incorporates guidelines issued by the DOJ and FTC in 1992 and uses market concentration screens and other analyses to identify transactions that would not harm competition.

In August 2010, the DOJ and FTC issued new guidelines that set forth how they will evaluate the competitive impact of mergers. Among other things, the new guidelines raise the thresholds that DOJ and FTC employed to assess market concentration. The new guidelines also place less emphasis on market definition and the use of a prescribed formula for considering the effects of a merger.

Today's Notice of Inquiry seeks comment on whether and how FERC should incorporate elements of the new guidelines into its merger analysis. It also asks what effects the new guidelines should have on the analysis of horizontal market power under the Commission's electric market-based rate program.

Comments on the Notice of Inquiry (RM11-14-000) are due 60 days after publication in the *Federal Register*.

R-11-22

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