



September 22, 2016

News Media Contact

Mary O'Driscoll | 202-502-8680

Docket Nos. RM16-21-000

Item No. E-2

FERC Launches Review of Market Power Analysis

The Federal Energy Regulatory Commission (FERC) today issued a Notice of Inquiry into revising how it assesses market power in electric utility industry mergers and other transactions under section 203 of the Federal Power Act (FPA) and applications for market-based rate authority under section 205 of the FPA.

FERC noted there are several areas where its market power analyses for both areas differ. While some of those differences may be appropriate, others may not be, so the Commission is asking whether increased harmonization of the two analyses is warranted and feasible.

Of particular interest is whether FERC should:

- establish a simplified analysis for certain section 203 transactions that are unlikely to raise market power concerns;
- add a supply curve analysis to section 203 evaluations;
- improve the Commission's single pivotal supplier analysis in reviewing market-based rate applications, and add a similar pivotal supplier analysis to section 203 evaluations;
- add a market share analysis to review of section 203 transactions;
- modify how capacity associated with long-term power purchase agreements should be attributed in section 203 transactions; and
- require submission of applicant merger-related documents for certain proposed transactions.

Additionally, FERC seeks comment on whether, and if so, how, to more precisely define *de minimis* in the context of the section 203 effect on competition and whether to develop a specific test for determining when a proposed transaction meets that definition such that a full Competitive Analysis Screen is unnecessary. FERC also is seeking comment on its scope of review under section 203, including whether there are existing blanket authorizations that may be overly broad or otherwise no longer appropriate, and whether there are classes of transactions for which further blanket authorizations or abbreviated filing requirements would be appropriate.

Comments on the NOI are due 60 days after publication in the *Federal Register*.

R-16-26

(30)