

#### **IV. THE MOVE TO OIL PIPELINE MARKET-BASED RATES**

Soon after the DOJ's deregulation study finding significant competition in the oil pipeline sector, the Commission approved (largely without prompting from the particular applicant pipeline in question) the use of market-based rates under certain circumstances. The Commission adopted the approach articulated by the *Farmers II* court as a reasoned approach to market-based ratemaking, i.e., one that analyzes the particular pipeline's market dominance in its discrete regional markets. The methodology adopted by the Commission to make this particularized assessment was to first define the pipeline's relevant product and geographic markets. Then, a number of factors designed to assess the pipeline's market power in those defined markets were to be analyzed. This basic methodological framework remains in place today. In addition, the first two proceedings that recognized market-based rates on a case-by-case basis are still controlling Commission precedent on a number of issues. Those include how to properly define the product market, the underlying purpose and method to defining the geographic market, and the market power statistics the Commission will find indicative, or not, of market power.

How the Commission will discuss or analyze certain factors in the market power analysis has shifted over time however. When the Commission first articulated its methodology in the two proceedings detailed below, it cited a number of factors without giving any one factor prominence over the others. For example, the Commission took a balanced approach in weighing the excess capacity in the relevant markets, the market power of large buyers in the pipeline's destination markets, and the market share and market concentration statistics. In later cases, however, the Commission shifted to citing most prominently the market share and market concentration statistics over other factors.