

V. POST ORDER NO. 572 MARKET-BASED RATE CASES

In the post Order No. 572 proceedings, the Commission maintained its framework of defining the applicant pipeline's product and geographic markets, and then determining the pipeline's market power in those defined markets through an assessment of certain factors. This included an adherence to the substitutability analysis to defining the product market outlined in the *Buckeye* proceeding. The basic purpose for defining the geographic market has remained the same as well. The process of identifying viable competition to the pipeline has been the subject of significant litigation, however. In determining the cost competitiveness of proposed alternative sources of transportation, the Commission first moved from a judgment based approach to a more mechanical application of certain price increase threshold. Then most recently, the Commission found that all used alternatives would be included in the market power statistics, and unused alternatives would only be included if the relevant market was not capacity constrained and only if their costs were within an acceptable range to the competitive price as evidenced by detailed cost studies.

In addition, the Commission narrowed the factors it would principally cite to when assessing an applicant pipeline's market power in its defined markets to market concentration and market share. The Commission also identified the market power statistics it would find indicative of market power were those articulated through its adjudicatory process and in particular the *Williams* proceeding. The evolution of the Commission's analysis is detailed below.