

(A) The applicant must compute market share for each supplier in each relevant downstream geographic market and the HHI statistic for the downstream market. The applicant must provide a summary table with the following information for each relevant downstream geographic market:

- (1) The economic capacity of each downstream supplier (specify the amount of such capacity served by each upstream supplier);
- (2) The total amount of economic capacity in the downstream market served by each upstream supplier;
- (3) The market share of economic capacity served by each upstream supplier; and
- (4) The HHI statistic for the downstream market.

(B) A similar table must be provided for available economic capacity and for any other measure used by the applicant.

(ii) *Upstream geographic market.* The applicant must provide a summary table with the following information for each upstream relevant product in each relevant upstream geographic market:

- (A) The amount of relevant product provided by each upstream supplier;
- (B) The total amount of relevant product in the market;
- (C) The market share of each upstream supplier; and
- (D) The HHI statistic for the upstream market.

(d) *Mitigation.* Any mitigation measures proposed by the applicant (including, for example, divestiture or participation in an Regional Transmission Organization) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the vertical competitive analysis as an additional post-transaction analysis. Any mitigation measures that involve facilities must identify the facilities affected by the commitment.

(e) *Additional factors.*

(1) If the applicant does not propose mitigation measures, the applicant must address:

- (i) The potential adverse competitive effects of the transaction.
- (ii) The potential for entry in the market and the role that entry could

play in mitigating adverse competitive effects of the transaction;

(iii) The efficiency gains that reasonably could not be achieved by other means; and

(iv) Whether, but for the proposed transaction, one or more of the parties to the transaction would be likely to fail, causing its assets to exit the market.

(2) The applicant must address each of the additional factors in the context of whether the proposed transaction is likely to present concerns about raising rivals' costs or anticompetitive coordination.

§ 33.5 Proposed accounting entries.

If the applicant is required to maintain its books of account in accordance with the Commission's Uniform System of Accounts in part 101 of this chapter, the applicant must present proposed accounting entries showing the effect of the transaction with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis), the effect on the income statement, and the effects on other relevant financial statements. The applicant must also explain how the amount of each entry was determined.

§ 33.6 Form of notice.

The applicant must file a form of notice of the application suitable for issuance in the FEDERAL REGISTER, as well as a copy of the same notice in electronic format in WordPerfect 6.1 (or other electronic format the Commission may designate) on a 3½" diskette marked with the name of the applicant and the words "Notice of Application." The Notice of Filing must appear in the following form:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

[Full Name of Applicant(s)]

Docket No. XXXX-XXX-XXX

NOTICE OF FILING

Take notice that on [Date of filing], [Applicant(s)] filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act