

§ 33.5

(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.

§ 33.7 Verification.

The original application must be signed by a person or persons having

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authority with respect thereto and having knowledge of the matters therein set forth, and must be verified under oath.

§ 33.8 Requirements for filing applications.

The applicant must submit the application or petition to the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov>.

(a) If the applicant seeks to protect any portion of the application, or any attachment thereto, from public disclosure, the applicant must make its filing in accordance with the Commission's instructions for submission of privileged materials and Critical Energy Infrastructure Information in § 388.112 of this chapter.

(b) If required, the applicant must submit information specified in paragraphs (b), (c), (d), (e) and (f) of § 33.3 or paragraphs (b), (c), (d) and (e) of § 33.4 on electronic recorded media (i.e., CD/DVD) in accordance with § 385.2011 of this chapter, along with a printed description and summary. The printed portion of the applicant's submission must include documentation for the electronic information, including all file names and a summary of the data contained in each file. Each column (or data item) in each separate data table or chart must be clearly labeled in accordance with the requirements of §§ 33.3 and 33.4. Any units of measurement associated with numeric entries must also be included.

[Order 769, 77 FR 65475, Oct. 29, 2012]

§ 33.9 [Reserved]

§ 33.10 Additional information.

The Director of the Office of Energy Market Regulation, or his designee, may, by letter, require the applicant to submit additional information as is needed for analysis of an application filed under this part.

[Order 642, 65 FR 71014, Nov. 28, 2000, as amended by Order 699, 72 FR 45324, Aug. 14, 2007; Order 701, 72 FR 61053, Oct. 29, 2007]