Prepared Statement of the Federal Trade Commission

benefits will not be achieved without an in-depth understanding of market power impacts.

There are huge resources at stake in this industry. Total industry revenues are estimated at $200 billion a year, and total industry capital investment is around $700 billion, or almost 10% of total U. S. capital investment. If the levels of cost savings and technological improvements in this industry approach those attained in other previously deregulated industries, many consumers likely will be substantially better off in terms of lower prices and increased choices.[(8)] But, these potential savings and innovations will not appear automatically. Proper application and enforcement of antitrust principles are necessary to ensure that the benefits of competition reach consumers.

II. Regulatory Background in the Electric Power Industry

To evaluate the impact of market power issues in the electric power industry and to better understand the role of the antitrust agencies in addressing competitive issues in a

regulation are not accompanied by the above-described unfair acts and practices. To address these conditions, the Administration proposes to give FERC authority to assess existing

many consumers of the product would not switch to an alternative product if the price of the

sole source of supply for the Navajo power plant in Page, Arizona and the Mohave power plant in Laughlin, Nevada. A post-acquisition PacifiCorp would have had both the incentive and the ability to raise the price of coal to its competitors, Navajo and Mohave. Both the Navajo and the Mohave plants have substantial off-peak excess capacity which is used to supply other utility companies in the Southwestern states. Raising fuel costs to these plants would put upward price pressure on electricity over a wide regional area.

The acquisition also would have given PacifiCorp access to proprietary information about its competitors. Through Peabody's coal supply relationships, PacifiCorp could have learned highly sensitive data about competitors' costs and generator operating conditions. Peabody provided coal to approximately 150 power plants in the Western states, many of them competitors of PacifiCorp. The order settling the complaint would have required PacifiCorp to divest the Kayenta and Black Mesa mines and to establish a firewall that would have forbidden Peabody from disclosing certain non-public information to PacifiCorp.

In a second convergence merger, the Commission filed a complaint against CMS Energy Corporation's (CMS) proposed acquisition of two natural gas pipelines from subsidiaries of Duke Energy. CMS is a combination electric and gas utility and a CMS subsidiary provides natural gas to residential and industrial consumers in Michigan. In addition, it also owns and operates the only intra-state natural gas transmission system through which consumers can buy natural gas from other suppliers, either for their own use, or to use to produce electricity. As a pipeline customer, CMS has had an incentive to maintain competitive access into its system. But after the acquisition of the pipelines, CMS would have the incentive to restrict the other pipelines' access to its system in order to support price increases on its own pipelines. The order settling this case requires CMS to give shippers two options if they cannot deliver gas into its service area because the available interconnection capacity is less than actual capacity. CMS is required to accept gas at another pipeline delivery point at no additional cost if the shipper can deliver it there; otherwise CMS must loan gas from its own supply to the shipper in an amount equal to the volume of gas that could not be transferred through any of CMS's interconnection points. The order also requires CMS to post to an electronic bulletin board information which will let shippers know whether actual capacity is less than current capacity at non-CMS interconnects.[(30)]

V. Conclusion

Deregulation in a number of industries has proven to be beneficial to many consumers and the competitive process. The deregulated industries generally exhibit lower prices, increased quality and quantity of goods and services, and heightened innovation. The electric power industry is currently experiencing substantial deregulation. While it is unclear whether that process will be driven by the states or by the Federal government, the outcome in either case should be that market forces will have an effect on firms long accustomed to the slower pace and shelter of regulated life.

The potential for consumer savings and increased choice is enormous, but it is certainly not guaranteed. As our recent cases demonstrate, vigilant antitrust enforcement is an essential

Rep. (CCH) ¶ 13,104 (Apr. 2, 1992), as amended, April 8, 1997. FERC announced that it would follow the principles in the Guidelines in its own analysis of utility consolidations. See Inquiry Concerning the Commission's Merger Policy under the Federal Power Act, RM96-6-000, 61 Fed. Reg. 68,595 (Dec. 18, 1996).

24. Specifically, the markets are defined by asking whether a hypothetical monopolist could raise prices by a "small but significant and nontransitory" amount, such that not enough buyers would switch to alternatives to make the price increases unprofitable. If the price increases would not be profitable, the relevant market is too narrowly defined. See Merger Guidelines § 1.11.

25. Electricity cannot be stored in any measurable quantities; it must be generated as it is consumed. Also, demand varies substantially not only seasonally but by time of day. Thus, the substitute sellers of electricity to any given consumer may be a number of firms offering subtly different products. Some consumers may want guaranteed reliability, while others may opt for interruptible power at lower prices. Some consumers may choose to defer power consumption to off-peak hours in return for lo(-)Tj 0.002 Tc 0.0eaocally, th-7(o)-1E-12(w)17d T* [9ecln6e