

130 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, and Philip D. Moeller.

Kansas City Power & Light Company and
Kansas City Power & Light Company – Greater
Missouri Operations Company

Docket No. ER10-230-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF
REVISIONS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued January 5, 2010)

1. On November 6, 2009, Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company¹ (GMO) (jointly, Applicants) filed proposed formula rates for recovery of their transmission and scheduling service revenue requirements. In this order, the Commission conditionally accepts for filing and suspends for a nominal period the proposed tariff sheets to be effective January 6, 2010, subject to refund, and establishes hearing and settlement judge procedures.

I. Background

2. On November 6, 2009, Applicants filed revised tariff sheets for transmission service under GMO's Open Access Transmission Tariff (Tariff) and revised tariff sheets for Schedule 1 Service² under KCP&L's and GMO's Tariff. Applicants also filed *pro forma* tariff sheets for transmission service and Schedule 1 Service over their transmission facilities under the Southwest Power Pool, Inc. (SPP) Tariff.³ The new tariff sheets provide for recovery of each company's transmission investment through a cost-of-service formula rate. On November 10, 2009, Applicants filed a correction to the supporting exhibits in their initial filing.

¹ KCP&L and GMO are both subsidiaries of Great Plains Energy Incorporated.

² Schedule 1 Service relates to Scheduling, System Control and Dispatch Service.

³ Applicants state that SPP will submit a companion filing to implement the *pro forma* tariff sheets.

3. Applicants state that the rate formula will incorporate data from a historical test year based upon their most recent annual FERC Form No. 1 as well as projected new transmission plant additions that are expected to go into service during the next calendar year. The formula rate also incorporates a true-up for the difference between the projected revenue requirement amounts and the actual net revenue requirement in a given calendar year. Applicants assert that this template will eliminate the time lag in recovering the costs of capital additions and is consistent with Commission treatment of similar projects.⁴

4. Applicants propose a stated return on common equity (ROE) of 11.8 percent plus a 50 basis point adder for participation in the SPP regional transmission organization (RTO) for a total ROE of 12.3 percent.⁵ Applicants state that the 50 point adder is consistent with section 219(c) of the Federal Power Act (FPA) and Order Nos. 679 and 679-A.⁶

5. Applicants state that the proposed formula rate also includes placeholders to allow for incentive-based rate treatments for the construction of new transmission facilities at some point in the future. The incentive placeholders will maintain a value of zero in the rate formulas until Applicants request an incentive and the incentive is approved by the Commission.

6. Additionally, Applicants propose to use blended depreciation rates in calculating the charges under the rate formulas. Moreover, Applicants propose to incorporate into the formula rate a carrying charge to calculate the cost of radial lines which are excluded from the cost of service consistent with Attachment AI of the SPP Tariff.

7. Applicants also propose Formula Rate Implementation Protocols (Protocols) that include provisions for meetings with customers to discuss annual rate updates, true-up of

⁴ Citing *Michigan Elec. Transmission Co., LLC*, 117 FERC ¶ 61,314, at P 17 (2006), *order on reh'g*, 118 FERC ¶ 61,139 (2007).

⁵ Applicants derived the 11.8 percent base ROE using the midpoint of the ROE's resulting from a Discounted Cash Flow analysis of a proxy group of sixteen utilities in the SPP, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, LLC.

⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

previous charges to actual costs, requests for information and customer challenges to the true-up calculations.

8. Applicants request that the Commission approve the filing without hearing or suspension. Furthermore, in the event that the Commission sets the filing for hearing and imposes a suspension, Applicants request that the Commission only impose a nominal suspension.

9. Applicants also request, to the extent necessary, waiver of section 35.13⁷ of the Commission's regulations, including the requirement to submit full Period I and Period II cost data. They state that their FERC Form No. 1 and the testimony accompanying the filing are sufficient and provide a basis for granting the cost data waivers.

10. Applicants also request waiver of the notice period to permit an effective date of January 1, 2010, for the proposed tariff changes. Applicants state that they have good cause for waiver in this proceeding. Applicants assert that waiver would allow the formula rates to take effect only 5 days before the standard notice period and would be consistent with the Commission's efforts to encourage transmission owners to change from stated rates to formula rates to promote transmission expansion programs.

II. Notice of Filing and Responsive Pleadings

11. Notice of Applicants' November 6, 2009 filing was published in the *Federal Register*, 74 Fed Reg. 60,251 (2009), with interventions and protests due on or before November 27, 2009. Notice of the November 10, 2009 filing was published in the *Federal Register*, 74 Fed Reg. 66,120 (2009), with interventions and protests due on or before December 10, 2009. SPP and City of Independence, Missouri filed timely motions to intervene. Motions to intervene and protest were filed by Kansas Electric Power Cooperative, Inc. (KEPC), Missouri Joint Municipal Electric Utility Commission (MJMEUC), Kansas Corporation Commission (KCC), and Kansas Municipal Energy Agency (KMEA) (collectively, Protesters). On December 15, 2009, Applicants filed an answer.

A. Protests

12. Protesters raise numerous concerns with the proposed formula rate and Protocols. MJMEUC, KEPC, and KCC protest Applicants' proposal to use the midpoint rather than the median ROE from the proxy group to establish the proposed ROE.⁸ MJMEUC

⁷ 18 C.F.R. § 35.13 (2009).

⁸ MJMEUC, November 30, 2009 Protest at 6-7; KEPC, November 25, 2009 Protest at 6-8; KCC, November 30, 2009 Protest at 6.

specifically requests that the Commission summarily reject this aspect of Applicants' proposal, stating that if the Commission does not do so, Applicants may continue to insist upon using the midpoint, making it more difficult to achieve settlement.⁹

13. MJMEUC urges the Commission to require Applicants to use a 13-month average plant balances to calculate annual updates and true-ups, because the use of end-of-year plant balances contravenes the Commission's policy requiring an average of 13 monthly balances for transmission-related balances.¹⁰ MJMEUC asserts that for similar reasons, Applicants should be required to use average of values from the beginning and end of the year for Accumulated Deferred Income Taxes, materials and supplies, and prepayments.

14. KMEA alleges that Applicants fail to use a fully-synchronized test period and instead the proposed rate formula uses actual costs from the most recent FERC Form No. 1 and estimated costs related to transmission capital additions. KMEA contends that Applicants must use either an historical test period or a projected test period, but not both, in order to comply with Commission precedent.¹¹

15. KMEA and KCC also argue that the Commission should deny Applicants' requests for waivers of Period I and Period II costs, as they have not provided sufficient information to support the waiver requests. KMEA and KCC state that the limited data provided at the time of filing must be supplemented by additional data and information to allow for the development of a full record upon which to determine the justness and reasonableness of the formula rate.¹²

16. Protesters raise numerous other issues with the proposed formula rates, including the rate of return, depreciation rates, true-up procedures, facilities carrying charge, treatment of grandfathered agreements and the lack of usable information showing how projected costs will be developed.

⁹ MJMEUC, November 30, 2009 Protest at 7 (citing *American Elec. Power Serv. Corp.*, 121 FERC ¶ 61,245, at P 12 (2007)).

¹⁰ *Id.* at 10 (citing 18 C.F.R. § 35.13(h)(4)(i) (2009); *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 29 (2007)).

¹¹ KMEA, November 30, 2009 Protest at 3 (citing *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008)).

¹² *Id.* at 4 (citing *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008)).

17. Every protester raises concerns regarding aspects of the proposed Protocols to the formula rates, challenging them as being inconsistent with a number of Commission policies or poorly supported.¹³

18. With respect to the effective date for the proposal, KCC, KEPC, and MJMEUC also assert that some of the proposed rates include increases that are excessive by more than 10 percent and thus a full five-month suspension of these rates is warranted.¹⁴ Whereas KCC and KEPC propose to suspend the entire filing, MJMEUC specifically asserts that the proposed increase in GMO's zonal transmission revenue requirement and the proposed increase in KCPL's point-to-point rate should be suspended for five months while the remaining aspects of the filing should be implemented subject to refund after a nominal suspension.¹⁵

19. KCC and MJMEUC further argue that the Commission should deny Applicants' request for waiver of the 60-day notice requirement because Applicants have failed to provide good cause. However, MJMEUC states that those aspects of the rate filing that reduce charges to customers, i.e. the reduction in GMO's Schedule 1 ATRR and the reduction in KCPL's zonal ATRR, should be implemented January 1, 2010.

B. Applicants' Answer

20. In their answer, Applicants state that they do not object to setting the filing for hearing provided that the hearing is suspended pending settlement discussions.

21. Applicants urge the Commission to approve summarily their request for a 50 basis point ROE adder for RTO participation. Applicants assert that in every formula rate case involving SPP participants, the Commission has summarily granted this request and excluded this issue from hearing.¹⁶

¹³ MJMEUC, November 30, 2009 Protest at 18-25; KMEA, November 30, 2009 Protest at 14-17; KEPC, November 25, 2009 Protest at 14-16; KCC, November 30, 2009 Protest at 6-7.

¹⁴ Citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

¹⁵ MJMEUC, November 30, 2009 Protest at 5.

¹⁶ Citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 58 (2008); *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 92 (2009); *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098, at P 71 (2008); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 28 (2008); *American Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 34 (2007).

22. Applicants further contend that the Commission should grant their request for waiver of the requirement to provide all the Period I and Period II data required by section 35.13 of the Commission regulations.¹⁷ Applicants assert that the Commission has granted waivers of the requirement to provide Period I and Period II data previously in a series of cases involving transmission formula rates.¹⁸ Applicants further contend that the Period I and Period II data are unnecessary for the calculation of formula rates because formula rates are based upon actual costs taken from transmission owners' FERC Form No. 1.

23. Applicants urge the Commission to reject MJMEUC's contention that rate decreases to GMO Schedule 1 Service and KCP&L's zonal charges should be effective immediately while the remaining aspects of Applicants' filing should be suspended for the full five month period. Rather, Applicants assert that the Commission should set a single effective date that applies to the entire filing. Applicants assert that the GMO Schedule 1 Service charge was reduced because certain costs will now be recovered in the transmission rate, and, thus, the decrease in the GMO scheduling charge is tied to the increase in the transmission rate.

24. Applicants also assert that the Commission should not summarily reject the use of the midpoint ROE from the proxy group, as opposed to the median, citing a number of cases where the Commission has set disputed ROE issues for hearing and settlement, including the midpoint issue.¹⁹

25. Applicants also urge the Commission to deny the request by MJMEUC to require the usage of the average of thirteen monthly balances to determine the annual true-up adjustment, arguing that the proposed year-end true-up uses the same method accepted by the Commission in prior proceedings.²⁰

¹⁷ 18 C.F.R. § 35.13 (2009).

¹⁸ Citing *PPL Elec. Utils. Corp.*, 125 FERC ¶ 61,121, at P 41 (2008); *American Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 9, 41 (2007); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 92, 94 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 79 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 55-56 (2005), *reh'g denied*, 115 FERC ¶ 61,156 (2006).

¹⁹ Applicants, December 15, 2009 Answer at 6 (citing *American Electric Power Service Corp.*, 124 FERC ¶ 61,306, at P 22, 38 (2008)).

²⁰ Applicants, December 15, 2005 Answer at 8 (citing *Westar Energy, Inc.*, 125 FERC ¶ 61,252 (2008) (order approving uncontested settlement); *ISO New England, Inc.*, 113 FERC ¶ 61,243, at P 30 (2005)).

26. Applicants deny that the proposed rate formulas are inconsistent with the Commission's policy requiring utilities to use a fully synchronized test period cost of service, based on either an historic or a projected test period. Applicants state that the proposed rate formulas use a projected test period. Applicants state that these projections rely on historic data, consistent with Commission precedent.²¹ Applicants emphasize that there will be no mismatch of data resulting from a combination of projected and historic costs and projected loads.²² Applicants emphasize that all projections are trued-up with actual data, including actual FERC Form No. 1 costs and actual billing determinants, and that all over-recoveries will include interest at FERC-approved interest rates. Furthermore, Applicants assert that using current year data as a proxy for the upcoming rate year for the billing determinants in the divisor is consistent with industry practice and does not result in larger than necessary true-ups.

27. Applicants further defend the components of the proposed rate formula, including but not limited to ROE analysis, the depreciation rates, capital structure, cost of debt, Post Retirement Benefits Other than Pension expenses, and the usage of transmission rate incentive placeholders.

28. Applicants also defend the customer protection procedures in the Protocols. Applicants state that nothing within the Protocols limits a party's right to file a section 206 complaint at any time; however, Applicants state that a party filing a section 206 complaint without complying with the procedures set forth in the Protocols bears the burden of proof in a section 206 complaint. Applicants further contend that the timelines provided in their filing are adequate and that the Protocols ensure that the customers have the necessary information.

²¹ Citing *Westar Energy, Inc.*, 125 FERC ¶ 61,252 (2008); *Oklahoma Gas & Electric Co.*, 127 FERC ¶ 61,296 (2009).

²² The Commission notes that Applicants indicate in the proposed Protocols that "load will be forecast for the next Rate Year in the Annual Update." See Applicants, November 6, 2009 Filing, Attachment 6, p. 54. However, Applicants also state that "SPP will then use the ATRRs [annual transmission revenue requirements], together with the prior year's zonal 12-CP load, to calculate the rates for Network Service and Point-to-Point Service in the KCP&L and GMO zones." See Exhibit No. GP-4, at 7.

III. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

31. For the reasons discussed below, we will conditionally accept Applicants' proposed tariff sheets, subject to a nominal suspension, to become effective January 6, 2010, subject to refund. In addition, we will establish hearing and settlement judge procedures to resolve all issues not summarily decided in this order.

1. Return on Equity Incentive for Participation in SPP

32. Consistent with our prior orders, we will grant up to 50 basis points of incentive ROE conditioned on Applicants' continued participation in SPP.²³ Our decision to grant this incentive is consistent with the incentives authorized by section 219 of the FPA²⁴ applicable to all utilities joining a regional transmission organization and is intended to encourage Applicants' continued membership in SPP.²⁵ All other issues relating to the ROE shall be addressed at hearing.²⁶

²³ *E.g., San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*); *American Elec. Power Serv.*, 120 FERC ¶ 61,205, at P 34, *order on reh'g*, 121 FERC ¶ 61,245 (2007).

²⁴ 16 U.S.C. § 824s (2000 & Supp. V 2005).

²⁵ *SDG&E*, 118 FERC ¶ 61,073 at P 25-26.

²⁶ The 50 basis point adder for participation in SPP is the only incentive being granted in this proceeding. Applicants also have requested placeholders in the formula rates reserved for future requests for incentives. Any placeholders ultimately accepted in this proceeding do not confer upon the Applicants the ability to recover other incentives without prior Commission approval.

2. Projected Transmission Plant Additions and True-up

33. Applicants propose in their November 6 filing a formula rate that estimates costs based on a projected test year for transmission plant additions and costs from an historical test year for the remaining formula rate inputs.²⁷ Commission policy requires that companies use a fully-synchronized test period cost-of-service study that is based upon either an historical test period or a projected test period.²⁸ In their answer, Applicants contend that the proposed rate formulas are consistent with the Commission's policy.

34. Applicants' assert the proposal is consistent with Commission policy because the proposed rate formulas use a projected test period,²⁹ and that the historical data are

²⁷ Applicants' Transmittal Letter stated:

Specifically KCP&L and GMO will implement a formulaic 'template' that will use actual calendar year cost data, the majority of which are contained in the FERC Form No. 1 and forecasted transmission plant balances to produce an ATRR for the Rate Year.

Applicants, November 6, 2009 Transmittal Letter at 4. Applicants' witness Alan C. Heintz further stated:

The Projected Gross Revenue Requirement is calculated utilizing actual costs for the prior calendar year, plus transmission plant additions budgeted for the current and subsequent calendar years and projected depreciation accruals, plus (or minus) transmission plant refunctionalized from distribution to transmission (or from transmission to distribution).

Exhibit GP-4, at 10.

²⁸ *Westar Energy, Inc.*, 122 FERC ¶ 61,268, at P 98 (2008). *See also Delmarva Power & Light Co.*, Opinion No. 262, 38 FERC ¶ 61,098, at 61,257 (1987) ("If the utility has accurately projected each of these three parameters—expenses, allocation factors, and billing determinants—then the utility should fully recover its cost of providing wholesale electric service. To the extent that each of these parameters has been forecast for a particular twelve-month period, they are, by definition, synchronized."); *Carolina Power & Light Company*, 47 FERC ¶ 61,160, at 61,530 (1989) ("[o]ur holding is based on our desire to maintain the integrity of our test year methodology").

²⁹ Applicants, December 15, 2009 Answer at 14.

merely used to develop data for the projected test period.³⁰ However, this assertion is not consistent with the information Applicants provided in their November 6 filing, where Applicants assert that the formula rate “will use actual calendar year cost data, the majority of which are contained in the FERC Form No. 1.” Thus, Applicants’ proposal to use different test periods for formula rate inputs (i.e., to use an historical test year for most formula rate inputs and a projected test year for transmission capital additions) is inconsistent with Commission precedent.³¹

35. Additionally, Applicants assert that the proposal is consistent with Commission policy because the rates are subject to a true-up mechanism that uses synchronized historical data. The Commission disagrees that the true-up mechanism makes Applicants’ proposal consistent with Commission policy requiring synchronized cost data. The initial rates charged to customers are based on both historical and projected year cost data. Applicants’ true-up mechanism implemented during the following year adjusts the charges for the next rate year.³² The customers paying the initial rates and the customers paying the rates reflecting the true-up mechanism, may be different. Thus, to be consistent with Commission precedent, Applicants must use synchronized cost data in both the initial rates charged to customers and the adjustment to those rates reflecting the

³⁰ *Id.* (stating “In developing the projections for the test period, Applicants rely on historical data to a significant extent, rather than starting from scratch and developing entirely new projections”).

³¹ *Westar Energy, Inc.*, 122 FERC ¶ 61,268 at P 98. Applicants further state that this “same method” has been approved by the Commission in prior proceedings. Applicants, December 15, 2009 Answer at 14. However, in support of this assertion, Applicants only cite to orders approving uncontested settlements. Applicants, December 15, 2009 Answer at 14 n.19 (citing *Westar Energy, Inc.*, 125 FERC ¶ 61,252 at P 3; *Oklahoma Gas & Electric Co.*, 127 FERC ¶ 61,296 at P 3). Uncontested settlements do not constitute binding Commission policy. *Florida Power Corporation*, 70 FERC ¶ 61,321, at 61,980 (1995). *See also Westar Energy, Inc.*, 125 FERC ¶ 61,252 at P 3 (“The Commission approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.”); *Oklahoma Gas & Electric Co.*, 127 FERC ¶ 61,296 at P 3 (same). Thus, Applicants’ contention that precedent supports their proposed methodology is without merit.

³² For example, the initial charges for 2010 will be based on both historical and projected costs. The true-up mechanism implement in June 2011 will adjust the next annual update in October 2011 for initial charges in 2012. *See Attachment 6*, p. 55.

true-up mechanism. Accordingly, in the settlement and hearing process ordered by the Commission, we direct the parties to address the utilization of synchronized cost data in a manner consistent with Commission policy.

3. Waivers

36. Applicants request any necessary waivers of section 35.13 of the Commission regulations, including waivers of the requirement to submit full Period I – Period II data and the requirement in section 35.13(a)(2)(iv) for determining the amount of any rate increase. The Commission has granted waivers of the requirements to provide such data previously in a series of cases involving transmission formula rates.³³ Thus, we will grant the waivers of section 35.13 and section 35.13(a)(2)(iv) as requested. Nonetheless, to the extent that parties at the hearing ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information, consistent with our orders in other similar cases.³⁴

37. We deny waiver of the 60-day notice requirement, because Applicants have not shown good cause to justify such a waiver.³⁵ Contrary to Applicants' assertions, the Commission's policy encouraging formula rates is not a sufficient reason to waive the 60-day notice requirement. Thus, we will accept Applicants' proposal to become effective January 6, 2010.

4. Suspension

38. We deny the Protesters' request for a five month suspension. In *West Texas*, we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension.³⁶ Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, the Commission will impose a suspension for a nominal period.

³³ E.g. *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 55-56 (2005), *reh'g denied*, 115 FERC ¶ 61,156 (2006); *Westar Energy, Inc.*, 122 FERC ¶ 61,268 at P 106.

³⁴ *Id.*

³⁵ 18 C.F.R. § 35.13 (2009); 16 U.S.C. § 824d(c) (2006).

³⁶ *West Texas Utilities Company*, 18 FERC ¶ 61,189, at 61,374.

5. Hearing and Settlement Judge Procedures

39. The proposal raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

40. Our preliminary analysis indicates that Applicants' proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will conditionally accept the filing, suspend it for a nominal period to be effective on January 6, 2010, subject to refund, and set it for hearing and settlement judge procedures.

41. At the hearing, Applicants will be required to demonstrate the justness and reasonableness of their proposal except to the extent the Commission has made summary findings in this order.

42. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁷ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.³⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

³⁷ 18 C.F.R. § 385.603 (2009).

³⁸ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) Applicants' proposal in Docket No. ER10-230-000 is hereby accepted for filing and suspended for a nominal period, to become effective January 6, 2010, subject to refund, subject to conditions and the outcome of hearing and settlement judge procedures, as discussed in the body of this order.

(B) Applicants' request for waiver of the requirements of section 35.13 to provide full Period I and Period II data, and waiver of section 35.13(a)(2)(iv) is hereby granted, as discussed in the body of this order.

(C) Applicants' request for waiver of the Commission's notice requirement is hereby denied as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the formula rate proposal as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.