

133 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Tampa Electric Company

Docket Nos. ER10-2061-000
ER10-2061-001

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING FILING AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 8, 2010)

1. On July 30, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ Tampa Electric Company (Tampa Electric) filed tariff sheets for inclusion in its wholesale requirements tariff (Requirements Tariff),² to implement a production cost of service formula rate (formula rates).³ The proposed tariff sheets establish the demand and energy rates for certain existing requirements customers.⁴ Tampa Electric also filed three revised service agreements⁵ under the Requirements Tariff, and separate rate

¹ 16 U.S.C. § 824d (2006).

² Tampa Electric's initial filing was submitted in Docket No. ER10-2061-000 on July 30, 2010 (July 30 Filing). Tampa Electric submitted an amended filing on August 12, 2010 (August 12 Filing) in Docket No. ER10-2061-001.

³ As described in more detail below, this production cost of service formula rate consists of three rates.

⁴ The customers listed in the Requirements Tariff Index of Customers are: Florida Power Corporation (Florida Power); the City of Fort Meade, Florida and the Florida Municipal Power Agency; the City of Wauchula, Florida (City of Wauchula); and the City of St. Cloud, Florida.

⁵ The service agreements are with: the City of Wauchula (Service Agreement No. 3); Florida Power (Service Agreement No. 5); and the City of St. Cloud, Florida (Service Agreement No. 6).

schedule revisions.⁶ In this order, we conditionally accept for filing the revised wholesale Requirements Tariff as amended, and the service agreements under the tariff, and suspend them for five months, to become effective March 1, 2011, subject to refund, and establish hearing and settlement judge procedures. We also direct Tampa Electric to submit a compliance filing within 30 days of the date of this order, as discussed below.

I. Background

2. Tampa Electric is an investor-owned utility, and wholly-owned subsidiary of Tampa Electric Energy, Inc., that generates, transmits, distributes, purchases and sells electric energy at wholesale and retail. Tampa Electric explains that the original Requirements Tariff which became effective February 28, 1991, consisted of bundled rates for both energy sales and transmission service, and has been unchanged for 19 years.⁷

3. Tampa Electric states that during the time that the existing stated rates under the Requirements Tariff have been in effect, Tampa Electric invested over \$1.7 billion to add or re-power generation to meet its requirements customers' electricity needs. Tampa Electric explains that this includes a \$1.2 billion commitment to reduce air and greenhouse gas emissions from its major power plants and \$225 million for the addition of five simple cycle combustion turbines to its system, which have a combined capacity of 300 MW. Tampa Electric states that these turbines meet the need to provide peaking power, and provide quick start capability, among other things. Tampa Electric also states that its current stated rates are not sufficient to compensate Tampa Electric and to allow it to reliably and effectively meet the needs of its requirements customers.⁸

II. Description of the Proposed Production Formula Rates

4. The July 30 Filing, as amended by Tampa Electric's August 12 Filing, proposes to unbundle the transmission and energy sales services under the existing Requirements

⁶ Tampa Electric filed Second Revised Rate Schedule FERC No. 55 with Reedy Creek Improvement District (Reedy Creek Contract) with its initial filing, but later withdrew it in its August 12, 2010 amended filing. Tampa Electric explained that Reedy Creek Improvement District exercised its right to terminate the Reedy Creek Contract as provided for in Section 15 of the contract. Tampa Electric filed a Notice of Cancellation of the Reedy Creek Contract on August 6, 2010, in Docket No. ER10-2164-000.

⁷ July 30 Filing, Transmittal Letter at 5.

⁸ *Id.*

Tariff. Under Tampa Electric's proposal, transmission service will be offered separately under Tampa Electric's Open Access Transmission Tariff filed in Docket No. ER10-1782-000,⁹ and energy service will be offered under the revised Requirements Tariff.

5. Tampa Electric proposes to change from a stated rate design to a formula rates design for demand and energy service under the Requirements Tariff in order to reflect changes in Tampa Electric's production-related costs on a timely basis. Tampa Electric states that the proposed Appendix A of the revised Requirements Tariff contains the production formula rates. Tampa Electric explains that the formula "rate year" will run from August 1 through July 31, with the exception of the initial rate year which will run from October 1, 2010, through July 31, 2011, because it is a partial rate year. Tampa Electric states that its formula rates are calculated from the data contained in 22 schedules. Tampa Electric states that one schedule, Schedule A-12, is the equivalent of the Commission's cost of service Statements BG and BH in section 35.13(h) of the Commission's regulations.¹⁰ Tampa Electric states that after each annual update of the formula rates, Schedule A-12 will be updated to show the revenue impact on the customers' monthly billings resulting from the revised rate.

6. To illustrate how its formula rates will work, Tampa Electric uses the rates proposed to be in effect for 2010 as an example. Tampa Electric explains that the formula will be populated using the prior year's (2009) actual costs, and adjusted for projected capital additions during the rate year (2010).¹¹ Tampa Electric also explains that after the publication of its FERC Form No. 1 in 2011, the differences between actual costs reported in the 2011 FERC Form No. 1 and projected costs collected during the 2010 rate year will be trued up with interest, and collected from or refunded to customers in 2011. Tampa Electric states that this method of combining actual costs with projected capital additions reduces the magnitude of the true ups, and is consistent with other formula rate methods previously accepted by the Commission.¹²

⁹ In the Docket No. ER10-1782-000 proceeding, the Commission set Tampa Electric's proposed formula rate for network service, point-to-point service, and ancillary services for hearing and settlement judge proceedings.

¹⁰ August 12 Filing, Alan C. Heintz Test., Ex. No. TEC 100 at 11-12 (citing 18 C.F.R. § 35.13(h) (2010)).

¹¹ August 12 Filing, Alan C. Heintz Test., Ex. No. TEC 100 at 6-9.

¹² *Id.* at 10 (citing the transmission formula rates of Baltimore Gas & Electric Co., Atlantic City Electric Co., Delmarva Power & Light Co., Potomac Electric Power Co., Commonwealth Edison Co., UGI Utilities, Inc., Trans-Allegheny Interstate Line Co., PPL Electric Utilities Corp, Minnesota Power Co., and others).

7. Tampa Electric states that part of its formula will be populated using data contained in its FERC Form No. 1. Tampa Electric's filing indicates that the remainder of its formula rates will be populated annually using data from "company records" or other source material not filed with the Commission.¹³ Tampa Electric states that the following components of its formula rates will be populated using the non-filed materials: pollution and non-pollution control construction work in progress (CWIP), depreciation, contract service agreements (Contract Service Agreements),¹⁴ plant held for future use, capital additions placed into service, Post-retirement Benefits Other than Pensions, generator step-up units, storm reserve accruals, and acquisition adjustments.¹⁵

8. Tampa Electric states that its formula will produce three rates: (1) the Generation Capacity Charge; (2) the Non-fuel Variable Cost Energy Charge; and (3) the Fuel and Purchased Power Charge. Schedule A-1 develops the Generation Capacity Charge that requirements customers will pay. Tampa Electric explains that the Generation Capacity Charge is the demand-related charge, and is calculated using a non-levelized rate base to develop a net annual revenue requirement, which includes components such as return, income taxes, taxes other than income taxes, plant-related depreciation, administrative and general expenses, and operation and maintenance expenses, functionalized to production. Tampa Electric also includes Pollution Control CWIP in its rate base, and explains that it will earn a return as part of this charge.

9. As part of the Generation Capacity Charge, Tampa Electric proposes to recover Post-retirement Benefits Other than Pensions based on the dollar amount of actual claims expensed for the year. Tampa Electric states that it will use this method because it does not have an external trust and therefore does not have actuarially-determined Post-retirement Benefits Other than Pensions amounts, and may only rely on the actual payments made on behalf of retirees for Post-retirement Benefits Other than Pensions.

¹³ Tampa Electric Company, FERC Electric Tariff, Second Revised Vol. No. 1, Schedules A-1.1, A-3.1, A-3.2, A-4, A-4.2, A-4.3, A-4.4, A-6, A-6.1, and A-7.

¹⁴ As described above, Tampa Electric has three service agreements with the City of Wauchula, Florida, Florida Power, and the City of St. Cloud, Florida. In the July 30 Filing, Tampa Electric describes the revised Service Agreements submitted with its formula rates proposal as agreements governing the sale of capacity and energy under its Requirements Tariff. July 30 Filing at 14-18. Tampa Electric explains in its answer that the Contract Service Agreements, on the other hand, are maintenance agreements on certain generating units to keep them in good working order. Tampa Electric's Answer at 20.

¹⁵ August 12 Filing, Alan C. Heintz Test. Exh. No. TEC-102 at 2-28.

10. Tampa Electric explains that Schedule A-2 of its Requirements Tariff develops two of the rates which are the energy components: the Non-fuel Variable Cost Energy Charge and the Fuel and Purchased Power Charge. These two charges combined produce the Energy Charge. Tampa Electric states that all charges in its Requirements Tariff will remain constant during the rate year, with the exception of the Fuel and Purchased Power Charge, which will be calculated on a monthly basis.

11. Tampa Electric states that Appendix B of the Requirements Tariff contains the formula rates protocols that describe how Tampa Electric will update its formula rates in future years, what the review process is, how customer challenges will be resolved, and how changes to the annual updates will be implemented. Specifically, the protocols provide that the annual update for future rate years will be no later than July 1 of each year. The protocols allow for an open meeting to provide customers with information and answer questions. This meeting will be held no earlier than 15 days before and no later than 30 days after the annual update is posted on Tampa Electric's website and filed with the Commission.

12. Under the formula rates protocols, customers, regulatory agencies, and consumer advocates have up to 90 days to serve "reasonable" information requests on Tampa Electric, and Tampa Electric shall make a good-faith effort to respond to such requests within 15 business days.¹⁶ Section 3 of the protocols precludes a party from filing a formal challenge with the Commission pursuant to section 206 of the FPA concerning any issue that the party had not first raised in a preliminary challenge to Tampa Electric. Section 3 also provides that interested parties shall have up to 162 days from the date that Tampa Electric publishes its annual update to file a formal challenge with the Commission.

13. Tampa Electric requests a return on equity (ROE) of 11.25 percent, with an actual capital structure based on FERC Form No. 1 data. Tampa Electric also requests that the Commission make its proposed Requirements Tariff effective on October 1, 2010.

14. To the extent that its filings require waivers, Tampa Electric requests waiver of the Commission's cost of service regulations including, without limitation, waiver of section 35.13(a)(2)(iv) (computing rate increases), section 35.13(d)(1), (2), (5), (Period I-Period II data and supporting work paper requirements), section 35.13(d)(6) (filing of attestation), and section 35.13(h) (cost of service statements).

¹⁶ Tampa Electric Company, FERC Electric Tariff, Second Revised Vol. No. 1, Appendix B, Section 3(a)(ii).

III. Notice of Filing and Responsive Pleadings

15. Notice of Tampa Electric's July 30 Filing was published in the *Federal Register*, 75 Fed. Reg. 48,962 (2010), with interventions and protests due on or before August 20, 2010. The City of Wauchula filed a timely motion to intervene and protest. The Orlando Utilities Commission filed a timely motion to intervene, motion to reject and protest. Florida Power filed a timely motion to intervene. Reedy Creek filed a timely motion to intervene and comments.

16. Notice of Tampa Electric's August 12 Filing was published in the *Federal Register*, 75 Fed. Reg. 51,451 (2010), with interventions and protests due on or before September 2, 2010. Florida Power filed a protest. Tampa Electric filed an answer to the protests submitted by Florida Power and by Orlando Utilities Commission. Orlando Utilities Commission filed an answer to Tampa Electric's answer.

17. The City of Wauchula argues that Tampa Electric's proposed amendments will result in rates and charges that are unjust and unreasonable. Orlando Utilities Commission raises a number of issues concerning Tampa Electric's proposal, challenging the inputs to the formula rates and other aspects of Tampa Electric's filings. Florida Power states that it supports many arguments raised by Orlando Utilities Commission in its protest.

A. Rate Base

1. Orlando Utilities Commission's Protest

18. Orlando Utilities Commission argues that Tampa Electric's filing is characterized by systemic errors and over-recoveries that result in a 79.6 percent increase in the demand charge, and a 90 percent increase in the energy charge for customers.¹⁷ It also contends that the filing fails to provide a verifiable basis for numerous inputs to the proposed formula and contains numerous errors that violate Commission ratemaking policy. In particular, Orlando Utilities Commission contends that Tampa Electric's rate base is overstated. For example, Orlando Utilities Commission argues that Tampa Electric's formula rates charge customers for both Pollution Control CWIP and Non-Pollution Control CWIP Contract Service Agreements in rate base, using numbers that will be updated annually based on company records that are not verifiable or supported.¹⁸ Orlando Utilities Commission argues that some of this CWIP appears to be in the form of Contract Service Agreements equal to \$65,277,680, but it is difficult to verify because

¹⁷ Orlando Utilities Commission's Protest at 3, 5, 44.

¹⁸ *Id.* at 25-26.

there is no explanation or support. Orlando Utilities Commission maintains that the Contract Service Agreements should be excluded from rate base, and if corrected, this would reduce the revenue requirement by \$8,134,000.

19. The Orlando Utilities Commission challenges Tampa Electric's use of company records rather than FERC Form No. 1 data to support its costs and expenses. It also states that when the CWIP in Tampa Electric's formula rates based on company records is compared with the CWIP that Tampa Electric reports to the Commission separately in its annual 2009 FERC Form No. 1, the CWIP that Tampa Electric proposes to charge in its formula rates exceeds the FERC Form No. 1 number by \$93,754,885. The Orlando Utilities Commission states that while it is not possible to verify the accuracy of this excess CWIP in the formula rates because it is from company records, CWIP charged to customers in rates should not exceed the CWIP that Tampa Electric reports to the Commission in its FERC Form No. 1 filing. Orlando Utilities Commission argues that this error may be a result of Tampa Electric double counting CWIP in the formula rates under plant additions for that year, and also as CWIP. Orlando Utilities Commission contends that correcting this error will reduce the formula rates revenue requirement by \$8,126,767.

20. Additionally, Orlando Utilities Commission notes that Tampa Electric's formula rates begin with a total production-related Accumulated Deferred Income Tax (ADIT) of \$346,041,716. However, Orlando Utilities Commission maintains that this amount is further reduced without explanation to \$221,312,562. Orlando Utilities Commission asserts that the formula rates are flawed because of this unexplained reduction. Orlando Utilities Commission argues that this flaw reduces the rate base by \$124,729,154 and revenue requirement by \$15,554,141.

21. Orlando Utilities Commission also argues that Tampa Electric includes costs populated from company records for generator step-up units in its formula rates. It argues that costs of generator step-up units are already recovered under market-based rates and are unregulated, and therefore, they should not be included in Tampa Electric's cost-based formula rates. Orlando Utilities Commission challenges other aspects of the formula rates, such as unjustified large increases in expense-related adjustments, under-projected revenue credits, flawed billing determinants, and inflated revenue requirement.¹⁹

¹⁹ *Id.* at 30-34, 37-38.

2. Tampa Electric's Answer

22. Tampa Electric argues that Orlando Utilities Commission's conclusion about the propriety of including the Contract Service Agreements in its rate base is incorrect because such agreements provide for maintenance services on the indicated production units to keep them in working order. Nevertheless, Tampa Electric states that it reviewed the items on Schedule A-3.1, and it acknowledges that some of the items have been double-counted in rate base including the amount associated with the Polk 1 Contract Service Agreement, and the amount associated with Pollution Control CWIP.

23. With respect to Orlando Utilities Commission's arguments regarding Plant Additions, Tampa Electric acknowledges that Pollution Control CWIP was inadvertently double-counted by including it in Plant Additions. Tampa Electric states that the correction will reduce the revenue requirement by approximately \$9.74 million. It states that no further adjustment for double counting is necessary.

24. In response to Orlando Utilities Commission's arguments regarding Tampa Electric's use of company records rather than FERC Form No. 1 data to support its costs and expenses, Tampa Electric asserts that most of the items specified by Orlando Utilities Commission are tied directly to general ledger accounts. Tampa Electric states that it "can provide more specific explanation and documentation of these items in exchange for information that attends settlement judge procedures."²⁰

25. Tampa Electric agrees that its formula rates incorrectly reduced ADIT by applying a net plant allocator to the ADIT. Tampa Electric commits to make a compliance filing, within 30 days following the date of a Commission order on Tampa Electric's filing in this docket, to correct the CWIP double counting and the ADIT error, and that reflects the reductions in the first month's rates.

26. Tampa Electric further states that all of the costs in the accounts Orlando Utilities Commission identifies as lacking supporting documentation can be documented and verified by Tampa Electric in an information exchange in settlement judge procedures. Tampa Electric argues that Orlando Utilities Commission has mischaracterized and overstated the expenses identified in its protest. Tampa Electric also states that issues Orlando Utilities Commission raises regarding fuel inventory, production materials and supplies, revenue credits, and billing determinants are misconceptions that can be resolved in the context of settlement judge procedures.

²⁰ Tampa Electric's Answer at 26.

B. ROE**1. Orlando Utilities Commission's Protest**

27. Orlando Utilities Commission argues that Tampa Electric's proposed 11.25 percent ROE fails to satisfy the Commission's corresponding risk criterion. Orlando Utilities Commission maintains that Tampa Electric proposes an excessive ROE and that the witness testimony supporting its ROE should not be relied on because the analysis fails to comport with established Commission precedent, relies on inconsistent and contradictory data, selects inappropriate electric companies to populate its proxy group of firms, and fails to address the business and financial risks actually facing Tampa Electric. For example, Orlando Utilities Commission argues that Tampa Electric uses a regional proxy group even though the Commission abandoned the use of the regional proxy group in *Southern Cal. Edison Co.*²¹ In addition, Orlando Utilities Commission provides its own discounted cash flow analysis to support its argument that Tampa Electric's request for an 11.25 percent ROE is excessive, unsupported, and should be reduced to 9.3 percent.

2. Tampa Electric's Answer

28. Tampa Electric argues that its proposed ROE is not excessive, and argues that Tampa Electric's cost of equity was estimated by examining current capital markets and applying the Commission's discounted cash flow method, and also referenced alternative ROE benchmarks developed by applying the discounted cash flow model to a group of non-utility companies, and by reference to expected earned rates of return for utilities. Tampa Electric contends that it is on this basis that it concludes that an 11.25 percent ROE is reasonable. Tampa Electric also argues that an ROE of 11.25 percent falls well within the 8.2 percent and 13.6 percent zone of reasonableness. Tampa Electric further maintains that the proxy group criteria used in its analysis is consistent with Commission precedent and that Orlando Utilities' challenges with respect to the proxy group criteria are without merit.

C. Depreciation Expense**1. Orlando Utilities Commission's Protest**

29. Orlando Utilities Commission argues that Tampa Electric's proposed depreciation rates are excessive, in part because they impermissibly include increases for negative net salvage costs associated with projected plant retirements. Orlando Utilities Commission

²¹ 131 FERC ¶ 61,020 (2010).

asserts that Tampa Electric does not have any legal right to recover these speculative future costs, otherwise they would be recovered as an Asset Retirement Obligations cost in Schedule A-4.2 of the formula rates, and not in the depreciation rate.²² With respect to amounts that Tampa Electric is legally obligated to incur, Orlando Utilities Commission maintains that Tampa Electric reported to the Securities and Exchange Commission that it had already recovered regulatory liabilities titled “Accumulated reserve-cost of removal” in amounts that were \$500 million over and above any net salvage Tampa Electric has actually incurred.²³

30. Orlando Utilities Commission further argues that while Tampa Electric’s formula rates reference the 2009 FERC Form No. 1, page 337 as the source of depreciation rates, that page of Tampa Electric’s FERC Form No. 1 does not contain any depreciation rates. Orlando Utilities Commission states that Tampa Electric’s FERC Form No. 1 is the most recent FERC Form No. 1 to contain data on depreciation, but even then the format of the depreciation data in the formula rates does not match the depreciation data contained in Tampa Electric’s 2007 FERC Form No. 1.²⁴

2. Tampa Electric’s Answer

31. Tampa Electric responds that the inclusion of negative net salvage costs in depreciation rates is consistent with long-established practice sanctioned by the Commission. Tampa Electric maintains that the removal portion of its depreciation rates allocates that expected cost over the remaining life of the assets that are serving, and thus benefiting the ratepayers paying the cost. Therefore, the cost of the removal increment is a true cost of service that is appropriately reflected in rates. Tampa Electric also states that Orlando Utilities Commission’s preliminary review of Tampa Electric’s proposed depreciation rates is flawed, explaining that its 2009 FERC Form No. 1 does not include any depreciation data because there have been no changes to that part of its FERC Form No. 1 since 2007, the year for which such data were last entered.

²² Orlando Utilities Commission’s Protest at 21.

²³ *Id.*

²⁴ *Id.* at 19-23. Orlando Utilities Commission notes that the depreciation rates proposed by Tampa Electric in this proceeding are the same as those approved by the Florida Public Service Commission. Orlando Utilities Commission requests that the Commission take into account the fact that Tampa Electric is required by state law to file updated depreciation rates every four years, and to the extent that Tampa Electric uses state-approved depreciation rates here, the same updated depreciation rates should be relied on in this case.

D. True-up and Transparency**1. Orlando Utilities Commission's Protest**

32. Orlando Utilities Commission contends that Tampa Electric's wholesale Requirements Tariff and annual true-up procedures should be corrected because Tampa Electric included all of its generation and power supply costs in its revenue requirement. Orlando Utilities Commission argues that the Requirements Tariff should be revised to state that all the ancillary service costs, except those costs recovered through Tampa Electric's transmission rates, are included in the Power Supply rates, in order to avoid over-recovery of costs.

33. Orlando Utilities Commission also challenges Tampa Electric's formula rates implementation protocols. Orlando Utilities Commission argues that section 1(b) of the proposed protocols could be read to preclude a FPA section 206 challenge during the rate year to rates that do not change during that rate year. As such, the Orlando Utilities Commission contends that the Commission should order Tampa Electric to amend section 1(b) to provide that notwithstanding the rate provisions therein, FPA section 206 rights as provided elsewhere in the protocols shall not be limited by maintaining a constant rate during the rate year.²⁵

2. Tampa Electric's Answer

34. Tampa Electric argues that Orlando Utilities Commission's issues regarding certain aspects of the formula rates implementation protocols, including the true-up process, can be resolved in settlement judge procedures.

E. Termination of Reedy Creek Contract**1. Comments and Protests**

35. Orlando Utilities Commission also takes issue with Tampa Electric's early termination of the Reedy Creek Contract, arguing that such termination is unduly discriminatory because Reedy Creek has been offered early termination and the retention of their existing lower rates through the term of the Reedy Creek Contract ending December 31, 2010, while other wholesale power customers, such as the City of

²⁵ In addition to the issues discussed herein, Orlando Utilities Commission also takes issue with provisions in section 1(d)(xi), section 2(c), section 3(a)(ii), section (1)(c), and section 5(a)(i)-(ii) of Tampa Electric's formula rates implementation protocols. Orlando Utilities Commission's Protest at 41-42.

St. Cloud, have not been offered these terms. Orlando Utilities Commission argues that the City of St. Cloud and Reedy Creek are similarly situated and should be offered comparable terms, and that the Commission should direct Tampa Electric to do so.

36. Florida Power states that it does not object to the early termination of the Reedy Creek agreement or to Reedy Creek receiving service under the existing rate for the remainder of its service agreement. However, Florida Power states that Tampa Electric's arrangement with Reedy Creek creates a difference in rates among similarly-situated customers in contravention of Commission policy.

37. Reedy Creek states that it takes no position concerning the revisions proposed by Tampa Electric and supports Tampa Electric's withdrawal of the Reedy Creek Contract from its July 30 Filing.

2. Tampa Electric's Answer

38. Tampa Electric responds to protesters' argument that the termination of the Reedy Creek Contract is unduly discriminatory by pointing out that their argument is premised on the other wholesale power customers who were not offered early termination of their contract being similarly situated. Tampa Electric asserts that any similarities are superficial and do not warrant mandatory identical treatment. For example, Tampa Electric states that unlike Orlando Utilities Commission and Florida Power, Reedy Creek is not a customer under Tampa Electric's Requirements Tariff. Tampa Electric further states that the Reedy Creek Contract is an independently negotiated rate schedule that in no way resembles the provisions of the service agreements under the Requirements Tariff. According to Tampa Electric, some unique features of the Reedy Creek Contract include a commitment by Tampa Electric to balance Reedy Creek's system load at no additional charge, the ability of Reedy Creek to vary its contract demand on a year-to-year and even a day-to-day basis, the ability of Reedy Creek to call upon additional firm capacity in the event of an emergency, and the ability of the parties to negotiate fuel energy charges.

39. Tampa Electric asserts that this last feature was challenged by Florida Power as unduly discriminatory when the Reedy Creek Contract was first filed. Tampa Electric asserts that the Commission rejected that challenge, finding that the different treatment was justified by the business circumstances unique to the transaction between Tampa Electric and Reedy Creek.²⁶ Additionally, Tampa Electric contends that as it explained in its filing, the unique provisions of the Reedy Creek Contract had become increasingly

²⁶ Tampa Electric's Answer at 29 (citing *Tampa Electric Co.*, 71 FERC ¶ 61,245, at 61,942 (1995), *reh'g denied*, 83 FERC ¶ 61,262 (1998)).

problematic with the passage of time and changes in regulatory and other circumstances. Therefore, Tampa Electric argues that its decision to accept early termination of the Reedy Creek Contract does not mean it must offer the same to other customers regardless of substantial differences in circumstances and contractual arrangements. Tampa Electric also maintains that the Commission has recognized that material dissimilarities may be based on either rates or service.²⁷

F. Hearing and Suspension Period

1. Protests

40. Orlando Utilities Commission also requests that the Commission reject, or in the alternative, order a maximum suspension of Tampa Electric's filing and data submitted in Attachment C. Orlando Utilities Commission argues that Tampa Electric's proposed rates are excessive by \$136.6 million, which justifies a full five-month suspension under *West Texas*.²⁸ In particular, Orlando Utilities Commission argues: (1) the expense-related adjustments (such as Post-retirement Benefits Other than Pensions) lack support necessary to justify the large increases proposed; (2) Tampa Electric has severely under-projected its revenue credits; (3) the proposed formula rates use flawed billing determinants that result in an inflated Generation Capacity Charge and that do not match load data used for rate design;²⁹ and (4) the proposed formula contains numerous unexplained or unsupported costs (such as inclusion of Pollution Control and Non-Pollution Control CWIP in rate base of \$130 million) and expenses, many of which are from company records³⁰ (such as Allowance for Funds Used During Construction (AFUDC)).

41. Orlando Utilities Commission also requests that if the Commission sets this matter for hearing, this case be assigned a Track III schedule to ensure the proposed increase is properly and fully resolved. Orlando Utilities Commission argues that the multiple

²⁷ *Id.* (citing *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115 (2003), *order on reh'g*, 106 FERC ¶ 61,223 (2004)).

²⁸ Orlando Utilities Commission Protest at 44-48 (internal citations omitted). Orlando Utilities Commission argues that the precedent relied on by Tampa Electric to support a nominal suspension of its filing is inapposite here because the Commission has only granted nominal suspension in transmission cases where the utility was undertaking significant transmission investment. *Id.* at 46.

²⁹ Orlando Utilities Commission Protest at 33-35 (stating that the actual energy consumption of several customers is significantly less than their contract demand).

³⁰ *Id.* at 24-27, 35-36.

concerns and complex issues identified in its protest will require extensive discovery, and that a Track II schedule would therefore be inadequate.

42. Florida Power argues that because Tampa Electric's termination of the Reedy Creek Contract creates a difference in rates among similarly-situated customers, the Commission should require Tampa Electric to extend to Florida Power the current rate until its agreement with Tampa Electric expires on February 28, 2011. Florida Power argues that, at a minimum, the Commission should suspend the proposed formula rates subject to refund for the maximum five-month suspension period starting from the date of Tampa Electric's amended filing, August 12, 2010.

2. Tampa Electric's Answer

43. Tampa Electric argues that while Orlando Utilities Commission and Florida Power have argued in favor of a full five-month suspension, they have failed to make a convincing argument that more than ten percent of the proposed rate increase appears to be excessive, as is required under *West Texas*.³¹ Tampa Electric contends that there are ample grounds, as explained in its answer, to support its conclusions regarding the appropriate ROE for Tampa Electric. It maintains that the size of the percentage increase in Tampa Electric's rates is a result of the fact that the rates have never been changed in the 19 years since they were initially filed and accepted, and has nothing to do with the over statement of Tampa Electric's revenue requirement. Therefore, Tampa Electric argues that the percentage of the rate increase should have no bearing on the suspension period. Additionally, Tampa Electric asserts that there is little to distinguish this formula rates filing from many others in which the Commission has suspended proposed rates for a nominal period, subject to refund and hearing and settlement judge procedures.

44. Additionally, Tampa Electric argues that it is unnecessary for the Commission to make a determination at this time on whether the hearing should be assigned a Track III hearing schedule. Tampa Electric states that in the event that the settlement judge procedures lead to an impasse and it becomes necessary to proceed to a hearing, requests regarding the appropriate track for the hearing may then be made in view of, for example, the amount of discovery that has already transpired.

3. Orlando Utilities Commission's Answer

45. Orlando Utilities Commission argues that a nominal suspension period is not warranted because Tampa concedes in its answer that its filing has two errors that partially recognize adjustments that Orlando Utilities Commission proposed. Those

³¹ *West Texas*, 18 FERC ¶ 61,189 (1982).

adjustments, in combination with the other apparent deficiencies in the filing that Tampa Electric concedes, exceed ten percent of the increase. Orlando Utilities Commission contends that Tampa Electric's offer to reflect these adjustments in a compliance filing does not obviate the necessity for considering them in the suspension analysis and would be contrary to the intent behind the Commission's suspension policy. Orlando Utilities Commission also puts forth the following additional arguments: (1) Tampa Electric's ROE is excessive; (2) Tampa Electric failed to respond to certain of Orlando Utilities Commission's proposed adjustments; and (3) Tampa Electric has failed to provide data or documentation to explain its level of expenses. Therefore, Orlando Utilities Commission maintains that a maximum suspension is fully warranted under *West Texas*.

IV. Discussion

A. Procedural Matters

46. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

47. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Tampa Electric and Orlando Utilities Commission because they have provided information that assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

48. Tampa Electric's proposed modifications to its Requirements Tariff and the service agreements raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept Tampa Electric's proposed revisions to its Requirements Tariff, as amended, and the service agreements, for filing, suspend them for the maximum five-month period, to be effective March 1, 2011, subject to refund, and set them for hearing and settlement judge procedures. We will also require Tampa Electric to submit a compliance filing within 30 days of the date of this order, as explained further below.

49. Our preliminary analysis indicates that Tampa Electric's proposed revisions to its Requirements Tariff have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. This analysis indicates that 10 percent or more of the requested rate increase may be excessive. It is our policy to suspend a requested rate increase for the maximum five-month period in those cases where our preliminary analysis indicates that 10 percent or more of the

requested increase may be excessive.³² As explained above, protestors have challenged the calculation of the rate base and components of Tampa's proposed formula rates.

50. In addition, Orlando Utilities Commission and Florida Power have challenged the termination of Reedy Creek's contract with Tampa Electric, arguing that it is unduly discriminatory for Tampa Electric to offer an early termination and retention of lower rates through the Reedy Creek Contract. Orlando Utilities Commission argues that it should be offered the same early termination and rate terms. It is unclear whether these protestors are seeking changes to their existing contracts or modifications to the proposed service agreements. To the extent that these protestors are seeking changes to their existing contracts with Tampa Electric (i.e., adding an early termination provision or extending the current rate), we find that those arguments are beyond the scope of this proceeding. However, any aspect of these issues related to the Tampa Electric's proposed Requirements Tariff or the proposed service agreements may be addressed during the hearing and settlement judge procedures ordered below.

51. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.³³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³⁴ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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 commencement of a hearing by assigning the case to a presiding judge.

³² *Id.* at 61,374-75; accord *Tucson Electric Power Co.*, 76 FERC ¶ 61,235, at 62,147, n.25 (1996); see also *Kentucky Utilities Co. v. FERC*, 125 FERC ¶ 61,242 (2008).

³³ 18 C.F.R. § 385.603 (2010).

³⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

C. Other Issues

1. Waivers

52. Tampa Electric requests any necessary waivers of section 35.13 of the Commission's regulations, including waivers of the requirements to submit full Period I and Period II data and work papers and cost of service statements in sections 35.13(a)(2)(iv), 35.13(d)(1), (2), (5) and (6), and 35.13(h) of the Commission's regulations.

53. We deny Tampa Electric's request for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations.³⁵ Prior Commission orders have granted waiver of cost support in formula rate cases because the formula rates used FERC Form No. 1 data, and therefore, full Period I and Period II data were not needed to evaluate those proposals.³⁶ However, unlike those cases, Tampa Electric's formula rates will be updated using a substantial amount of costs that are not from its FERC Form No. 1 data or publicly-available documents.³⁷ Furthermore, as discussed above, Tampa Electric has already admitted that there are known flaws with its formula rates that are derived from company records. Therefore, Tampa Electric's formula rates do not qualify for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations as it applies to amounts not supported by FERC Form No. 1 data. Accordingly, we direct Tampa Electric to submit the information along with all supporting work papers and testimony required by section 35.13 of our regulations with its compliance filing, which must be submitted within 30 days from the date of this order.

54. Several of the components in Tampa Electric's formula rates are based on company records only, and therefore do not illustrate how its rates were derived from FERC Accounts or the formulas used. Commission policy requires that a formula rate clearly state the formula used to achieve the rate. The formula rates should contain calculations, work papers, and the detail necessary to explain how the numbers were

³⁵ 18 C.F.R. § 35.13 (2010).

³⁶ *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308, at P 56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009).

³⁷ *See, e.g.*, Tampa Electric Company, FERC Electric Tariff, Second Revised Vol. No. 1, Schedules A-1.1, A-3.1, A-3.2, A-4, A-4.2, A-4.3, A-4.4, A-6, A-6.1, and A-7. Tampa Electric's proposed Schedules contain charges that will be modified annually based on company records.

derived from FERC Accounts.³⁸ Where a utility includes line item numbers but does not record the formula used in calculating the rate, or where the utility does not show how the rate is derived from the FERC Accounts, or where the accounting transparency in the formula rate is lacking due to projections of data or other factors, a company has the potential to exercise discretion in calculating the rate.³⁹ To ensure that the detail and specificity of Tampa Electric's rates are sufficient, we direct Tampa Electric to submit a compliance filing, within 30 days of the date of this order, that includes the company records upon which it has based its proposed formula rates components, and to file tariff sheet modifications containing calculations, work papers, and the detail necessary to explain how the *numbers* were derived from FERC Accounts.

55. For a utility to include CWIP in rate base, the Commission's regulations require the company to propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base.⁴⁰ Tampa Electric has not filed this data and does not request waiver of this requirement. Public utilities that receive a current return on CWIP through rate base recover this cost in a different period than it would ordinarily be charged to expense under the general requirements of the Commission's Uniform System of Accounts.⁴¹ To promote comparability of financial information between entities, the Commission has required a specific accounting treatment or the use of footnote disclosures to recognize the economic effects of having CWIP in rate base.⁴² Because Tampa Electric proposes to

³⁸ See *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003); *American Electric Power Service Corporation*, 120 FERC ¶ 61,205 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (Deficiency letter issued, formula rates later set for hearing); *Trans Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 59 (2007); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 (2008); *Boston Edison Co.*, 111 FERC ¶ 61,266 (2005); *Midwest Independent System Operator, Inc.*, 108 FERC ¶ 61,235, at 68 (2004). See also, *ISO New England, Inc.*, 100 FERC ¶ 61,140 (2002).

³⁹ See *Maine Yankee Atomic Power Co.*, 43 FERC ¶ 61,453, at 61,923 (1988) (requiring specificity in the calculation of formula rate, as it appears in the form of a rate schedule).

⁴⁰ 18 C.F.R. § 35.25 (2010).

⁴¹ *Id.* Part 101.

⁴² See, e.g., *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, *order on reh'g*, 121 FERC ¶ 61,009 (2007); *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008). See also *The United Illuminating Co.*, Application for Incentive Rates, Docket No. ER07-653-000, at Exh. Nos. UI-13, UI-14 and UI-15 (filed Mar. 23, 2007); *Boston Edison Company*, OATT Revisions Filing, Docket No. ER05-69-000, at Exh. Nos. BE-2

(continued...)

include CWIP in rates, we direct Tampa Electric to make a compliance filing, within 30 days of the date of this order, with proposed accounting and ratemaking procedures.

2. Errors in Formula Rates Components

56. As discussed above, Tampa Electric acknowledges that its formula rates include a double recovery of CWIP and states that the recovery is shown first in the CWIP line items in rate base, and then again as Plant Additions line items in rate base. Tampa Electric also acknowledges that its formula rates improperly apply a net plant allocator to ADIT. In its answer, Tampa Electric commits to correcting these errors in a compliance filing. Therefore, we direct Tampa Electric to submit a compliance filing, within 30 days of the date of this order, that corrects these errors.

3. Confidentiality Provision

57. Section 9 (Confidentiality) of Tampa Electric's proposed service agreements contains a provision for one party to disclose information it has received from the other to comply with any applicable law or regulation, if such party first notifies the other, in writing, and provides the other with a reasonable opportunity to seek a protective order or other form of confidential treatment prior to such disclosure.

58. As the Commission has previously stated, the ability to obtain necessary information on a timely basis is critical to the Commission's ability to monitor and address market power concerns and to ensure that rates remain just and reasonable and are not unduly discriminatory or preferential.⁴³ The Commission must be able to obtain information within specified time frames, including the confidential information at issue here. Therefore, Tampa Electric is directed to make a compliance filing, within 30 days of the date of this order, modifying Section 9 of its service agreements to include the following language regarding the release of confidential information to the Commission or its staff:

Notwithstanding anything in this Section 9 to the contrary, if the Commission or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Service Agreement, the Party

(at 4-5) and BE-6 (filed Oct. 25, 2004); American Transmission Company LLC, OATT Rate Formula Modifications Filing, Docket No. ER04-108-000, at Exh. Nos. ATC-9 and ATC-10 (filed Oct. 30, 2003).

⁴³ *MidAmerican Energy Co.*, 113 FERC ¶ 61,274, at P 49 (2005); *Virginia Electric and Power Co.*, 97 FERC ¶ 61,262 (2001).

shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Party shall notify the other Party to the Service Agreement when it is notified by FERC or its staff that a request for disclosure of, or decision to disclose, confidential information has been received, at which time either of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

59. We do not believe that either party to each service agreement should be required to notify the other party of the receipt of a request for information by the Commission or its staff. Further, neither party should voluntarily notify the other party prior to the release of the confidential information to the Commission or its staff.⁴⁴ That information will, in any event, at the parties' request be treated confidentially under the Commission's regulations until the Commission should rule otherwise.⁴⁵ Furthermore, the Commission's regulations specifically provide for the notification to the Disclosing Party both of the request for disclosure of confidential information⁴⁶ and of a decision to disclose.⁴⁷ As a result, the parties will have the opportunity to respond before such information is made public.

4. Annual Review Procedures and Changes to the Formula Rate

60. We find that sections 3 (Annual Review Procedures) and 5 (Changes to the Formula Rate) of Tampa Electric's proposed protocols would unreasonably preclude a party from making a formal challenge concerning any issue that the party has not raised in a preliminary challenge. The Commission has previously disallowed such a preliminary challenge prerequisite.⁴⁸ As the Commission explained in several cases,⁴⁹

⁴⁴ See *supra* note 43; accord *PJM Interconnection, L.L.C.*, 93 FERC ¶ 61,269, at 61,868-69 (2000).

⁴⁵ 18 C.F.R. § 388.112(c)(1) (2010). See also 18 C.F.R. §§ 1b.9, 1b.20 (2010).

⁴⁶ 18 C.F.R. § 388.112(d) (2010).

⁴⁷ *Id.* § 388.112(e).

⁴⁸ *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098, at P 46 (2008) (*VEPCO*); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (*Pioneer*).

⁴⁹ *VEPCO*, 123 FERC ¶ 61,098 at P 46; *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 15-16 (2008) (*PSE&G*); *American Elec. Power Service Corp.*, 124 FERC ¶ 61,306, at P 32 (2008); *Pioneer*, 126 FERC ¶ 61,281 at P 112.

the courts have recognized that FPA section 206 permits customers to challenge formula rates.⁵⁰ The Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula.⁵¹ Indeed, customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.⁵²

61. The Commission has explained that it does not object to a utility's efforts to resolve matters with its customers before resorting to a section 206 complaint. However, that process may not impact the rights of any party that has standing to bring a complaint.⁵³ Because we are concerned that the tariff language in Tampa Electric's proposed protocols limits parties' and the Commission's rights to initiate a section 206 proceeding, Tampa Electric must revise its tariff to remove the provisions in sections 3 and 5 that prohibit parties from raising in a section 206 complaint any issues that were not raised in a preliminary challenge. Accordingly, we will require Tampa Electric to make a compliance filing within 30 days of the date of this order to revise the protocols so that they do not limit a customer's or the Commission's rights with respect to challenges to the inputs into the formula rate.

⁵⁰ *Public Utilities Commission of California v. FERC*, 254 F.3d 250, 258 (D.C. Cir. 2001) (“Because relief can be sought pursuant to section 206 in the event a pass through of ... costs results in unjust and unreasonable rates, the Commission's acceptance of the ISO's formula rate without additional section 205 filings does not leave the [state public utilities commission] or ratepayers without any statutory recourse.”).

⁵¹ *North Carolina Electric Membership Corp. v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) (rejecting the utility's efforts to limit the period of review to the prior 12 months by stating “[w]hile prompt identification of disputes is certainly a reasonable goal to strive for, the Commission cannot allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not complain in as prompt a manner as the company believes the customer should have.”). The Commission has held repeatedly that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. See *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28, *order on reh'g*, 113 FERC ¶ 61,214 (2005), *reh'g denied*, 119 FERC ¶ 61,109 (2007); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

⁵² See, e.g., *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992) (allowing review of potentially imprudent costs charged to customers in prior-year formula rates).

⁵³ See *VEPCO*, 123 FERC ¶ 61,098 at P 45.

62. Because we have determined that Tampa Electric must revise the protocols so that they do not limit a customer's or the Commission's rights with respect to challenges to the inputs into the formula rate and so that they do not impose a burden of proof for changes to the formula rate that is more demanding than the burden of proof under section 206 of the FPA, these issues are not included in the hearing and settlement procedures.

The Commission orders:

(A) Tampa Electric's revised Requirements Tariff, as amended, and accompanying service agreements, are hereby accepted for filing and suspended for five months, to become effective March 1, 2011, subject to refund, as discussed in the body of this order.

(B) Tampa Electric is hereby ordered to submit a compliance filing, within 30 days of the date of this order, that includes the required cost support under section 35.13 of the Commission's regulations, the required cost support for its proposal under section 35.25 of the Commission's regulations, that corrects the formula rates components in its Requirements Tariff (CWIP and ADIT), and that explains the calculation of its rate base, and that revises the Commission's and parties' rights with respect to challenges to the inputs in the formula rate, and that revises the confidentiality provision in the proposed service agreements, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by 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 Tampa Electric's revised tariff sheets. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), 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 within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of this order, 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 every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) 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 these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.