

139 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.	Docket Nos. ER12-1017-000 ER12-1018-000 ER12-891-000 EL12-51-000
Westar Energy, Inc.	ER12-909-000

ORDER ACCEPTING AND SUSPENDING TRANSMISSION SERVICE
AGREEMENTS, CONSOLIDATING PROCEEDINGS, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES, AND INSTITUTING SECTION 206
PROCEEDING

(Issued April 6, 2012)

1. On February 7, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) submitted for filing unexecuted and revised Network Integration Transmission Service Agreements (NITSA) and Network Operating Agreements (NOA) in two proceedings. In Docket No. ER12-1017-000, SPP submitted a NITSA between SPP as transmission provider and Kaw Valley Electric Cooperative, Inc. (Kaw Valley) as network customer, as well as a NOA among SPP as transmission provider, Kaw Valley as network customer, and Westar Energy, Inc. (Westar) as host transmission owner (together, Revised Kaw Valley Agreements). Similarly, in Docket No. ER12-1018-000, SPP submitted a NITSA between SPP as transmission provider and Nemaha-Marshall Electric Cooperative (Nemaha-Marshall) as network customer, as well as a NOA among SPP as transmission provider, Nemaha-Marshall as network customer, and Westar as host transmission owner (together, Revised Nemaha-Marshall Agreements).²

¹ 16 U.S.C. § 824d (2006).

² The Commission accepted the original Kaw Valley and Nemaha-Marshall Agreements in April 2010. *See Southwest Power Pool, Inc.*, Docket Nos. ER10-830-000 and ER10-831-000 (Apr. 19, 2010) (delegated letter order).

2. As discussed below, we will accept the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements for filing, suspend such agreements for a nominal period, make them effective December 1, 2011, as requested, subject to refund, and establish hearing and settlement judge procedures. We will also consolidate the instant filings with the ongoing proceedings in Docket Nos. ER12-891-000³ and ER12-909-000⁴ for purposes of hearing and settlement judge procedures. Additionally, because SPP's filings represent a rate reduction, we will institute an investigation pursuant to section 206 of the FPA⁵ in Docket No. EL12-51-000 to determine whether the proposed rate reductions are just and reasonable.

I. Background

3. Kaw Valley, Nemaha-Marshall, and Doniphan Electric Cooperative (collectively, Kansas Cooperatives) are network transmission service customers under the SPP Open Access Transmission Tariff (OATT or Tariff)⁶ and wholesale customers of Westar under long-term generation formula rate agreements (GFRAs). Westar is a transmission-owning member of SPP. According to a 2009 settlement between Westar and each of the Kansas Cooperatives,⁷ Kansas Cooperatives are responsible for losses associated with the points of delivery identified in their respective GFRAs.⁸

³ *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,211 (2012).

⁴ *Westar Energy, Inc.*, 138 FERC ¶ 61,237 (2012).

⁵ 16 U.S.C. § 824e (2006).

⁶ In Docket No. ER12-891-000, Kansas Cooperatives explain that while Westar is the transmission customer, Doniphan Electric Cooperative (Doniphan) pays for the transmission service provided under the Revised NITSA at issue in that docket. Therefore, Doniphan joined Kaw Valley and Nemaha-Marshall as an intervenor and protestor in that docket and does so here, in Docket Nos. ER12-1017-000 and ER12-1018-000.

⁷ *Westar Energy Inc.*, 130 FERC ¶ 61,007 (2010).

⁸ Article I (34) of each GFRA states:

34. Losses shall be the percentage identified in the Transmission Provider's currently effective OATT multiplied by Customer's usage (measured in kWh and kW) as measured by the revenue-quality meter(s) installed at the Point(s) of Receipt. In no case will Losses include losses that may be incurred from the Point(s) of Receipt to Customer's Load.

4. On January 25, 2012, in Docket No. ER12-891-000, SPP submitted (1) an executed, revised NITSA between SPP as transmission provider and Westar as network customer, and (2) an executed NOA between SPP as transmission provider and Westar as both network customer and host transmission owner (Revised Westar Agreements). The Revised Westar Agreements contain modifications similar to those in the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements. On March 23, 2012, the Commission accepted the Revised Westar Agreements for filing, suspended them for a nominal period, and made them effective December 1, 2011, subject to refund. The Commission also established hearing and settlement judge procedures and instituted a section 206 proceeding.⁹

5. On January 27, 2012, in Docket No. ER12-909-000, Westar submitted modifications to sections 15.7 and 28.5 of its Tariff to update the loss factors applicable to transmission service within the Westar zone of SPP. On March 30, 2012, the Commission accepted the Tariff revisions for filing, suspended them for a nominal period, to be effective April 1, 2012, subject to refund, and established hearing and settlement judge procedures.¹⁰ Additionally, the Commission consolidated Westar's filing with the ongoing proceeding in Docket No. ER12-891-000 for purposes of hearing and settlement judge procedures.

II. SPP's Filings

6. In the instant filings, SPP states that it is submitting the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements because (1) they are unexecuted and (2) the NITSA's include terms and conditions that do not conform to the *pro forma* NITSA in SPP's OATT.

A. Distribution Losses

7. SPP explains that Kaw Valley and Nemaha-Marshall did not execute the agreements because of a dispute regarding language requested by Westar found in section 8.6 of Attachment 1 in both the Revised Kaw Valley NITSA and Revised Nemaha-Marshall NITSA regarding wholesale distribution losses.¹¹ Proposed section 8.6 stipulates:

Real Power Losses – Distribution

The Network Customer shall replace all distribution losses in accordance

⁹ *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,211 (2012).

¹⁰ *Westar Energy, Inc.*, 138 FERC ¶ 61,237 (2012).

¹¹ SPP Filings in Docket Nos. ER12-1017-000 and ER12-1018-000 at 2.

with Westar Energy's Open Access Transmission Tariff, Section 28.5, based upon the location of each delivery point meter located on distribution facilities. The composite loss percentages in Section 28.5 shall exclude transmission losses.

8. SPP explains that Kaw Valley and Nemaha-Marshall objected to this language and notified SPP that they would not execute the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements. Moreover, SPP states that Kaw Valley and Nemaha-Marshall communicated that should section 8.6 be included in the NITSAs, section 8.6 should reference the GFRAs, which Kaw Valley and Nemaha-Marshall contend address distribution losses.¹² SPP explains that Westar requested SPP to include the section 8.6 language in all NITSAs in which Westar is a host transmission owner. SPP states that, according to Westar, proposed section 8.6 provides details regarding the calculation of distribution losses in accordance with a Commission-approved transmission tariff. SPP notes that the Commission has previously accepted transmission service agreements containing similar language.¹³

B. Wholesale Distribution Service Charges

9. Next, SPP states that section 8.9 of Attachment 1 in both the Kaw Valley and Nemaha-Marshall NITSAs adds language specifying that wholesale distribution service charge cost support information, as well as monthly service charges, are set forth in revised Appendix 4 of the NITSAs. Appendix 4 includes formula calculations for wholesale distribution service charges for various points of delivery. Appendix 4 also specifies that the charges are effective December 1, 2011. SPP asserts that the inclusion of cost support information is consistent with Schedule 10 of the SPP Tariff, which requires the provision of cost support information for wholesale distribution service charges in agreements filed with the Commission. SPP notes that the Commission approved similar language in the original Kaw Valley and Nemaha-Marshall Agreements.¹⁴ We note that the wholesale distribution service charge proposed in both

¹² *Id.*

¹³ *Id.* at 2-3, citing, *e.g.*, *Southwest Power Pool, Inc.*, Docket No. ER12-557-000 (Jan. 30, 2012) (delegated letter order) and *Southwest Power Pool, Inc.*, Docket No. ER11-4180-001 *et al.* (Nov. 2, 2011) (delegated letter order).

¹⁴ *Id.* at 4. The modifications in Appendix 4 of both NITSAs update the wholesale distribution service charges applicable to each network customer.

agreements is a decrease from the currently effective wholesale distribution service charge.¹⁵

C. Modifications to Points of Delivery

10. Additionally, SPP states that revised Appendix 3 in the Kaw Valley and Nemaha-Marshall NITSA contains additional information, including SPP bus numbers, delivery point numbers, and a footnote indicating that the voltage of the point of delivery is the voltage where the meter is physically located. SPP asserts that this language provides additional detail regarding points of delivery and that the Commission has accepted similar changes in previous agreements.¹⁶

D. Effective Date and Waiver Request

11. Finally, SPP requests waiver of the Commission's 60-day notice requirement to allow for the requested December 1, 2011 effective date in both proceedings.

III. Notice of Filing and Responsive Pleadings

12. Notice of SPP's filings in Docket Nos. ER12-1017-000 and ER12-1018-000 was published in the *Federal Register*, 77 Fed. Reg. 9,222 (2012), with interventions and protests due on or before February 28, 2012 in both proceedings. Kansas Cooperatives filed motions to intervene and protests in both proceedings. Westar filed a motion to intervene and answer. Kansas Cooperatives filed an answer to Westar's answer.

A. Kansas Cooperatives Protests

1. Distribution Losses

13. Kansas Cooperatives object to the inclusion of language in section 8.6 of Attachment 1 in both NITSA that would make the network customer responsible for

¹⁵ Compare Appendix 4 of the Revised Kaw Valley NITSA (wholesale distribution service charge is \$2,500.77 total WDS dollars/month) and Appendix 4 of the original Kaw Valley NITSA (wholesale distribution service charge is \$2,613.39 total WDS dollars/month). Similarly, compare Appendix 4 of the Revised Nemaha-Marshall NITSA (wholesale distribution service charge is \$3,573.09 total WDS dollars/month) and Appendix 4 of the original Nemaha-Marshall NITSA (wholesale distribution service charge is \$4,915.21 total WDS dollars/month).

¹⁶ SPP Filings in Docket Nos. ER12-1017-000 and ER12-1018-000 at 3-4, citing agreements accepted by the Commission in Docket Nos. ER11-4180-001 *et al.*, ER10-1698-000, and ER10-1688-000.

replacing distribution losses in accordance with section 28.5 of the Westar Tariff, based upon the location of each delivery point meter located on distribution facilities. Kansas Cooperatives assert that this provision is contrary to the currently-applicable losses provision in the GFRA, further alleging that SPP and Westar are attempting to amend or override provisions in the GFRA with a conflicting NITSA obligation for distribution losses. Kansas Cooperatives also argue that this change is inappropriate because they are not customers under Westar's Tariff.¹⁷

14. Kansas Cooperatives note that at present, they are responsible for real power losses in accordance with Attachment M of the SPP Tariff. Kansas Cooperatives assert that this provision is correct and accurately reflects the provision regarding delivery service losses under the GFRA, which specifies that losses shall be the percentage identified in the transmission provider's tariff multiplied by the customer's usage.¹⁸

15. Kansas Cooperatives state that the Commission rejected a previous attempt by SPP and Westar to insert a charge for Westar's wholesale distribution service losses into its *pro forma* OATT and that the Commission questioned a separate previous attempt, which SPP then withdrew.¹⁹

2. Wholesale Distribution Service Charges

16. Kansas Cooperatives claim that, while Westar's proposed modifications to the wholesale distribution service charges appear to be rate decreases from existing wholesale distribution charges, Westar has not provided any information regarding the changes in the costs underlying the proposed rate changes. For example, Kansas Cooperatives note that Westar does not explain why it has lowered the net plant carrying charge percentage, increased or lowered substation distribution plant dollars and allocation percentages for various points of delivery, and decreased circuit distribution plant dollars and allocation percentages for various points of delivery. Kansas Cooperatives argue that until Westar provides some underlying cost support information,

¹⁷ Kansas Cooperatives Protests in Docket Nos. ER12-1017-000 and ER12-1018-000 at 3.

¹⁸ *See, e.g.*, Nemaha-Marshall GFRA, Article I, Section 34—Losses.

¹⁹ Kansas Cooperatives Protests in Docket Nos. ER12-1017-000 and ER12-1018-000 at 4, citing *Westar Energy, Inc.*, 131 FERC ¶ 61,183 (2010), *order denying reh'g*, 134 FERC ¶ 61,176 (2011); *Southwest Power Pool, Inc.*, Docket Nos. ER11-2428-000 and ER11-2428-001 (filed Dec. 21, 2010 and amended Mar. 23, 2011) (the Commission issued a deficiency letter on Feb. 25, 2011).

neither they nor the Commission can determine whether these changes are reasonable or should be reduced even more.²⁰

3. Modifications to Points of Delivery

17. Kansas Cooperatives argue that—contrary to SPP’s assertion that the changes to Appendix 3 in the NITSAs merely provide additional ministerial information beyond the name, ownership, and voltage of the points of delivery set forth in the original agreements—the proposed modifications would actually change the points of delivery described in Appendix 3.²¹

18. Kansas Cooperatives emphasize that the Appendix 3 modifications in the instant filings should be considered in conjunction with Westar’s filing in Docket No. ER12-909-000, which the Kansas Cooperatives characterize as raising the amount of losses purchased or supplied by all transmission customers using Westar’s transmission system.²² Kansas Cooperatives allege that, under Westar’s proposal, every metering location would become a point of delivery and would provide Westar the opportunity to charge for additional losses based on the configuration of the physical facilities at the metering location. Kansas Cooperatives note that a metering location can be some distance away from a point of delivery, and in some cases, Westar’s proposal would allow it to charge for losses on facilities that Westar does not own.²³ Kansas Cooperatives note that their points of delivery with Westar and the associated delivery point voltages have remained the same since 1983, and, pursuant to Article II, section 4 of the GFRAs, the parties must mutually agree in writing to add, delete, or modify points of delivery.²⁴

²⁰ *Id.* at 6-7.

²¹ *Id.* at 4.

²² On February 17, 2012, Kansas Cooperatives submitted a motion to intervene and protest in Docket No. ER12-909-000.

²³ Kansas Cooperatives Protests in Docket Nos. ER12-1017-000 and ER12-1018-000 at 4-6, citing Kansas Cooperatives Protest in Docket No. ER12-909-000 at 13-14.

²⁴ *Id.* at 17-18.

B. Answers**1. Distribution Losses**

19. Westar argues that the GFRA losses provision does not conflict with or override the Revised NITSAs' proposed distribution losses provision.²⁵ Westar claims that Article II, section 3(a) of the GFRAs clearly states that the GFRAs do not include the provision of transmission service.²⁶ Westar notes that any change to the loss calculation used to determine the amount of power purchased by the Kansas Cooperatives under the GFRAs would require a filing under FPA section 205 to change the GFRAs.²⁷ Westar states that the calculation of losses under the GFRAs—which determines the amount of power the Kansas Cooperatives should be charged under those agreements—is entirely separate from the calculation of losses under the Revised NITSAs.²⁸

20. Kansas Cooperatives argue that Westar is incorrect to claim that the proposed distribution losses provision in the revised NITSAs does not conflict with the GFRA losses provision.²⁹ Kansas Cooperatives assert that they and Westar agreed to the GFRA losses provision as a single losses provision, covering all losses to the identified delivery

²⁵ Westar Answer at 5.

²⁶ The cited portion of Article II states:

3. Responsibility for Transmission, Ancillary and Wholesale Distribution Services.

a) Customer shall be responsible for making all arrangements and executing all agreements with the Transmission Provider [SPP] for use of Westar Energy's transmission system and any other third-party transmission systems, including any associated ancillary services for Westar Energy's and/or other third-party transmission systems, which are necessary to transmit the Full Requirements Electric Service from the Points of Delivery to the Point(s) of Receipt. This Agreement does not provide any such services and the costs of such services will not be included in the Formula Rate, and Customer shall not claim that the Generation Resources under this Agreement include any such services.

²⁷ Westar Answer at 4.

²⁸ *Id.* at 5.

²⁹ Kansas Cooperatives Answer at 2, 7-8.

points.³⁰ In addition, Kansas Cooperatives argue that Westar's claim is inconsistent with Westar's billing practices for losses under the GFRA for the first year after the GFRA were approved by the Commission, in that during that time Kansas Cooperatives disputed whether the charge for losses included wholesale distribution service, and Westar resolved the dispute by agreeing not to charge separately for wholesale distribution service losses.³¹ Kansas Cooperatives also point out that in GFRA with other entities, Westar has included a separate provision for wholesale distribution service losses.³² Kansas Cooperatives argue that the presence of a wholesale distribution service losses provision in the Westar-Burlingame GFRA undercuts Westar's assertion that the GFRA relate only to generation services.

2. Wholesale Distribution Service Charges

21. Westar answers that it annually updates the calculation for wholesale distribution service charges for each SPP transmission customer that receives delivery of wholesale power using some portion of Westar's distribution system.³³ Westar states that the information that it provides in Appendix 4 is sufficient and reflects a calculation method that has been accepted by the Commission.³⁴ Westar also notes that it presented full cost support to the Kansas Cooperatives in December 2011 and discussed the information with them, even incorporating one of their suggestions in the final determination. Westar's answer includes a meeting agenda from December 6, 2011 listing the topic "Wholesale Distribution Service Charge – update." Westar's answer also includes 45 pages of additional information on the wholesale distribution service charges.

22. Kansas Cooperatives argue that the additional cost support information in Westar's answer is insufficient and creates more concerns about Westar's wholesale distribution service charges.³⁵ Kansas Cooperatives state that Westar is wrong to base its treatment of the net plant carrying charge on Westar's transmission formula rate because a transmission carrying charge or transmission fixed charge rate should not be applied to wholesale distribution facilities.³⁶ Kansas Cooperatives also argue that the additional

³⁰ *Id.*

³¹ *Id.* at 9.

³² *Id.* at 9-10, citing GFRA between Westar and City of Burlingame, Kansas.

³³ Westar Answer at 6, citing Lane Affidavit at P 2.

³⁴ *Id.* at 7, citing *Commonwealth Edison*, 123 FERC ¶ 61,122 (2008).

³⁵ Kansas Cooperatives Answer at 10.

³⁶ *Id.* at 11.

information provided in the Westar answer reveals that Westar's wholesale distribution service charges are flawed and over-allocate costs to Kansas Cooperatives in several ways.

3. Modifications to Points of Delivery

23. In their answer, Kansas Cooperatives reiterate their position regarding modifications to points of delivery in Appendix 3 of the Kaw Valley and Nemaha-Marshall Agreements.³⁷ Kansas Cooperatives note that, in its answer, Westar did not address their objections to these modifications.³⁸

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Westar and Kansas Cooperatives' answers because they have provided information that assisted us in our decision-making.

B. Substantive Matters

1. Hearing and Settlement Judge Procedures

26. SPP's filings raise issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements for filing, suspend them for a nominal period, effective December 1, 2011, subject to refund, and set them for hearing and settlement judge procedures as ordered below. Also, because the issues in this proceeding are closely intertwined with those raised in Docket Nos. ER12-891-000 and

³⁷ Kansas Cooperatives note that they did not object to the Appendix 3 changes in the Revised Doniphan Agreement. *Id.* at 15.

³⁸ *Id.*

ER12-909-000, we consolidate the instant filings with the ongoing proceedings in Docket Nos. ER12-891-000 and ER12-909-000 for purposes of hearing and decision, as well as settlement judge procedures.

27. Also, because SPP's filing represents a rate decrease, we are instituting an investigation pursuant to section 206 of the FPA in Docket No. EL12-51-000 to determine whether the proposed reduction is just and reasonable. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005,³⁹ requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. We establish a refund effective date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL12-51-000 is published in the *Federal Register*.

28. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, whichever is earlier, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding administrative law judge (judge) to provide a report to the Commission no later than 15 days in advance of the refund date in the event the judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification or a settlement or issuance of an initial decision.

29. While we are setting this case 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, 18 C.F.R. § 385.603 (2011). 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.⁴⁰

³⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

⁴⁰ The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the 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 commencement of a hearing by assigning the case to a presiding judge.

2. Effective Date and Waiver Request

30. SPP requests an effective date of December 1, 2011, for the Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements, requesting waiver of the Commission's 60-day notice requirement. Waiver is appropriate when a filing results in a rate decrease.⁴¹ The Revised Kaw Valley Agreements and Revised Nemaha-Marshall Agreements, as proposed, represent a decrease in the wholesale distribution service charges for the network customers. Therefore, we grant the requested waiver and accept and suspend the Revised Kaw Valley Agreements and Revised Nemaha Marshall Agreements to be effective December 1, 2011, subject to refund.

The Commission orders:

(A) The Revised Kaw Valley Agreements filed in Docket No. ER12-1017-000 are hereby accepted for filing and suspended for a nominal period, to be effective December 1, 2011, subject to refund and hearing, as discussed in the body of this order.

(B) The Revised Nemaha-Marshall Agreements filed in Docket No. ER12-1018-000 are hereby accepted for filing and suspended for a nominal period, to be effective December 1, 2011, subject to refund and hearing, as discussed in the body of this order.

(C) Docket Nos. ER12-1017-000 and ER12-1018-000 are hereby consolidated with Docket Nos. ER12-891-000 and ER12-909-000 for purposes of hearing and settlement judge procedures, as discussed in the body of this order.

(D) 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 Docket Nos. ER12-891-000, ER12-909-000, ER12-1017-000, and ER12-1018-000. However, the hearing shall be held in abeyance to

⁴¹ *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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 (2011), 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.

(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 every 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 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.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of a section 206 proceeding in Docket No. EL12-51-000.

(I) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (H) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.