

137 FERC ¶ 61,059  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Buckeye Power, Inc.

Docket No. EL11-54-000

v.

American Transmission Systems, Incorporated

ORDER ON COMPLAINT AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 20, 2011)

1. On July 18, 2011, Buckeye Power, Inc. (Buckeye) filed a complaint (Complaint), pursuant to sections 206 and 306 of the Federal Power Act (FPA),<sup>1</sup> alleging that the American Transmission Systems, Incorporated's (ATSI) voltage-differentiated rates for transmission service in the ATSI Zone of PJM Interconnection, L.L.C. (PJM) are unjust, unreasonable, unduly discriminatory, and preferential, and should be replaced with a rolled-in rate reflecting the cost of all ATSI transmission facilities, regardless of voltage. As discussed below, the Commission finds that there are issues of material fact with respect to Buckeye's claims that cannot be resolved on the basis of the written record,<sup>2</sup> and therefore establish a trial-type evidentiary hearing and settlement judge procedures. The Commission also sets a refund effective date of July 18, 2011, the date the complaint was filed.

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<sup>1</sup>16 U.S.C. §§ 824e(a) and 825e (2006).

<sup>2</sup> *E.g.*, *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994) (citing *Vermont Dept. of Pub. Serv. v. FERC*, 817 F.2d 127, 140 (D.C. Cir. 1987); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993)).

## I. Background

2. Buckeye is a generation and transmission cooperative that produces, procures, and provides the electric capacity and energy required by its 25 member electric distribution cooperatives operating in Ohio.<sup>3</sup> Those member cooperatives serve more than 380,000 residential, commercial, and industrial customers in service territories encompassing parts of 77 of Ohio's 88 counties. Buckeye and all of its member distribution cooperatives are transmission dependent electric utilities. Buckeye owns no transmission facilities and currently depends entirely upon PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) for open access transmission service to transmit electricity from its generation resources to its members' delivery points. Buckeye is a network integration transmission service customer in the ATSI Zone, and purchases transmission service from PJM to deliver electricity to its members in the ATSI Zone at delivery points operating at voltages of 138 kV or lower voltage. Consequently, Buckeye and its members pay both the ATSI rate for service via 138 kV and above facilities, and the ATSI rate for service via below 138 kV facilities.

3. ATSI is a wholly-owned subsidiary of FirstEnergy Corp. ATSI is a transmission-only utility that owns, operates and maintains 7,300 circuit-miles of transmission facilities that operate at 345 kV, 138 kV and 69 kV in Ohio and western Pennsylvania. ATSI states that it owns no distribution facilities or generation assets and provides no retail utility service. On June 1, 2011, ATSI became a Transmission Owner member of PJM. Prior to June 1, 2011, ATSI was a member of the Midwest ISO.<sup>4</sup> The formula rate

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<sup>3</sup> The 25 distribution cooperative members of Buckeye are: Adams Rural Electric Cooperative, Inc.; Buckeye Rural Electric Cooperative, Inc.; Butler Rural Electric Cooperative, Inc.; Carroll Electric Cooperative, Inc.; Consolidated Electric Cooperative, Inc.; Darke Rural Electric Cooperative, Inc.; Firelands Electric Cooperative, Inc.; The Frontier Power Company; Guernsey-Muskingum Electric Cooperative, Inc.; Hancock-Wood Electric Cooperative, Inc.; Holmes-Wayne Electric Cooperative, Inc.; Licking Rural Electrification, Inc.; Logan County Cooperative Power and Light Association, Inc.; Lorain-Medina Rural Electric Cooperative, Inc.; Mid-Ohio Energy Cooperative, Inc.; Midwest Electric, Inc.; Midwest Energy Cooperative; North Central Electric Cooperative, Inc.; North Western Electric Cooperative, Inc.; Paulding-Putnam Electric Cooperative, Inc.; Pioneer Rural Electric Cooperative, Inc.; South Central Power Company; Tricounty Rural Electric Cooperative, Inc.; Union Rural Electric Cooperative, Inc.; and Washington Electric Cooperative, Inc.

<sup>4</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 (2011). Buckeye filed a protest in the proceeding to transfer ATSI's transmission facilities from Midwest ISO to PJM. In its protest, Buckeye raised, in part, the issue of ATSI's voltage-differentiated

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for transmission service on the ATSI transmission system was transferred, with certain revisions, from the Midwest ISO Open Access Transmission Tariff (OATT) to the PJM OATT effective June 1, 2011.<sup>5</sup>

## II. Complaint

4. Buckeye requests that the Commission find that ATSI's voltage-differentiated rate design is unjust, unreasonable, unduly discriminatory, and preferential and require that it be replaced with a rolled-in rate design covering all of ATSI's integrated transmission facilities, regardless of voltage, in a single rate. Buckeye believes that the record, as presented in this complaint, is sufficient to make this finding. Additionally, Buckeye requests that the Commission: (1) to the extent necessary, set the matter for hearing and settlement judge procedures to permit gathering and presentation of the necessary information to determine that ATSI's voltage-differentiated design should be replaced with a single, rolled in rate, covering all of ATSI's facilities; and (2) set the earliest possible refund effective date for any changes in the voltage-differentiated rates. Buckeye filed testimony and exhibits in support of its complaint.<sup>6</sup>

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rate design. The Commission rejected Buckeye's protest because it found the issue to be outside the scope of the proceeding. Additionally, the Commission found that Buckeye's protest was, in effect, a complaint and, if Buckeye believes that the filed rate is unjust and unreasonable, it should be separately filed pursuant to section 206 of the FPA. The Commission declined to establish a section 206 investigation based on Buckeye's protest. *See id.* P 66.

<sup>5</sup> The formula rate features a voltage-differentiated rate design under which ATSI charges two separate rolled-in rates: one rate to recover costs associated with transmission facilities that operate at 138 kV and higher (Bulk Transmission System) to be assessed to all transmission customers, and a second rate to recover costs associated with transmission facilities that operate at 69 kV (Area Transmission System) to be assessed only to transmission customers with loads connected to such facilities.

<sup>6</sup> *See* Buckeye's Complaint, Attachment A: The Prepared Direct Testimony and Exhibits of Dennis W. Bethel (Exh. Nos. BPI-100 - BPI-105); Attachment B: The Prepared Direct Testimony and Exhibits of Manmohan K. Sachdeva (Exh. Nos. BPI-200 - BPI-202); Attachment C: A copy of the Prepared Testimony of Carl J. Bridenbaugh (without attached exhibit), as filed initially on March 19, 1999, in FERC Docket No. EC99-53-000, and subsequently on April 25, 2001, in FERC Docket

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5. Buckeye states that the Commission's established policy regarding the allocation of costs of transmission facilities favors rolled in rates in the absence of a showing that facilities are not integrated.<sup>7</sup> Buckeye argues that while all transmission facilities are not simply presumed to be integrated, the Commission has held consistently, for many years that "any degree of integration" is sufficient to warrant roll-in of the facilities.<sup>8</sup> Specifically, Buckeye states that the most cited earmark of integration is the "looped" configuration of facilities, as defined in *Sierra Pacific Power Company v. FERC*, 793 F.2d 1086 (9th Cir. 1986).<sup>9</sup>

6. Buckeye argues that given Commission precedent, there is no factual basis for treating 69 kV and higher voltage transmission facilities in the ATSI zone differently

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No. EL01-69-000; Attachment D: A copy of the Supplemental Testimony of Carl J. Bridenbaugh (without attachments), as filed on April 4, 2000, in PUCO Case Nos. 99-1212-EL-ETP, *et al.*

<sup>7</sup> Buckeye cites specifically to Opinion No. 783, *supra*, 56 FPC at 3035 (quoting *Detroit Edison Company*, Opinion No. 748, 54 FPC 3012, 3020 (1975)) ("[A]n electric transmission system which operates as an integrated, cohesive network in moving electric energy in bulk and which is designed and constructed to achieve maximum efficiency and reliability at minimum cost on a system-wide basis establishes a factual predicate necessitating the adoption of a "rolled-in" cost approach as the "consistent and equitable method of costing electric transmission service;" *see also* Complaint at 6 n.7 (cites omitted).

<sup>8</sup> Complaint at 7 n.12, citing *City of Anaheim, California, et al.*, Opinion No. 483,113 FERC ¶ 61,091, at P 34 (2005), *reh'g denied*, 114 FERC ¶ 61,311 (2006); Opinion No. 474, *supra*, 108 FERC ¶ 61,084 at P 47; *Pacific Gas and Electric Company*, Opinion No. 466-B, 108 FERC ¶ 61,297, at P 19 (2004); *American Electric Power Service Corporation*, Opinion No. 311,44 FERC ¶ 61,206, at 61,478, *reh'g denied*, Opinion No. 311A, 45 FERC ¶ 61,408 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989); *Utah Power & Light Company*, 28 FERC ¶ 61,088, at 61,165 (1984).

<sup>9</sup> Additionally, Buckeye points to *Mansfield* for further guidance as to the characteristics of integration. Complaint at 8-9, citing *Mansfield Municipal Electric Department, et al. v. New England Power Company*, Opinion No. 454, 97 FERC ¶ 61,134, at 61,613-14 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

because, Buckeye contends, the 69 kV facilities are “clearly integrated with the 138 kV and above facilities according to the long-recognized attributes of integration.” As evidence of the lack of factual basis for treating 69 kV and higher voltage transmission facilities in the ATSI zone differently as well as evidence that the costs of all of the transmission facilities on ATSI’s system should be rolled into a single rate, Buckeye points to the Transmission Planning Criteria of ATSI’s parent, FirstEnergy, and ATSI’s own statements in Commission proceedings. Under FirstEnergy’s Transmission Planning Criteria, ATSI’s 69 kV facilities are regarded as transmission facilities that are “normally operated in a network manner.”<sup>10</sup> Buckeye asserts that under FirstEnergy’s Transmission Planning, ATSI’s 69 kV facilities are planned in a manner similar or comparable to ATSI’s 138 kV and above facilities,<sup>11</sup> and thus FirstEnergy’s Planning Criteria provides no basis in cost causation for the segregation of ATSI’s 69 kV transmission facilities from the 138 kV and above.

7. Buckeye contends that ATSI’s own statements in Commission proceedings support Buckeye’s assertion that ATSI system is an integrated network, whose components operate together to ensure reliability on a system-wide basis and whose costs should be rolled into a single rate. In support for its contention, Buckeye highlights testimony submitted as part of the FirstEnergy’s Operating Companies application for Commission authorization to transfer their transmission facilities to its then newly formed affiliate, ATSI.<sup>12</sup> Specifically, Buckeye points to testimony of how ATSI’s Bulk Transmission System and Area Transmission System facilities function: with specific reference to the Area Transmission System, Mr. Bridenbaugh states that “the 69 kV system serves a transmission function because it operates in parallel with the Bulk Transmission System and is integral to the transfer of power across the system.” He also observes that “[p]ower routinely flows into and out of the Bulk Transmission System (345 kV and 138 kV) and the Area Transmission System (69 kV),” and that “[f]lows on the Area Transmission System are generally responsive to single element outages on the Bulk Transmission system, and the 69 kV facilities can be limiting for power transfers for multiple simultaneous element outages on the Bulk Transmission systems.”<sup>13</sup>

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<sup>10</sup> Complaint at 10, citing Attachment A at 8-9.

<sup>11</sup> *See* Complaint, Attachment B at 13-14.

<sup>12</sup> Complaint, Attachment C.

<sup>13</sup> Complaint at 14, citing Attachment C at 9, 11.

8. Buckeye states ATSI's testimony in multiple proceedings:<sup>14</sup> (1) "corroborates unequivocally" Buckeye's analysis and conclusion as to the integrated nature of ATSI's transmission system as well the assertion that there are benefits to all users derived from its 69 kV components; and (2) is tantamount to an admission that the costs of all its transmission facilities, regardless of voltage, should be rolled-in.

### **III. Notice and Responsive Pleadings**

9. Notice of the Complaint was published in the *Federal Register*, 76 Fed. Reg. 44320-44321 (2011), with protests and interventions due on or before August 8, 2011. On July 28, 2011, the Commission issued an errata notice correcting and extending the comment due date to August 17, 2011.

10. ATSI filed an answer to Buckeye's Complaint. Timely motions to intervene were filed by PJM, Midwest ISO and Industrial Energy Users – Ohio. American Municipal Power, Inc. (AMP) filed a protest and comments on behalf of itself and Cleveland Public Power (CPP). Buckeye filed a motion for leave to reply and reply to ATSI's answer and protest and comments of AMP and CPP. AMP and CPP collectively filed an answer in opposition to Buckeye's leave to reply, and alternative motion for leave to respond to Buckeye's reply.

#### **A. ATSI's Answer**

11. ATSI asserts that the Commission should deny the Complaint because Buckeye fails to satisfy its obligation under section 206 to demonstrate that the existing rate is unjust, unreasonable or unduly discriminatory. ATSI states that Buckeye's argument is simply that because ATSI's Bulk Transmission Facilities and Area Transmission Facilities are integrated elements of a single transmission system, the only just and reasonable and not unduly discriminatory rate is a single rolled-in rate consisting of all of the costs of all transmission facilities. ATSI contends that even if its 69 kV facilities are integrated with its 138 kV and above facilities, this does not demonstrate that rolled-in differentiated rates are unjust, unreasonable, or unduly discriminatory or preferential; nor account for the fact that such rates are not unjust unreasonable or unduly discriminatory or preferential if they reflect factual differences among customers that pay different rates and how those customers use the transmission facilities. Additionally, ATSI states that Buckeye fails to demonstrate that by charging different rates to different transmission customers that ATSI is treating similarly situated customers differently. Further, ATSI states that Buckeye disregards factual differences between the extent to which various transmission customers rely on ATSI's Area Transmission facilities for their ability to

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<sup>14</sup> Complaint at 14-16, citing Attachment C and Attachment D.

receive energy to serve their loads. ATSI also states that Buckeye is incorrect in its assertion that ATSI plans for its Area Transmission Facilities in the same manner as it plans for the Bulk Transmission Facilities. Finally, ATSI states that the Commission precedent that Buckeye presents is not relevant to this proceeding or is inappropriately applied.

**B. AMP and CPP's Protest and Comments**

12. AMP and CPP state that Buckeye has failed to make a *prima facie* showing that ATSI's existing differentiated rate design is unjust, unreasonable, unduly discriminatory or preferential, and should be dismissed. AMP and CPP state that Buckeye's argument is predicated on the interpretation of Commission precedent requiring that the costs of all integrated transmission facilities be recovered through a single undifferentiated rate based solely on the grounds that they are integrated. However, AMP and CPP argue that the real question raised by the Complaint is:

[W]hether the functions performed by the two groups of facilities represented in ATSI's dual-voltage rate design are so alike, and the beneficiaries of each group of facilities so close to identical, that it is unjust, unreasonable and unduly discriminatory for ATSI to treat them separately for cost-recovery purposes.<sup>15</sup>

13. AMP and CPP state that Buckeye's argument that Commission precedent requires that the costs of all integrated transmission facilities be recovered through a single undifferentiated rate relies on a misstatement of Commission precedent as to the significance of a finding of integration.<sup>16</sup> AMP and CPP further state that Buckeye's contention is that if ATSI's 69 kV facilities are integrated to any degree with the 138 kV and higher voltage system, the costs of the 69 kV facilities must be recovered through the same rolled in rate as the costs of the higher voltage facilities.

14. AMP and CPP contend that ATSI's 138 kV and above facilities, serve a distinctly different function than do ATSI's 69 kV facilities and that each rate reflects the embedded costs of all ATSI facilities classified as transmission within each voltage.

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<sup>15</sup> AMP and CPP Protest and Comments at 4.

<sup>16</sup> AMP and CPP argue that most of the cases which Buckeye relies on involved the question of whether the cost of transmission upgrades necessitated by a specific service request should be rolled into the transmission provider's system-wide rate or instead directly assigned to the service-requesting customer.

AMP and CPP contend that ATSI's voltage-differentiated rate design is validated by the differences that distinguish its 69 kV facilities and its 138 kV and higher systems. Specifically, AMP and CPP contend that: (1) ATSI's Bulk Transmission System facilities (at or above 138 kV) are being used primarily to transfer from injection points into the system in bulk to other systems or major load centers, and the Area Transmission System facilities (69 kV) are being used primarily to transfer power within a large load center,<sup>17</sup> and (2) PJM treats ATSI's 69 kV facilities differently from 138 kV and above facilities for the purposes of reliability coordination.<sup>18</sup> AMP and CPP state that PJM retains operational responsibility for regional coordination for reliability of ATSI's 138 kV and above facilities.<sup>19</sup> In contrast, AMP and CPP state that ATSI's 69 kV facilities are not "under PJM's control for coordinating regional and interregional operations."<sup>20</sup>

15. AMP and CPP state that the evidence that Buckeye relies on does not support a finding of undue discrimination. Specifically, AMP and CPP dispute the assertion in testimony in support of Buckeye's Complaint that certain 69 kV facilities *appear* to form "closed loops," which indicates that the ATSI's system operates as a "network" with the 138 kV and higher voltage systems such that the two sets of facilities support one another, and that all of ATSI's transmission customers benefit from the increase reliability and system security, which is made possible through the integration of the 69 kV facilities and the higher voltage systems.<sup>21</sup> AMP and CPP counter that Buckeye's testimony fails to point out that there are load delivery substations that are tapped off of the 69 kV loop and that the purpose of these 69 kV loops is to provide redundant paths to serve the load delivery substations that tap from such a circuit. AMP and CPP contend that this allows a load delivery substation to be served from either direction if the flow of power from one end of the loop is interrupted.<sup>22</sup> AMP and CPP assert that rather than supporting higher voltage systems, ATSI's 69 kV facilities predominantly serve a localized load delivery function and that the "looped" nature of some of its 69 kV circuits

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<sup>17</sup> Complaint, Attachment C at 5, lines 6-17.

<sup>18</sup> AMP and CPP Protest and Comments, Affidavit of Paul D. Reising, PP 26-30 (Reising Affidavit); Reising Affidavit, Exhibit H at 3.

<sup>19</sup> Reising Affidavit at PP 18, 20.

<sup>20</sup> *Id.* P 28, Exhibit H at 3.

<sup>21</sup> Emphasis added.

<sup>22</sup> AMP and CPP Protest and Comments, Reising Affidavit at P 36.

simply allows load delivery points to be served from either end if there is an interruption in a 69 kV circuit.

16. AMP and CPP also argue that FirstEnergy's Transmission Planning Criteria does not support both Buckeye's claim that ATSI's 69 kV facilities are subject to the same cost drivers as the higher voltage systems as well as Buckeye's argument that there exists no valid basis to differentiate between the two for cost recovery purposes. On the contrary, AMP and CPP point to differences in the treatment of 69 kV facilities and facilities at or above 138 kV with respect to voltage deviation standards and transmission system performance during contingencies. Finally, AMP and CPP state that Buckeye's use of previously submitted ATSI testimony disregards the portions of that testimony that explains the distinct differences in function performed by ATSI's 69 kV facilities and its 138 kV and above facilities.

### **C. Buckeye's Motion for Leave to Reply and Reply**

17. Buckeye asserts that despite arguments to the contrary of ATSI as well as AMP and CPP, Buckeye has made a *prima facie* showing that ATSI's voltage-differentiated rates are unjust, unreasonable, unduly discriminatory, and preferential. Buckeye counters ATSI, AMP and CPP, and argues that its has made its showing as a result of the following four elements: (1) Buckeye reiterates its stance that the Commission has consistently applied its policy in circumstances substantially similar to those found in this proceeding to favor the roll-in of integrated lower voltage and higher voltage facilities; (2) Buckeye states that it has made a sufficient showing that ATSI's integrated 69 kV facilities provide benefits to the users of ATSI's system; (3) Buckeye asserts that despite ATSI's and AMP and CPP's statement to the contrary, there are no "special circumstances" of fact with ATSI's transmission system that warrant a departure from the Commission's policy favoring rolled-in pricing for ATSI's transmission facilities;<sup>23</sup> and (4) Buckeye states that the rates yielded by ATSI's voltage-differentiated rate design are unduly discriminatory and preferential.

18. Additionally, Buckeye argues that the difference in PJM's treatment of 69 kV and 138 kV and higher facilities does not lessen the importance of the 69 kV facilities, nor do

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<sup>23</sup> Buckeye Reply at 10-11, citing *Utah Power & Light Company*, Opinion No. 220, 27 FERC ¶ 61,258, at 61,487, *reh'g denied*, 28 FERC ¶ 61,088 (1984) (UP&L), in which the Commission reviewed an initial decision regarding whether the costs of facilities of different voltages should be rolled in and observed that "[i]n cases where an integrated transmission system is involved, we have adhered to the rolled-in costs methodology absent special circumstances."

AMP and CPP show how the difference in PJM's treatment of facilities is material to the rate design question or how it favors voltage-differentiated rates. Ultimately, Buckeye reiterates its request in its Complaint that the Commission should either determine summarily that ATSI's transmission rate must be designed as a single rolled-in rate, or prescribe a hearing to determine the proper rate design.

**D. AMP's and CPP's Motion for Leave to Respond**

19. AMP and CPP argue that Buckeye, in its reply, misrepresents or makes incorrect claims as to their position on the issues in this proceeding. Specifically, AMP and CPP state that Buckeye misrepresents their position with respect to: (1) the discretion afforded to transmission providers to propose a suitable rate design, and (2) the factual and functional differences between ATSI's 69 kV facilities and ATSI's 138 kV and higher facilities. As to the former position, AMP and CPP state that their argument is not that a transmission provider's discretion to propose a suitable rate design is unbounded, rather, that a transmission provider has the ability to design its transmission rate in a manner that makes sense based on the characteristics of its system, so long as its proposal respects the Commission's basic principles of cost causation. As to the latter position, AMP and CPP argue that in making a distinction between ATSI's voltage-differentiated facilities, their intent was to highlight the factual and functional differences between the voltage-differentiated facilities.

20. AMP and CPP further assert that Buckeye is incorrect in its claim that AMP and CPP failed to show how the application of different planning criteria is "material" to rate design. AMP and CPP state that this argument fails to recognize AMP's and CPP's explanation of the relationship between the different planning criteria and the reasonableness of ATSI's voltage-differentiated rate design. Moreover, AMP and CPP allege that Buckeye impermissibly raises a new argument when it argues that ATSI's rate design creates a "counterintuitive" relationship between the level of the 69 kV rate and the reliability of the associated service, as this was not presented as a basis for relief in Buckeye's Complaint.

**IV. Discussion**

**A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>24</sup> the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

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<sup>24</sup> 18 C.F.R. § 385.214 (2011).

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.<sup>25</sup> We will accept ATSI's answer, Buckeye's reply and AMP's and CPP's response because they have aided us in our decision-making.

**B. Substantive Matters**

**1. Integration of ATSI's 69 kV and 138 kV and above Transmission Facilities**

23. We find that there are genuine issues of material fact with respect to Buckeye's claims regarding the integration and operation of ATSI's 69 kV and 138 kV and above facilities that cannot be resolved based on the record before us. We also note that the parties' positions with regards to Commission precedent and its applicability, as well as whether ATSI's voltage-differentiated rates are appropriate, are predicated on arguments that first necessitate establishing facts regarding the integration and operation of ATSI's transmission system. Given the dispute over the facts in this proceeding, we find that more information is necessary to determine whether the voltage-differentiated rates for ATSI's 69 kV and 138 kV facilities are just and reasonable. As a result, ATSI's voltage-differentiated rates may be unjust, unreasonable, unduly discriminatory, and preferential. We establish a trial-type evidentiary hearing and settlement judge procedures.

24. 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.<sup>26</sup> 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.<sup>27</sup> 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

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<sup>25</sup> 18 C.F.R. § 385.213(a)(2) (2011).

<sup>26</sup> 18 C.F.R. § 385.603 (2011).

<sup>27</sup> 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 and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

## 2. Refund Effective Date

25. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,<sup>28</sup> we will set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaint, which was July 18, 2011.

26. 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 a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. This case has been set for hearing and settlement judge procedures. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures or, if this case were to go to hearing immediately, by October 28, 2012. We estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately seven months of the filing of briefs on and opposing exceptions, or by July 26, 2013.

### The Commission orders:

(A) 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 the issues identified as being set for hearing 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 (B) and (C) below.

(B) 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

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<sup>28</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

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.

(C) 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.

(D) 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.

(E) The refund effective date established pursuant to section 206(b) is July 18, 2011.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.