

128 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Riverside, California

Docket Nos. EL09-52-000
EL09-52-001

ORDER ON PETITION FOR DECLARATORY ORDER AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 28, 2009)

1. On May 6, 2009, as supplemented on July 2, 2009, the City of Riverside, California (Riverside), filed a petition for declaratory order requesting the Commission to approve its revised Transmission Owner Tariff (TO Tariff) rates. Riverside requests the Commission to approve its (1) revised base Transmission Revenue Requirement (TRR); (2) revised Transmission Revenue Balancing Account Adjustment (TRBAA); (3) revised High Voltage Transmission Revenue Requirement (High Voltage TRR); and (4) accompanying mechanism to automatically adjust the costs it incurs under its Existing Transmission Contracts (ETCs) with Southern California Edison Company (SCE). Riverside also requests that the Commission grant certain waivers. Riverside requests an effective date of July 1, 2009, and consents to return any payments it receives from the CAISO for Riverside's revised rates in excess of those ultimately approved by the Commission.

2. As discussed below, the Commission conditionally accepts Riverside's revised TO Tariff rates and the associated tariff sheets, effective July 1, 2009, subject to hearing and settlement judge procedures to determine the appropriate rates.

I. Background

3. Riverside is not a public utility but is a Participating Transmission Owner (PTO) in the California Independent System Operator Corporation (CAISO). Riverside is reimbursed for its TRR by the CAISO through CAISO's collection of a Transmission Access Charge (TAC) from all users of the CAISO grid. The TAC rate is a formula rate based on the TRRs of all PTOs. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA) and full review by this

Commission to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charged by the CAISO.¹

4. Section 26.1.1 of the CAISO tariff requires non-jurisdictional PTOs to file with the Commission their proposed High Voltage TRR. In 2003, Riverside filed, and the Commission subsequently accepted, Riverside's initial TO Tariff.² This tariff included Riverside's base TRR, TRBAA, and resultant High Voltage TRR to be used by the CAISO to calculate the TAC paid under the CAISO tariff by CAISO transmission customers for service over Riverside's facilities and entitlements.³

5. In accordance with the CAISO tariff, Riverside is required to annually update its revenue crediting mechanism, TRBAA, to permit this adjustment to become effective on January 1 of each year. On February 3, 2009, the Commission accepted Riverside's current TRBAA.⁴

II. Description of Filing

6. In its petition for declaratory order, as amended in its supplemental filing, Riverside proposes to (1) increase its current TRR from \$17,500,000 to \$22,657,299 (a \$5,157,299 increase); and (2) revise its current TRBAA to \$1,629,684 to omit \$633,600 in SCE ETC costs. Thus, Riverside proposes a High Voltage TRR of \$21,747,615, which is calculated by subtracting Riverside's TRBAA from its TRR.

¹ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

² *City of Anaheim, California*, 105 FERC ¶ 61,293 (2003); *City of Anaheim, California*, Opinion No. 483, 113 FERC ¶ 61,091 (2005), *order on reh'g*, Order No. 483-A, 114 FERC ¶ 61,311 (2006).

³ The TRBAA is a tracking mechanism used to ensure that all revenues forecasted to be received by a PTO in a given year from wheeling service, usage charges, and the sale of financial transmission rights benefit CAISO transmission customers without delay, subject to an annual true-up. Riverside's TRBAA is calculated annually pursuant to section 3.25 of its TO Tariff and subtracted from its base TRR. The resultant amount represents Riverside's High Voltage TRR. Additionally, Riverside's TRBAA tracks the shortfall or surplus resulting from changes to the transmission service rates for existing contracts between Riverside and SCE due to changes in SCE's TRBAA.

⁴ *City of Riverside, California*, Docket No. EL09-27-000 (Feb. 3, 2009) (unpublished letter order).

Included in the proposed rate increase is (1) an increase in Riverside's General Fund Transfer amount from 9 percent of the subtotal of Riverside's base TRR to 11.5 percent of the subtotal of its revised base TRR; and (2) certain increases in Administrative and General (A&G) costs and regulatory expenses.

7. Riverside also proposes to implement an ETC adjustment clause, which Riverside characterizes as a tracking mechanism akin to the TRBAA, to minimize the number of rate filings in a given year necessitated by adjustments to SCE's High Voltage Existing Contract Access Charge. According to Riverside, it has four ETCs with SCE with estimated revenues of \$6,224,508 for fiscal year 2010.⁵ Riverside states that these costs are based upon SCE's High Voltage Existing Contract Access Charge, which may change multiple times in any given year if SCE revises its TRR frequently. Thus, Riverside proposes to implement a mechanism where the costs of the four ETCs would be subject to an automatic recovery and an annual true-up through the proposed ETC Adjustment Clause.

8. Additionally, Riverside asks the Commission to (1) waive the 60-day notice requirement to allow for an effective date of July 1, 2009;⁶ (2) waive the filing fee associated with this petition; and (3) grant any other relief or waivers necessary or appropriate for Commission approval and implementation of Riverside's revised TRR.

III. Notice of Filing and Responsive Pleadings

9. Notice of Riverside's filing was published in the *Federal Register*, 74 Fed. Reg. 23,853 (2009), with interventions, comments, and protests due on or before June 5, 2009. A notice of intervention was filed by the California Public Utilities Commission and timely motions to intervene were filed by City of Santa Clara, California and the M-S-R Public Power Agency; City of Vernon, California; San Diego Gas & Electric Company;

⁵ In the petition, Riverside notes that its estimated ETC costs are based on SCE's current High Voltage Existing Contract Access Charge rate of \$2.16 kW/month. Subsequently, in the supplemental filing, Riverside updated its ETC costs to reflect SCE's settled rate of \$1.91 kW per month filed on July 1, 2009 in Docket No. ER08-1343-000. This reduction lowered Riverside's projected annual ETC costs, resulting in a corresponding reduction in Riverside's base TRR to \$22,657,299 from its initial projection of \$23,377,299.

⁶ Riverside requests the Commission to allow its revised TRR to go into effect by July 1, 2009 "subject to refund if appropriate" *Id.* at 8. Riverside states that, "[s]olely for purposes of this filing, Riverside consents to procedures in the nature of refund obligations for any payments it receives from the CAISO for Riverside's revised TRR in excess of the TRR ultimately approved by the Commission." *See id.* at 18-19 & n.19.

and Startrans IO, L.L.C. Comments and protests were filed by Transmission Agency of Northern California (TANC); SCE; Modesto Irrigation District;⁷ California Department of Water Resources State Water Project (SWP); and Pacific Gas and Electric Company (PG&E). Riverside filed an answer in response to comments and protests.

10. Notice of Riverside's July 2, 2009 supplemental filing was published in the *Federal Register*, 74 Fed. Reg. 34,335 (2009), with interventions, comments, and protests due on or before July 23, 2009. None were filed.

A. Comments

11. TANC is concerned that Riverside's ETC Adjustment Clause proposal, which seeks formulary rate treatment for one category of its transmission costs, may set a precedent for other utilities with much larger costs who may rely upon Riverside's filing when seeking cost recovery through an automatic adjustment clause. Accordingly, TANC states that the Commission should limit any affirmative ruling on the ETC Adjustment Clause to the narrow facts presented in Riverside's petition.⁸ By creating a rate design that allows for changes to a single cost component and combining a stated and a formula rate, TANC argues that Riverside's proposal ignores potential offsetting cost changes that may reduce its overall rates.⁹ TANC cites to Order No. 890 to note that automatic recovery of costs of credits is contrary to the Commission's long-standing policy concerning single-issue rate adjustments.¹⁰ TANC argues further that automatic cost recovery could cause a mismatch with other costs that may also have changed but will not be adjusted until the fixed part of the rate is adjusted. Moreover, TANC claims that the automatic nature of Riverside's proposal may result in less regulatory scrutiny than if the relevant costs were considered in the context of a filed rate case, where the filing utility has the burden of proving the justness and reasonableness of costs.¹¹ Lastly, TANC states that it is unclear whether Riverside's proposal will yield the desired

⁷ Modesto Irrigation District, a member of TANC and M-S-R, adopts TANC's comments and requests by reference, and urges the Commission to adopt them.

⁸ TANC at 12-13.

⁹ *Id.* at 10.

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹¹ TANC at 10.

administrative efficiencies it seeks or whether ETC costs are even appropriately addressed through a formula rate.¹²

12. SWP supports Riverside's ETC Adjustment Clause because it will obviate the need for new rate filings for any future increases in ETC costs resulting from Riverside's bilateral agreements with SoCal Edison. However, SWP suggests that Riverside's ETC rate calculation should be based on SoCal Edison's High Voltage Existing Contract Access Charge, which is currently in settlement negotiations in another proceeding. SWP argues that the final settlement rate will be significantly lower than SCE's initially proposed High Voltage Existing Contract Access Charge rate of \$2.16/kW per month that Riverside used to develop its costs.¹³

13. SCE contends that the Commission should not allow Riverside's TO Tariff rate revisions to go into effect until it is certain that these rates are just and reasonable.¹⁴ It also argues that CAISO ratepayers should not be subjected to a protracted legal battle regarding a non-jurisdictional PTO's lack of refund obligation. Therefore, SCE asks the Commission to either (1) suspend for the maximum period and set for hearing Riverside's rate proposal; or (2) allow the CAISO to establish an escrow mechanism for the collection of all of Riverside's payments above the currently-authorized level.¹⁵

14. Also, both PG&E and SCE object to the inclusion in Riverside's TRR of amounts related to Riverside's transfer to the City of Riverside's General Fund. They contend that it is inappropriate for CAISO wholesale customers to pay City of Riverside's expenses that do not benefit CAISO ratepayers. SCE asserts that Riverside has not adequately supported its proposal to include as an expense item in its cost of service approximately \$2.1 million, which is 11.5 percent of its gross operation revenues. Riverside categorizes the expense as a General Fund transfer, which SCE states is conceptually similar to a franchise fee and a return on equity (ROE).¹⁶ PG&E claims that the *de facto* ROE that Riverside would receive is not calculable given the information Riverside has presented in this filing. Also, PG&E asserts that Riverside has failed to explain how it determined that certain personnel, whose salaries are partially included in Riverside's proposed A&G

¹² *Id.* at 11.

¹³ SWP at 6-7. *See supra* note 5.

¹⁴ SCE at 6.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 7-8.

expenses, are related to the transmission function.¹⁷ Thus, according to PG&E, there is no way to determine whether the proposal yields a TRR for Riverside that results in just and reasonable CAISO rates. Thus, PG&E asks the Commission to suspend Riverside's proposed TO Tariff rates for five months, subject to refund, and establish hearing and settlement judge procedures.¹⁸

B. Answer

15. Riverside asserts that requiring it to revise its entire TRR whenever the Commission approves changes to SCE's High Voltage Existing Contract Access Charge rate makes little sense.¹⁹ Riverside explains that SCE ETC costs change when the Commission approves modifications to SCE's base TRR and corresponding High Voltage Existing Contract Access Charge rates. Riverside notes that it only requests adjustment clause treatment for the four SCE ETCs, where the rates are subject to Commission approval in other proceedings as a result of filings by SCE.

16. Riverside also notes that the Commission has accepted automatic adjustment clauses (1) where the costs at issue are both volatile and of a large magnitude;²⁰ and (2) for certain categories of costs incurred by California PTOs, including SCE, which recovers its construction-work-in-progress costs for certain transmission projects through its construction-work-in-progress TRR.²¹ Riverside also states that its proposed ETC Adjustment Clause satisfies the justness and reasonableness standard for costs afforded adjustment clause treatment because (1) the necessary formulae for calculating such costs are contained in the rate schedule; and (2) all information and data inputs to the formulae are made available.²²

17. Riverside also dismisses TANC's argument that the ETC Adjustment Clause will result in less scrutiny of Riverside's ETC costs. Riverside explains that the High Voltage Existing Contract Access Charge rate and its corresponding impact on Riverside's costs

¹⁷ PG&E at 5.

¹⁸ *Id.* at 1, 5.

¹⁹ Riverside Answer at 7.

²⁰ *Id.* at 6 (citing *Fla. Power Corp.*, 70 FERC ¶ 61,321, at 61,979 (1995); *PacificCorp Elec. Operations and Ariz. Pub. Serv. Co.*, 54 FERC ¶ 61,296, at 61,853-61,854 (1991)).

²¹ *Id.* at 7 (citing *Southern Cal. Edison Co.*, 122 FERC ¶ 61,187 (2008)).

²² *Id.* (citing *Entergy Servs. Inc.*, 76 FERC ¶ 61,093, at 61,498 (1996)).

would be reviewed by the Commission and affected parties twice: (1) in response to a filing to modify the High Voltage Existing Contract Access Charge rate by SCE; and (2) in response to a filing to include in the Riverside TRR the ETC costs that result from the Commission-approved High Voltage Existing Contract Access Charge rate. Riverside also states that nothing in its proposal would preclude TANC or any other entity from filing an intervention in and protest of Riverside's annual ETC Adjustment Clause to correct any errors. Further, Riverside argues that contrary to TANC's contention that Riverside may not realize an efficiency gain from an automated treatment of the SCE ETC costs, the proposed ETC Adjustment Clause will be more efficient, and will eliminate the risk that Riverside will under-recover its ETC costs.²³

18. Riverside states that speculations regarding future filings by other PTOs are premature and should not serve as the basis for rejecting Riverside's proposed ETC Adjustment Clause. According to Riverside, the appropriate time to address the treatment of ETC costs or revenues for other PTOs is when, and if, a filing requesting a similar mechanism is made. Thus, Riverside requests the Commission to decline TANC's request to include in an order on Riverside's petition *dicta* regarding future filings by other PTOs.²⁴

19. Riverside contends that SCE's and PG&E's objections to the General Fund Transfer and its proposed personnel costs are unjustified. Riverside states that its transfer to the City of Riverside's General Fund is akin to a return that SCE and PG&E ratepayers pay to their shareholders. According to Riverside, residents in the City of Riverside are shareholders in a city utility system; thus, Riverside argues that city shareholders should not be required to forgo the type of compensation that SCE and PG&E shareholders receive for investing in their utilities. Riverside states that since there is no single just and reasonable ratemaking approach, it is appropriate that the means of providing a return

²³ For example, Riverside notes that it will under-recover a total of \$806,400 in costs related to SCE ETCs for the period between March 1, 2009 through the end of June, 2009. Without the ETC Adjustment Clause, Riverside states that to synchronize recovery of its ETC costs with the effective date of any proposed increase to the High Voltage Existing Contract Access Charge rate by SCE, it must file an increase in its TRR immediately following any filing by SCE that would result in a modification of the High Voltage Existing Contract Access Charge. However, According to Riverside, SCE's proposed changes to its High Voltage Existing Contract Access Charge rate may not be resolved prior to the effective date of such a filing by Riverside. Thus, Riverside argues it would have to seek an increase subject to refund and then revise its filing after resolution of SCE's High Voltage Existing Contract Access Charge proceeding. *Id.* at 10-11.

²⁴ *Id.* at 12.

to investor-owned and customer-owned utilities may differ.²⁵ With regard to its proposed personnel costs, Riverside argues that all personnel costs included in its TRR are related to transmission service, and that PG&E has not demonstrated that Riverside's estimates, or the costs thereto, are unreasonable.²⁶

20. Riverside argues that SCE's request to place Riverside's TRR in an escrow account or to suspend it for the maximum period should be rejected. Riverside states that it has consented to refund procedures and that Riverside has a history of repaying to the CAISO any amounts the Commission has determined that Riverside over collected pending the outcome of its TRR proceeding. Riverside further states that to indefinitely suspend Riverside's proposed TRR increase would be unjustly discriminatory, confiscatory and contrary to the CAISO Tariff, particularly given its history of cooperation with the Commission, the CAISO, jurisdictional PTOs, and CAISO ratepayers with respect to refunds relating to its TRR.²⁷ Similarly, Riverside urges the Commission to reject PG&E's request for a five-month suspension because Riverside's proposed TRR increase is not unjust and unreasonable and does not result in excessive revenues.

IV. Discussion

A. Procedural Matters

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

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

²⁵ *Id.* at 13.

²⁶ According to Riverside, five percent of the Energy Risk manager's time is spent on transmission matters and ten percent of the Power Planning/Marketing Manager's and Senior Resource Analyst's time is for transmission-related activities. *Id.* at 16.

²⁷ *Id.* at 15.

B. Standard of Review

23. The Commission addressed the issue of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).²⁸ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of a jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."²⁹ The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the court held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."³⁰ Subsequently, the court upheld the Commission's decision that subjecting the TRRs of non-jurisdictional utilities (like Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."³¹

24. However, in *TANC*, the court nevertheless rejected the Commission's authority to order Vernon to pay refunds. The court held that the structure of the FPA clearly reflects Congress' intent to exempt governmental entities and non-public utilities from the Commission's refund authority over wholesale electric energy sales.³² The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."³³

25. Therefore, while Riverside is not within the Commission's jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate for review purposes to apply the just and reasonable standard of section 205 to Riverside's TO Tariff

²⁸ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

²⁹ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

³⁰ *Id.* at P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

³¹ *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

³² *Id.* at 673-74.

³³ *Id.* at 674.

rates. To determine the justness and reasonableness of Riverside's TO Tariff rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

26. As an initial matter, we note that in its Petition Riverside agrees to return any payment it receives from the CAISO for Riverside's revised rates in excess of those ultimately approved by the Commission.³⁴ Furthermore, consistent with the court's findings in *TANC*, Riverside is not subject to section 205 (aside, that is, from our applying a just and reasonable standard), including Commission-imposed rate suspension and refund obligations. Therefore, any requests that the Commission suspend Riverside's proposed TRR for the maximum period of five months and, alternatively, require refunds or an escrow account for refunds are outside our jurisdiction.³⁵ We cannot act on these requests. As indicated above, while we find that Riverside's TO Tariff rates are subject to the same just and reasonable standard as that found in section 205, Riverside is not itself subject to the refund requirements of section 205. Therefore, it is not within our authority to direct Riverside to comply with any suspension, refunds, or the escrow account.

C. Hearing and Settlement Judge Procedures

27. Riverside's proposed TO Tariff rate revisions raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing procedures ordered below.

28. Our preliminary analysis indicates that Riverside's rate proposal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Riverside's TO Tariff rates and the associated tariff sheets for filing, make them effective as of July 1, 2009, as requested, and set them for hearing and settlement judge procedures.

29. This proceeding should also consider the reasonableness of Riverside's proposed ETC Adjustment Clause, including the threshold issue of whether it is appropriate to separately account for this single rate component through an automatic adjustment clause.

³⁴ Riverside Petition at 19 & n.19.

³⁵ As noted above, Riverside has agreed to repay amounts found to exceed the just and reasonable rate. To the extent that Riverside has an obligation to make such repayment, but fails to do so, the affected parties may seek to enforce any such obligation in the appropriate forum. *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 925 (9th Cir. 2005). We further note that other sections of the FPA may apply. *See, e.g.*, 16 U.S.C. § 824e(e) (2006).

30. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.³⁶ 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.³⁷ 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. Should the settlement judge ultimately determine that a hearing is warranted, Riverside shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

D. Waiver of Filing Fees

31. We will grant Riverside's petition for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required in Part 381.³⁸ Riverside explains that it is a municipal utility organized under the laws of California. Riverside is therefore exempt from the filing fee required for a petition for a declaratory order.

The Commission orders:

(A) Riverside's proposed Transmission Owner Tariff rates are hereby conditionally accepted for filing, effective July 1, 2009, subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) Riverside's petition for waiver of the filing fee is hereby granted, as discussed in the body of this order.

³⁶ 18 C.F.R. § 385.603 (2009).

³⁷ 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

³⁸ 18 C.F.R. § 381.108 (2009).

(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 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 Riverside's Transmission Owner Tariff rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

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

(E) 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.

(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.