129 FERC 61,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Commonwealth Edison Company

Docket Nos. ER10-209-000
EL10-12-000
(consolidated)

ORDER ACCEPTING IN PART, REJECTING IN PART, AND SUSPENDING PROPOSED RATE SCHEDULE, CONSOLIDATING PROCEEDINGS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2009)

1. On November 3, 2009, in Docket No. ER10-209-000, Commonwealth Edison Company, on behalf of itself and its wholly-owned subsidiary Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd), submitted a proposed Assignment Rate Schedule to its tariff describing ComEd's assignment to Ameren Services Company (Ameren) of certain credits (Section 4.8 Credits) under the Settlement Agreement Involving the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Certain Transmission Owners in the Midwest ISO, the Alliance Companies and Other Parties (Settlement Agreement). ComEd requests waiver of the sixty-day prior notice requirement[1] so that its proposed Assignment Rate Schedule can be accepted effective December 31, 2009. Also on November 3, 2009, in Docket No. EL10-12-000, ComEd filed a Petition for Declaratory Order seeking a Commission order requiring Midwest ISO to recognize the assignment of Section 4.8 Credits and allow Ameren to take service under Schedule 10-A of the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Midwest ISO Tariff).[2]

2. In this order, we accept ComEd's proposed filing in Docket No. ER10-209-000 in part, reject it in part, and suspend it for a nominal period, to become effective January 3,

[1] 18 C.F.R. § 35.11 (2009), as set forth in 16 U.S.C. § 824d (2006).

[2] Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1.

2010, subject to refund. We also consolidate ComEd's filings and establish hearing and settlement judge procedures.

I. Background

3. Prior to the operation of Midwest ISO, Illinois Power Company (Illinois Power),[3] ComEd,[4] and Ameren[5] (collectively, Departing Companies) each filed a Notice of Withdrawal from Midwest ISO, with the intent to join the Alliance Regional Transmission Organization (Alliance). The Commission instituted settlement procedures,[6] and, on March 20, 2001, Midwest ISO, certain transmission owners in Midwest ISO, the Departing Companies, and other parties entered into a Settlement Agreement which provided for, among other things, the withdrawal of the Departing Companies from Midwest ISO.[7] Certain information from the Settlement Agreement is described further below.

4. The Commission accepted the Settlement Agreement on May 8, 2001.[8] In December 2001, the Commission found that Alliance did not satisfy the criteria to be declared a Regional Transmission Organization.[9] The members of Alliance were ordered to elect whether they would join Midwest ISO or PJM Interconnection, LLC (PJM). Ameren and Illinois Power rejoined Midwest ISO.[10] Upon their return, Midwest ISO

---

[3] *See* Dynegy, October 13, 2000 Notice of Withdrawal, Docket No. ER01-123-000. Dynegy filed the notice on behalf of Illinois Power and, at the time of the filing, Illinois Power was not yet affiliated with Ameren.

[4] *See* Exelon Corp., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., December 22, 2000 Notice of Withdrawal, Docket No. ER01-780-000.

[5] *See* Union Electric Co. and Central Illinois Public Service Co., January 16, 2001 Notice of Withdrawal, Docket No. ER01-966-000.

[6] *Illinois Power Co.*, 94 FERC ¶ 61,332 (2001).

[7] *See* Settlement Agreement, Docket No. ER01-123-000, *et al*.

[8] *Illinois Power Co*., 95 FERC ¶ 61,183, *reh'g denied*, 96 FERC ¶ 61,026 (2001).

[9] *Alliance Companies*, 97 FERC ¶ 61,327 (2001).

[10] *See Alliance Companies*, 100 FERC ¶ 61,137 (2002).

returned their respective portions of the exit fee that they had paid pursuant to the Settlement Agreement, with interest.[11] ComEd elected to join PJM.[12]

II. Settlement Agreement

5. Under the Settlement Agreement, the Departing Companies agreed to pay an exit fee to Midwest ISO in the amount of $60 million.[13] Recognizing that transmission customers would typically pay their share of Midwest ISO start-up costs over time through the Midwest ISO administrative charge (rather than paying such capital costs up-front via the exit fee), the Settlement Agreement provides in section 4.8 that the Departing Companies receive credits against the capital cost component of future Midwest ISO administrative charges as they take transmission service from Midwest ISO. Such crediting is to be implemented through an alternate administrative cost adder under the Tariff.[14] Under section 4.9 of the Settlement Agreement, the total Section 4.8 Credits provided to the Departing Companies shall not exceed $60 million, and no Section 4.8 Credits shall be provided in connection with transmission service after December 15, 2013. In addition, the Settlement Agreement provides for *some* transferability of the Section 4.8 Credits. Specifically the Settlement Agreement allows

---

[11] Ameren was reimbursed its entire $18 million exit fee. *See Ameren Services Co.*, 101 FERC ¶ 61,320 (2002).

[12] *See PJM Interconnection, LLC*, 106 FERC ¶ 61,253 (2004).

[13] *See* Settlement Agreement, Docket No. ER01-123-000, *et al*., at section 4.1. Of the $60 million, ComEd paid $35.5 million; Ameren paid $18 million; and Illinois Power paid $6.5 million. Under section 4.1 of the Settlement Agreement, the parties agree that the exit fee reflects "the Departing Companies' fair share of Midwest ISO's [s]tart-[u]p [c]osts."

[14] Midwest ISO amended its Tariff to add Schedule 10-A, which details how Midwest ISO would assess its administrative charges against holders of the Section 4.8 Credits, and to include Attachment I to Schedule 10-A, which lists those entities entitled to take service under Schedule 10-A. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,193 (2003) (approving contested Offer of Settlement on Schedule 10-A); *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,205 (2003) (accepting revisions to Schedule 10-A based on Offer of Settlement); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,160 (2007) (accepting the most recent revisions to Schedule 10-A).

the credits to be applied against the charges owed for transmission services taken by the Departing Companies "or their current affiliates (or their successors or assigns)."[15]

III. Summary of Filings

6. On November 3, 2009, ComEd made two concurrent, related filings. First, in Docket No. ER10-209-000, ComEd filed a proposed Assignment Rate Schedule to its tariff,[16] which sets forth a description of an assignment to Ameren of $20 million of ComEd's Section 4.8 Credits.[17] ComEd's proposed Assignment Rate Schedule summarily describes the Assignment Agreement entered into by ComEd and Ameren on November 3, 2009 (Assignment Agreement).[18] ComEd states that, pursuant to the Settlement Agreement, Section 4.8 Credits are transferable to the successors or assigns of the Departing Companies. ComEd states that it does not expect to use sufficient Midwest ISO transmission service to make full use of the Section 4.8 Credits before December 15, 2013. ComEd states that Ameren, as a member of Midwest ISO, frequently uses Midwest ISO transmission service, making the Section 4.8 Credits valuable to Ameren. ComEd states that, as a result of the assignment effected by the proposed Assignment Rate Schedule, Midwest ISO will be required to apply the Section 4.8 Credits to Ameren's bills. Section 4 of the proposed Assignment Rate Schedule provides that "[the Commission's] acceptance of this Schedule shall constitute direction to Midwest ISO to charge its administrative costs to [Ameren] pursuant to Schedule 10-A of the Midwest ISO [Tariff], rather than under Schedule 10 of the Midwest ISO [Tariff], reflecting the [Section 4.8] Credits that have been assigned to [Ameren]."

7. ComEd states that its proposed Assignment Rate Schedule is subject to Commission approval pursuant to section 205 of the Federal Power Act because the assignment of Section 4.8 Credits will affect the jurisdictional charges for transmission service provided by Midwest ISO and should be accepted for filing because it pertains to the Settlement Agreement that the Commission approved in 2001.

---

[15] *See* Settlement Agreement, Docket No. ER01-123-000, *et al.*, at section 4.8.

[16] ComEd, FERC Electric Tariff, Original Vol. No. 7, Original Sheet Nos. 1-6.

[17] While ComEd states that it still retains the rights to over $30 million of its original $35.5 million of Section 4.8 Credits, Ameren has agreed to receive an assignment of up to a $20 million portion of ComEd's Section 4.8 Credits.

[18] ComEd included, for informational purposes only, the Assignment Agreement. In exchange for the transfer of the Section 4.8 Credits, the Assignment Agreement provides that Ameren will pay ComEd up to an aggregate amount of $15 million.

8. Second, in Docket No. EL10-12-000, ComEd filed a Petition for Declaratory Order seeking a Commission order requiring Midwest ISO to recognize the assignment of Section 4.8 Credits and allow Ameren to take service under Schedule 10-A. ComEd states that, if the Commission accepts its proposed Assignment Rate Schedule under section 205 of the Federal Power Act, ComEd will withdraw its petition as an unnecessary filing.

9. ComEd asserts in both filings that no changes to the Midwest ISO Tariff are needed in order to effectuate ComEd's assignment to Ameren.

IV. Notice of Filings and Responsive Pleadings

10. Notice of ComEd's filing in Docket No. ER10-209-000 was published in the *Federal Register*, 74 FR 59150 (2009), with interventions and protests due on or before November 24, 2009. A motion to intervene was filed by the City of Naperville, Illinois. A notice of intervention was filed by the Illinois Commerce Commission. Motions to intervene and protests were filed by Midwest ISO, the Midwest ISO Transmission Owners (Midwest ISO TOs),[19] and the FirstEnergy Companies (FirstEnergy).[20] A motion to intervene and comments were filed by the Illinois Municipal Electric Agency (IMEA). WPPI Energy filed a motion to intervene out of time. ComEd filed an answer to the protests and comments.

11. Notice of ComEd's filing in Docket No. EL10-12-000 was published in the *Federal Register*, 74 FR 59157 (2009), with interventions and protests due on or before

---

[19] In this proceeding, Midwest ISO TOs consist of: American Transmission Systems, Inc.; City of Columbia Water and Light Dept. (Columbia, MO); City Water, Light and Power (Springfield, IL); Duke Energy Corp. for Duke Energy Ohio, Inc., Duke Energy Indiana Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power and Light Co.; Manitoba Hydro; Michigan Public Power Agency; MidAmerican Energy Co.; Minnesota Power and Superior Water, L&P; Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., a Minnesota corp., and Northern States Power Co., a Wisconsin corp.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas and Electric Co.; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[20] The FirstEnergy Companies consist of Cleveland Electric Illuminating Co., Ohio Edison Co., Pennsylvania Power Co., The Toledo Edison Co., and FirstEnergy Solutions Corp.

November 24, 2009. Motions to intervene were filed by Ameren[21] and the City of Naperville, Illinois. A notice of intervention was filed by the Illinois Commerce Commission. Motions to intervene and protests were filed by Midwest ISO, Midwest ISO TOs, and FirstEnergy. A motion to intervene and comments were filed by IMEA. WPPI Energy filed a motion to intervene out of time. ComEd filed an answer to the protests and comments.

12. FirstEnergy, Midwest ISO, and Midwest ISO TOs contend that the "successors or assigns" language in section 4.8 of the Settlement Agreement is either ambiguous or imprecise and does not allow ComEd to assign the Section 4.8 Credits to Ameren. They contend that this language only contemplates a linear successor, such as through a merger or acquisition, and not a transfer to a completely separate corporate entity. They state that Ameren is not a "successor or assign" of ComEd since it neither "succeeded" ComEd in the corporate sense nor acquired or received assignment of ComEd's assets or transmission service. Even if Ameren were deemed to be an "assign" of ComEd, they contend that Ameren is not eligible for any credits because its exit fee was returned by Midwest ISO. Instead, they argue that the Section 4.8 Credits were designed to diffuse the impact of the exit fees paid by the Departing Companies, assuming that those entities stayed out of Midwest ISO, and that Schedule 10-A was not intended to create a market for the Section 4.8 Credits.

13. FirstEnergy, Midwest ISO, and Midwest ISO TOs state that Ameren no longer has the status of a Departing Company since it received a refund of its exit fee when it rejoined Midwest ISO and is no longer eligible to take service under Schedule 10-A. Accordingly, Midwest ISO TOs maintain that it is not appropriate to provide Ameren with a credit designed to mitigate the impact of the exit fees. ComEd's filing, Midwest ISO argues, merely exploits the fact that the initial list of eligible entities set forth in Attachment I of Schedule 10-A has not been amended to reflect Ameren's subsequent non-eligibility. Midwest ISO states that Attachment I is clerical in nature, seeking to provide additional clarity, and it cannot alter the substantive eligibility requirements of Schedule 10-A or those of the underlying Settlement Agreement. Midwest ISO states that Schedule 10-A limits its scope to entities that "have paid the capital portion of [Midwest ISO's] start-up cost in advance," which no longer pertains to Ameren.

14. FirstEnergy, Midwest ISO, and Midwest ISO TOs argue that the Commission should reject ComEd's proposal because it would adversely impact those entities that pay charges under Schedule 10 of the Midwest ISO Tariff by increasing the Schedule 10 rate.

---

[21] Ameren submitted its filing on behalf of Union Electric Co., Central Illinois Public Service Co., Central Illinois Light Co., Illinois Power Co., Ameren Energy Marketing Co., AmerenEnergy Generating Co., and AmerenEnergy Resources Generating Co.

In the alternative, FirstEnergy and Midwest ISO TOs request that the Commission suspend the proposed effective date of ComEd's filing for the maximum extent possible and set the matter for hearing. FirstEnergy and Midwest ISO TOs state that the proposal would allow Ameren to receive transmission service at a discounted rate, while similarly-situated companies would not receive such a discount. Such a result, they maintain, would be unduly discriminatory. Midwest ISO states that the proposal would allow Ameren to over-recover its exit fee by $5 million and members of Midwest ISO would be required to contribute an additional $20 million in Schedule 10 charges to make up for the revenue shortfall created by the credits. Midwest ISO also argues that ComEd owed Midwest ISO a minimum of $35.5 million in exit fees, yet through the instant application, seeks to reduce its effective exit fee by $15 million. Midwest ISO argues that it is not just and reasonable to abate ComEd's exit fee through an assignment that actually functions as an unjustifiable cross-subsidization by current Midwest ISO participants to ComEd.

15. Midwest ISO states that the Settlement Agreement has been overtaken by events because of the demise of Alliance and, as such, there is no reason to preserve arguable rights that have ceased to be relevant. Midwest ISO maintains that the concept of "Departing Companies" bound for Alliance is no longer an operative premise. Section 4.8, Midwest ISO states, is an unexecuted portion of the Settlement Agreement that was intended to govern the economic relationship of the Departing Companies as members of Alliance and Midwest ISO. Midwest ISO asserts that it cannot provide a Section 4.8 Credit to two of the three original Departing Companies because they no longer have a prepaid capital contribution to offset.

16. FirstEnergy and Midwest ISO contend that ComEd has not cited any basis on which it is entitled to make a filing under section 205 of the Federal Power Act seeking to increase the jurisdictional rates that customers pay for service under the Midwest ISO Tariff; and, even if it were entitled to do so, they argue that ComEd has not met its burden of showing that the proposed rate increase is just and reasonable. Midwest ISO contends that section 4 of the Assignment Rate Schedule would improperly direct Midwest ISO to charge Ameren administrative costs under Schedule 10-A and, thus, improperly attempts to modify the Midwest ISO Tariff without showing that Schedule 10-A is no longer just and reasonable.[22]

17. Midwest ISO argues that ComEd cannot compel the modification of the Midwest ISO Tariff by making a filing under section 205 of the Federal Power Act to establish a new rate schedule under ComEd's tariff or by filing a Petition for Declaratory Order. Since ComEd is not a transmission-owning member of Midwest ISO, Midwest ISO states

[22] Midwest ISO Protest at 6 (citing ComEd Filing, Docket No. ER10-209-000, Appendix A, section 4).

that ComEd is not authorized to make a filing that would affect the rates, terms, or conditions of service under the Midwest ISO Tariff. Moreover, Midwest ISO states, it is *ultra vires* for one utility to make a filing to compel the action of a non-filing utility.[23] Midwest ISO concludes that ComEd would need to make an application under section 206 of the Federal Power Act to effectuate the proposed assignment and, therefore, ComEd's filings should be rejected.

18. IMEA supports ComEd's proposal. However, IMEA states that if all or any part of ComEd's exit fee was funded through charges by ComEd to its transmission customers, including IMEA, then any payment received by ComEd from Ameren for the Section 4.8 Credits should be shared with those transmission customers. IMEA states that ComEd should be required to demonstrate the source of its share of the exit fees paid and to describe the accounting procedures it will use to record the sale of and revenues from the Section 4.8 Credits.

19. In its answer, ComEd explains that the Settlement Agreement expressly provides that the Section 4.8 Credits may be used by ComEd's "successors and assigns." ComEd states that protestors' assertion that the phrase "successors and assigns" allows use of the credits only by "successors" flies in the face of the plain words of the agreement. ComEd contends that no hearing or other additional procedures are required because the Settlement Agreement is unambiguous.

20. ComEd states that the currently effective Schedule 10-A provides that the Section 4.8 Credits may be used by "those Transmission Customers listed in Attachment I."[24] ComEd states that it is listed in Attachment I, as is Ameren, which is accepting the assignment.[25] ComEd maintains that, while Midwest ISO may contend that Attachment I is merely clerical in nature, Attachment I is part of the Midwest ISO Tariff and is the filed rate. Further, ComEd argues that its filing does not adjust or alter the rate levels of Midwest ISO administrative charges, and, if any party has a concern about those rate levels, such concerns must be raised in another proceeding under section 205 or section 206 of the Federal Power Act. ComEd states that the Settlement Agreement is not voidable and contends that Midwest ISO should not be allowed to keep the benefits it obtained from the settlement while denying ComEd its side of the bargain.

---

[23] *Id*. at 7 (citing 18 C.F.R. § 35.1 (e)).

[24] ComEd Answer at 14 (citing Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Second Revised Sheet No. 960).

[25] *Id*. at 14 (citing Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2461).

21. ComEd maintains that its proposed rate schedule is properly subject to the Commission's jurisdiction under section 205 of the Federal Power Act and reasserts that the rate schedule does not seek to revise or amend the Midwest ISO Tariff. Instead, ComEd states that its proposal only effectuates an assignment permitted by the Settlement Agreement that is implemented through the Commission-approved methodology specified in the currently-effective version of Schedule 10-A of the Midwest ISO Tariff.

22. In response to IMEA, ComEd maintains that the assignment will not affect rates charged to ComEd's ratepayers. ComEd states that the original cost of the exit fee was not funded through customer rates, and ComEd intends to record the proceeds of the assignment in an account that is likewise omitted from ComEd's rate calculations.

V. Discussion

A. Procedural Issues

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

24. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant WPPI Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. 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 ComEd's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

26. ComEd's proposed rate schedule and Petition for Declaratory Order raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

27. Our preliminary analysis indicates that ComEd's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept ComEd's proposed rate schedule for filing in part, reject it in part, suspend its effectiveness for a nominal period to become effective January 3, 2010, which is after the sixty-day notice period, subject to refund, and set it for hearing and settlement judge procedures. Further, we reject section 4 of the proposed rate schedule, which states that

our acceptance of the rate schedule shall constitute direction to Midwest ISO to charge its administrative costs to Ameren pursuant to Schedule 10-A of the Midwest ISO Tariff. If, based on the record established at hearing, the Commission finds that the Settlement Agreement permits the assignment of the Section 4.8 Credits to Ameren, the Commission will consider what actions are appropriate to enforce the Settlement Agreement in the context of the Petition for Declaratory Order. In the meantime, ComEd and/or Ameren may exercise their rights under section 206 of the Federal Power Act to seek to enforce the Midwest ISO Tariff, or amend it if necessary, to recognize the assignment.

28. 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.[26] 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.[27] 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.

29. Finally, given the common issues of fact and law, we will consolidate Docket Nos. ER10-209-000 and EL10-12-000, for purposes of hearing, settlement and decision.

The Commission orders:

(A) ComEd's proposed Assignment Rate Schedule is hereby accepted in part for filing, rejected in part, and suspended for a nominal period, to become effective January 3, 2010, subject to refund, as discussed in the body of this order.

(B) 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

---

[26] 18 C.F.R. § 385.603 (2009).

[27] 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 (www.ferc.gov – click on Office of Administrative Law Judges).

Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning ComEd's filings associated with its proposed assignment of Section 4.8 Credits to Ameren. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) 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.

(D) 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.

(E) 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.