134 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER11-2059-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 7, 2011)

1. On November 9, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to assess a charge on withdrawing members to recover the congestion hedge revenues that are lost when the Long-Term Firm Transmission Rights (LTTR) of these entities are removed from the Midwest ISO. This order accepts the proposal, suspends it for a nominal period, to become effective January 9, 2011, as requested, subject to refund and establishes hearing and settlement procedures.

I. **Background**

2. In Order No. 681,[1] the Commission required regional transmission organizations and independent transmission system operators (collectively, RTO) to make LTTRs available to all transmission customers. Under Order No. 681, LTTRs have to meet certain requirements, including: (1) the LTTRs must be point-to-point rights that specify a source and a sink; (2) they must provide a hedge against locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified and, once allocated, the financial coverage provided by the LTTR should not be modified during its term except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the RTO; and (3) the

[1] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

LTTRs must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.[2] While RTOs may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, the LTTRs must be able to offer firm coverage for at least a ten-year period.

3. With regard to the withdrawal of members from an RTO, the Commission stated in Order No. 681 that withdrawal of an entity from an RTO was best addressed in the RTO member agreement's terms for exit and should be reviewed on a case-by-case basis. The Commission encouraged RTOs and their stakeholders to consider the need for additional language in their tariffs or members agreements and to include any proposed revisions in their compliance filings.[3]

4. In response to Order No. 681, Midwest ISO proposed Tariff revisions in 2007 that provided its transmission owners with LTTRs in the form of Stage 1A Auction Revenue Rights (ARR). Midwest ISO proposed to make an initial allocation of ARRs to market participants based on a market participant's firm historical usage of the transmission network and consistent with Midwest ISO's determination that the ARRs are simultaneously feasible. Once a market participant receives its allocation of ARRs, the participant has the option of converting its ARRs into LTTRs by nominating such LTTRs with equivalent specifications or it can choose to receive the revenues associated with its ARR from the annual auction of LTTRs.[4] The Midwest ISO proposal did not include any language addressing how LTTRs are impacted when a market participant withdraws from the Midwest ISO.

5. On May 17, 2007, the Commission conditionally accepted Midwest ISO's compliance with Order No. 681.[5] Separately, on October 19, 2007, the Commission affirmed that Midwest ISO's counter-flow method, which assigns counterflow LTTRs effective for up to ten years when necessary to render LTTRs feasible for other market participants that nominate their ARRs, meets the requirements of Order No. 681.[6]

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[2] Order No. 681, 116 FERC ¶ 61,077 at P 108, 122, 217.

[3] *Id.* P 428.

[4] *See* Tariff section 44 (Annual FTR Auctions).

[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,141 (2007), *order on reh'g,* 121 FERC ¶ 61,063 (2007).

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,063, at P 17 (2007). The Commission conditionally accepted counter-flow FTRs as a transitional restoration method to ensure the availability of other FTRs that otherwise could be

(continued…)

II. Midwest ISO's Filing

6. On November 9, 2010, Midwest ISO submitted a proposed annual charge applicable to withdrawing market participants and an exit fee applicable to withdrawing transmission owners to recover the congestion hedge revenues that are lost when the LTTRs, including counterflow LTTRs, of these participants are removed from the Midwest ISO. The Midwest ISO explains that its proposal is intended to address the impending withdrawal of FirstEnergy and Duke[7] and that the proposal has the support of a majority of the FTR Working Group.

7. Midwest ISO asserts that its Tariff, in compliance with Order No. 681, provides load-serving entities with a long-term hedge against congestion with a set amount of LTTRs and requires the LTTRs to be fully funded for a 10-year period.[8] However, according to Midwest ISO, the withdrawal of a market participant results in "the wholesale loss of [a transmission owner's] LTTRs, and the counterflows, [which] potentially undercuts the feasibility of the LTTRs of the remaining Market Participants dependent on the LTTRs." Midwest ISO asserts that the remaining market participants may have to bear the cost of infeasibility through congestion uplift charges.

8. While Midwest ISO acknowledges that the Midwest ISO Transmission Owners Agreement (TO Agreement) does not address how LTTRs are impacted by a market participant's withdrawal, it nevertheless asserts that the TO Agreement requires the Commission to review such a withdrawal and to determine that such a withdrawal is just and reasonable. That review, according to Midwest ISO, requires the Commission to

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rendered infeasible if certain market participants refrain from making FTR nominations for their baseload capacity. *Midwest Indep. Trans. Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 156, 189, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007). The Commission accepted continuation of counter-flow LTTRs, with certain modifications, after the transition period. *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,027 (2010).

[7] American Transmission Systems, Inc. (an affiliate of FirstEnergy Service Company) (collectively, FirstEnergy) and Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (collectively, Duke) have requested to withdraw from the Midwest ISO. The Commission approved FirstEnergy's request in *American Transmission Sys., Inc.*, 129 FERC ¶ 61,249 (2009), *order on reh'g*, 130 FERC ¶ 61,171 (2010), and Duke Energy's request in *Duke Energy Ohio, Inc.* 133 FERC ¶ 61,058 (2010).

[8] Midwest ISO Tariff section 43.2.5.

consider the effect of the requesting party's withdrawal on Midwest ISO and its remaining members.[9]

9. Midwest ISO witness, Mr. Todd Ramey, explains that in order to be just and reasonable, the terms of a transmission owner's withdrawal should recognize and enforce the responsibility of the transmission owner for any adverse LTTR impacts caused by the withdrawal.[10] Midwest ISO also asserts that the Commission has previously evaluated the impact of a planned transmission owner's withdrawal on FTRs and ARRs[11] and that the Commission has ruled that utilities should be held harmless from adverse financial and other impacts of a withdrawal, including congestion uplift, that can be reasonably identified and quantified.[12] Midwest ISO asserts that the proposed Tariff revisions will protect remaining market participants from the adverse effects of transmission owner withdrawals and individual market participant departures.[13]

10. Moreover, Midwest ISO asserts that it never intended LTTRs to be at the mercy of withdrawing transmission owners, noting that its Tariff does not recognize a transmission owner withdrawal as an extraordinary circumstance under which the full funding of LTTRs may be excused. Midwest ISO states that it has adhered to Order No. 681's narrowly circumscribed view that such extraordinary circumstances should be limited to *force majeure* events.[14]

11. To calculate its proposed charge, Midwest ISO proposes to compare a reference case reflecting the infeasibility of all LTTRs existing before the withdrawal(s) and a case reflecting the impact of the withdrawal(s) on feasibility over a period of up to ten years after the withdrawal(s). A charge will be assessed on withdrawing members in the circumstance that the withdrawals are calculated to have an overall negative net impact[15] on the feasibility of the existing LTTRs of remaining LTTR holders. The annual charge shall be reduced by a discount factor in each year in which the LTTR infeasibility is less than the infeasibility determined in the study case. Midwest ISO does not propose to compensate a withdrawing transmission owner if the net impact on remaining LTTRs is

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[9] *Louisville Gas & Elec.*, 114 FERC ¶ 61,282, at P 28 and n. 25 (2006) (*LG&E*).

[10] Midwest ISO November 9, 2010 Filing, Ramey Testimony at 3.

[11] *Duquesne Light Co.*, 124 FERC ¶ 61,219, at P 110-111 (2008) *(Duquesne*).

[12] *Alliance Cos.*, 102 FERC ¶ 61,214, at P 7 (2003) (*Alliance*).

[13] Midwest ISO, November 9, 2010 Filing, Ramey Testimony at 4.

[14] Order No. 681, 117 FERC ¶ 61,201 at P 180-183.

[15] The calculation assesses the impacts of the withdrawal(s) on rendering existing LTTRs feasible as well as making feasible existing LTTRs that are infeasible.

positive. Midwest ISO proposes to calculate the total value of the impact of the withdrawal(s) to be assessed up to ten years after withdrawal based on historic prices for the previous three annual auctions. Upon receipt of payment, Midwest ISO proposes to reduce the uplift of the cost of infeasible LTTRs to all remaining LTTR holders on a *pro rata* basis.

III. Notice of Filing and Responsive Pleadings

12. Notice of Midwest ISO's proposed Tariff revisions was published in the *Federal Register*, 75 Fed. Reg. 70,231 (2010), with interventions or protests due on or before November 30, 2010.

13. Xcel Energy Services, Inc., Office of Ohio Consumers Counsel, Consumers Energy Company, Madison Gas & Electric Company, the Midwest Municipal Transmission Group, Missouri River Energy Services and WPPI Energy (collectively Midwest TDUs), Wisconsin Electric Power Company, Public Utilities Commission of Ohio, Detroit Edison Company, and Coalition of Midwest Transmission Customers filed timely motions to intervene or notices of intervention. Duke Energy Ohio and Duke Energy Kentucky (collectively, Duke Energy), FirstEnergy Service Company (FirstEnergy), and American Municipal Power, Inc. (AMP) filed timely motions to intervene and protests. Hoosier Energy Electric Cooperative, Inc. and Southern Illinois Power Cooperative (collectively Hoosier & Southern Illinois), Ameren Services Company (Ameren), and MidAmerican Energy Company (MidAmerican) filed timely motions to intervene with comments. ITC Holdings (ITC Holdings) filed a late motion to intervene with comments.

14. Midwest ISO submitted an answer on December 21, 2010. FirstEnergy and AMP submitted answers on December 28, 2010, and January 5, 2011, respectively.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also will grant ITC Holdings' motion to intervene out-of-time given its interest in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

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

B. Substantive Matters

1. Comments

17. FirstEnergy and Duke assert that the proposed Tariff provisions are inconsistent with the TO Agreement. FirstEnergy and Duke argue that withdrawal from Midwest ISO is governed explicitly by the TO Agreement and that such terms cannot be modified through a unilateral tariff amendment.[16] Rather, they claim that any changes to the TO Agreement must be unanimously approved by the transmission owners.

18. FirstEnergy and Duke further contend that the TO Agreement does not permit or contemplate the exit fees being proposed by Midwest ISO in this case, which encompasses only service provided by the withdrawing transmission owner to customers under certain existing contracts. In contrast, they argue, the LTTRs that Midwest ISO seeks to protect, which do not source or sink within the withdrawing transmission owner's system, do not even use the withdrawing transmission owners' facilities.

19. In addition, FirstEnergy and Duke contend that Midwest ISO's proposal is outside the scope of the exit fee provision of the TO Agreement because it does not involve financial obligations "incurred" by Midwest ISO, but instead concerns the impact of a transmission owner's withdrawal in future periods up to ten years after the effective date of the withdrawal. They assert that the purpose of the proposal is to reallocate future

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[16] Article V of the TO Agreement (Withdrawal of Members) sets forth six conditions that must be met by a transmission owner seeking to withdraw from the Midwest ISO. As relevant here, Article V, section 2(A) of the TO Agreement (the "hold harmless" provision) requires a transmission owner seeking to withdraw from the Midwest ISO to hold existing customers harmless. Article V, section 2(A) states:

> Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues for that service than if there had been no withdrawal by such Owner.

Further, Article V, section 2(B) of the TO Agreement (the "exit fee" provision) states that "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner."

costs and revenues, directly in conflict with Commission precedent holding that a withdrawing transmission owner is not obligated to protect remaining members from the possible reallocation of future costs or revenues. As an additional argument, they state that if the Commission does not reject the provision, Midwest ISO's proposed methodology for ascertaining the infeasibility charges is unjust, unreasonable, speculative, and vague and should be rejected on this basis or set for hearing.

20. Hoosier & Southern Illinois support the proposal, arguing that the provision is consistent with Article Five of the TO Agreement, which requires a departing transmission owner to be responsible for all financial obligations incurred prior to the date of withdrawal. They argue that the LTTRs are an existing obligation that must be funded for a ten-year period.

21. FirstEnergy faults Midwest ISO's reliance on the *Alliance* case[17] to support its contention that withdrawing transmission owners have a generalized "hold harmless" obligation that is broader than the scope of Article Five. FirstEnergy asserts that the Commission has repeatedly rejected attempts to use the hold harmless obligation in the *Alliance* case to expand a transmission owner's contractual withdrawal obligations.[18] AMP also considers Midwest ISO's reliance on *Alliance* to be misplaced since that order involved an unusual situation in which certain companies' RTO selections effectively destroyed the electrical contiguity between Midwest ISO and its members in Michigan and Wisconsin resulting in partial electrical stranding of Wisconsin and Michigan.[19]

22. AMP contends that Midwest ISO should not be permitted to implement Tariff revisions that obligate withdrawing transmission owners to fund an open-ended congestion hedge for remaining market participants since it is inconsistent with Commission precedent in the *Duquesne* case.[20] AMP argues that the *Duquesne* precedent states that withdrawing transmission owners are neither obligated to hold parties harmless from all costs occasioned by the withdrawal nor obligated to generally hold parties harmless from cost increases due to replacement arrangements that are otherwise just and reasonable.

23. FirstEnergy, Duke, Ameren, and American Municipal Power assert that the proposal is unduly discriminatory because it singles out withdrawing transmission owners

[17] *Alliance*, 102 FERC ¶ 61,214 at P 7.

[18] *E.ON U.S. LLC*, 116 FERC ¶ 61,020, at P 25 (2006); *LG&E*, 114 FERC ¶ 61,282 at P 49; *Duquesne Light Co.*, 122 FERC ¶ 61,039 at P 134 (2008).

[19] *Alliance,* 102 FERC ¶ 61,214 at P 53.

[20] *Duquesne*, 124 FERC ¶ 61,219 at P 110.

as the cause of infeasibility that is also influenced by system configuration, generation retirements by other market participants and other factors. FirstEnergy notes that Midwest ISO does not charge other entities for taking actions, such as retiring generators, that also may impact the feasibility of LTTRs.

24. Ameren supports Midwest ISO's filing as consistent with the general principle that costs should be allocated to those that cause them and, therefore, considers it appropriate that departing transmission owners or market participants pay the costs associated with their withdrawal. However, Ameren considers the proposal to use a study case based on transmission outages for 2011/2012 to be an inaccurate and unfair basis to determine a ten-year liability for a withdrawal taking place in 2012 or later. Ameren also argues that it is not appropriate to base infeasibility estimates on the past three annual auction clearing prices, as the Midwest ISO proposes, since FTR and ARR values can change significantly from year to year. AMP considers it unreasonable to not credit withdrawing transmission owners and market participants if the net impacts of their withdrawals on remaining LTTRs are positive, as Midwest ISO proposes.

25. ITC Holdings argues that Midwest ISO has not fully explained how the proposed Tariff revisions would apply to stand-alone transmission companies, as these companies do not hold LTTRs. MidAmerican notes that the proposal contains references to section 42A.5 of the Tariff that should be revised to references to section 43.7.4.5.

2. **Answers**

26. In its answer, Midwest ISO asserts that there is no need to amend the TO Agreement since it already holds a departing transmission owner responsible for obligations incurred before the withdrawal date. In that regard, Midwest ISO argues that the proposed Tariff revisions would result in payment obligations incurred before the withdrawal date. Midwest ISO considers the protests to be flawed by their failure to distinguish the TO Agreement's withdrawal obligations from the payment obligations that can be incurred under the Tariff before the effective date of a transmission owner's withdrawal. According to Midwest ISO, the protests virtually imply that the only obligations that can be incurred by withdrawing transmission owners are those specifically and explicitly mentioned in the TO Agreement. Instead, Midwest ISO states, the TO Agreement generally provides that payment obligations incurred before the withdrawal date will remain obligations that the withdrawing transmission owner must comply with, while the Tariff's provisions, including those that became effective before

the withdrawal date, specify the types of obligations that the withdrawing transmission owner can incur. Midwest ISO cites to examples in which exit fee obligations under Schedules 10, 16 and 17 of the Tariff have been assessed to transmission owners that have previously withdrawn from Midwest ISO. It also notes that the exit obligations currently in effect in Schedules 16 and 17 and Attachment FF of the Tariff, which were not part of the Tariff when Duke joined Midwest ISO, have been found by the Commission to be consistent with the TO Agreement and reasonable.[21]

27. Midwest ISO contends that transmission owners should bear the cost of any LTTR infeasibility caused by their withdrawal so that remaining LTTRs would be held harmless from such adverse impacts, and that in this sense the proposed Tariff revisions are consistent with Article V of the TO Agreement.

28. Midwest ISO considers the calculation of the proposed charge to be reasonable and notes that it is based on the same simultaneous feasibility tests that are in the current Tariff. Midwest ISO argues that its proposal is consistent with cost causation since the cost of existing infeasibility for reasons other than transmission owner departures will not be assigned to departing transmission owners. Midwest ISO asserts that it is reasonable to not credit any net positive impact of a withdrawal to a departing transmission owner since this is a type of financial benefit that is only appropriate for entities that remain part of, and participate in, Midwest ISO markets.

29. In its answer, FirstEnergy argues that Midwest ISO has overreached in interpreting its authority to impose new charges on withdrawing transmission owners under the TO Agreement. FirstEnergy asserts that Article V of the TO Agreement does not authorize Midwest ISO to create any new category of withdrawal charges and then impose those charges as long as the Tariff revisions became effective prior to the date of the withdrawal. FirstEnergy also contends that counterflow obligations are outside the scope of the hold harmless provision in Article V since counterflow obligations are not obligations that rely on transmission service provided by the withdrawing transmission owner. FirstEnergy notes that the Commission has rejected the position espoused by Midwest ISO that a withdrawing transmission owner must hold remaining RTO members harmless against any impact the withdrawal may have on LTTRs.[22]

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[21] *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 47, n.52, and P 52-54 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003); *Midwest Indep. Transmission Sys. Operator, Inc.,* 118 FERC ¶ 61,209 (2007), *order on reh'g and compliance filing,* 120 FERC ¶ 61,080, at P 83 (2007).

[22] *Duquesne Light Co.,* 122 FERC ¶ 61,039 at P 134.

30. FirstEnergy considers Schedules 10, 16, 17 and the charges applicable to transmission expansions under Attachment FF to be different from the speculative LTTR infeasibility costs at issue in this proceeding since LTTR infeasibility costs are future costs and they are not costs that have been incurred by Midwest ISO on behalf of the withdrawing transmission owners.

31. In its answer, AMP asserts that there is a distinction between enforcing an existing tariff term and creating a new tariff term and enforcing it after the fact.[23] AMP claims that precedent cited by the Midwest ISO is distinguishable from the facts in this case because it only supports the enforcement of an existing tariff provision.

3. Commission Determination

32. Midwest ISO's proposal raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

33. Our preliminary analysis indicates that Midwest ISO's proposal 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 Midwest ISO's proposal for filing, suspend it for a nominal period, make it effective January 9, 2011, subject to refund, and set it for hearing and settlement judge procedures.

34. 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.[24] 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.[25] 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.

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[23] AMP January 5, 2011 Answer at 2-3 (citations omitted).

[24] 18 C.F.R. § 385.603 (2010).

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

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.

The Commission orders:

(A) Midwest ISO's proposed Tariff revisions, including a charge on withdrawing members to recover the congestion hedge revenues that are lost when the LTTRs of these entities are removed from the Midwest ISO, are hereby accepted for filing and suspended for a nominal period, to become effective January 9, 2011, as requested, 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 Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Midwest ISO's proposed charge on withdrawing members to recover the congestion hedge revenues that are lost when the LTTRs of these entities are removed from the Midwest ISO. 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 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(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)

Kimberly D. Bose,
Secretary.