

136 FERC ¶ 61,137  
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.

City of Riverside, California

Docket No. ER11-3984-000

ORDER ACCEPTING PROPOSED TRANSMISSION  
REVENUE REQUIREMENT AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued August 29, 2011)

1. On July 1, 2011, the City of Riverside, California (Riverside) submitted revisions to its Transmission Owner Tariff (TO Tariff). Riverside requests that the Commission approve its (1) revised base Transmission Revenue Requirement (TRR); (2) revised High Voltage Transmission Revenue Requirement (High Voltage TRR); (3) modified Gross Load calculation; and (4) continued implementation of provisions for the pass-through of costs associated with Riverside's Existing Transmission Contracts (ETC)<sup>1</sup> with Southern California Edison Company (SoCal Edison). In addition, Riverside requests that the Commission approve a revision to Riverside's TO Tariff to facilitate the study of potential Resource Adequacy resources located within Riverside's electric system, and makes several ministerial changes to reflect the implementation of the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Update (MRTU) initiative.

2. Riverside requests an effective date of August 1, 2011, 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.<sup>2</sup> As discussed below, we accept Riverside's revised TO Tariff rates for filing, effective August 1, 2011, and set the matter for hearing and settlement judge procedures.

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<sup>1</sup> The mechanism for the pass-through of Riverside's ETC costs is referred to herein as the ETC Pass-Through Clause.

<sup>2</sup> Riverside's Petition at 26.

## I. Background

3. Riverside is not a public utility but is a Participating Transmission Owner (Participating TO) in the 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 Participating TOs. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA)<sup>3</sup> 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.<sup>4</sup>

4. Section 26.1.1 of the CAISO tariff requires non-jurisdictional Participating TOs to file with the Commission their proposed High Voltage TRR. In 2003, Riverside filed, and the Commission subsequently accepted, Riverside's initial TO Tariff.<sup>5</sup> This tariff included Riverside's base TRR, Transmission Revenue Balancing Account Adjustment (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 (as defined in the CAISO tariff).<sup>6</sup> Riverside's

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<sup>3</sup> 16 U.S.C. § 824d (2006).

<sup>4</sup> *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).

<sup>5</sup> *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*, Opinion No. 483-A, 114 FERC ¶ 61,311 (2006).

<sup>6</sup> The TRBAA is a tracking mechanism used to ensure that all revenues forecasted to be received by a Participating TO 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 SoCal Edison due to changes in SoCal Edison's TRBAA.

currently-effective TRR of \$25,514,941 was established by a settlement agreement,<sup>7</sup> as updated for the calendar year 2011 through the operation of Riverside's ETC Pass-Through Clause.<sup>8</sup>

5. In this docket, Riverside proposes a revised base TRR of \$31,693,122 on an annual basis.<sup>9</sup> Riverside states that its TRBAA, which serves as a revenue credit or negative adjustment to the TRR, will not change as a result of this filing and will remain, as a credit, of \$321,736. The revised High Voltage TRR (i.e., Riverside's base TRR with the TRBAA adjustment) would become \$31,371,386. The Gross Load associated with Riverside's proposed TRR is 2,180,985 MWh. According to Riverside, its Gross Load is determined through an econometric forecasting process that uses past observations of weather, national and local economic performance, and seasonal patterns to predict future energy consumption.<sup>10</sup>

6. Riverside explains that its revised base TRR is based upon projected annualized costs of the Riverside transmission Entitlements for fiscal year 2012 (July 1, 2011 through June 30, 2012). The base TRR also reflects Riverside's projected Administrative and General (A&G) costs, regulatory expenses, and a portion of the Riverside Public Utilities Department's payment to the City's general fund.

7. Riverside states that it participates in, and has Entitlements to, three transmission projects through the Southern California Public Power Authority (SCPPA). These three SCPPA projects are the Mead-Phoenix Project, the Mead-Adelanto Project, and the Southern Transmission System whose total annualized cost for Riverside's Entitlements are projected to be \$15,751,367 during fiscal year 2012. Riverside also states that it has Entitlements to transmission capacity pursuant to four agreements with the Los Angeles Department of Water and Power (LADWP). Collectively, the cost of Riverside's Entitlements under the four LADWP contracts for the 2012 fiscal year is \$2,207,080. The costs of these Entitlements with SCPPA and LADWP are included in the proposed

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<sup>7</sup> See Offer of Settlement and Settlement Agreement, City of Riverside, California, Docket Nos. EL09-52-000 and EL09-52-001 (filed December 14, 2009); *City of Riverside, California*, 130 FERC ¶ 61,094 (2010) (approving Offer of Settlement and Settlement Agreement).

<sup>8</sup> *City of Riverside, California*, 135 FERC ¶ 61,074 (2011).

<sup>9</sup> Riverside's proposed TRR reflects a \$6,178,181 increase.

<sup>10</sup> Riverside states that its proposed Gross Load is consistent with the forecast Riverside provided to the California Energy Commission and is used in Riverside's internal resource planning and procurement decisions.

TRR of \$31,693,122. Finally, Riverside states that it has contractual Entitlements to transmission capacity pursuant to four ETC agreements with SoCal Edison. Riverside states that because the costs for these ETCs, \$9,614,941, are already reflected in Riverside's base TRR through its ETC Pass-Through Clause mechanism, Riverside has reflected in the proposed base TRR described in this filing the same level of ETC costs as are currently recovered through Riverside's base TRR.

8. Riverside estimates that its A&G expenses related to transmission, and regulatory expenses will total \$469,332 and \$381,605, respectively. Additionally, Riverside states that for fiscal year 2012, the general fund transfer amount will be 11.5 percent of Riverside's annual gross electric operating revenue, or \$3,268,797. Riverside asserts that the general fund transfer is conceptually similar to a franchise tax that would be allocable to the transmission function as well as an appropriate substitute for a return on equity. For these reasons, Riverside asserts that it is both reasonable and appropriate for Riverside to recover a portion of its general fund transfer through its TRR.

9. Riverside also proposes to continue its ETC Pass-Through Clause<sup>11</sup> mechanism past its current termination date of December 31, 2011 and requests Commission approval to continue the mechanism on a permanent basis effective January 1, 2012. Riverside states that because it contains a true-up mechanism and provides that any over- or under-collection in Riverside's costs as invoiced by SoCal Edison will be reflected in the ETC Pass-Through Clause mechanism with interest, CAISO transmission customers are assured that only Riverside's actual ETC costs will be recovered through its TRR. Riverside states that it anticipates that its ETC costs will continue to change multiple times per year in the foreseeable future and, therefore, continuation of the ETC Pass-Through Clause mechanism is just and reasonable and will ensure that Riverside continues to recover, through its TRR, the costs of these Entitlements.

10. Additionally, Riverside proposes to include in its TO Tariff language that will permit Riverside, in its capacity as a Participating TO, to coordinate and cooperate with the CAISO regarding deliverability analyses for resources that are connected to Riverside facilities. Riverside states that the new tariff language is necessary to facilitate compliance with Resource Adequacy obligations under the CAISO Tariff.

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<sup>11</sup> Riverside's TO Tariff describes the ETC Pass-Through Clause as "[t]he mechanism that adjusts Riverside's High Voltage TRR for changes in the costs associated with certain ETCs, consisting of Riverside's projected annual cost of its four ETCs with SoCal Edison for the next calendar year, based upon the stated High Voltage Existing Contract Access Charge rate in effect at the time of Riverside's annual filing, plus true-up of the prior year's costs of such ETCs as compared with the projected ETC costs for the same period, including interest on the true-up amount. . . ."

11. Riverside proposes several additional revisions to its TO Tariff that are ministerial in nature and required to conform Riverside's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU. Riverside proposes to (1) delete the definition of Net FTR Revenue; (2) modify the definition of Transmission Revenue Credit to delete references to Net FTR Revenues and Usage Charge Revenues; (3) delete the reference to Transition Period; and (4) delete references to Usage Charge Revenues and FTR auction proceeds.

12. Also, Riverside argues that, as a municipality organized under the laws of California, it is exempt from the fees otherwise imposed under Part 381 of the Commission's regulations.<sup>12</sup> Riverside notes that the Commission granted a similar request for waiver of filing fees associated with its last revision to its Base TRR.<sup>13</sup> In keeping with this precedent, Riverside request that the Commission waive any fee associated with this filing.

13. Riverside requests an effective date of August 1, 2011, to allow the revised base TRR and TO Tariff provisions to be placed into service as soon as possible.

## **II. Notice of Filing and Responsive Pleadings**

14. Notice of Riverside's filing was published in the *Federal Register*, 76 Fed. Reg. 41,787 (2011), with interventions, comments, and protests due on or before July 22, 2011. The Modesto Irrigation District, and the City of Santa Clara, California and the M-S-R Public Power Agency jointly filed motions to intervene. The California Department of Water Resources State Water Project (SWP), Pacific Gas and Electric Company (PG&E) and SoCal Edison filed motions to intervene with comments or protests. San Diego Gas & Electric Company (SDG&E) filed a motion to intervene out-of-time. Riverside filed an answer in response to protests.

### **A. Protests**

15. SoCal Edison argues that given the limited testimony and evidence submitted related to the Southern Transmission System portion of the SCPPA costs, Riverside has not met its burden of proof demonstrating that such a cost increase is justified. SoCal Edison states that Riverside is seeking an increase of \$2,707,084 as compared with the costs it incurred in 2010. However, according to SoCal Edison, comparing Riverside's Southern Transmission System costs with its last TRR filing in Docket No. EL09-52-000 indicates the inclusion of a significant cost increase over the current levels. SoCal Edison

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<sup>12</sup> 18 C.F.R. § 381.108 (2011).

<sup>13</sup> *City of Riverside, California*, 128 FERC ¶ 61,207, at P 31 (2009).

argues that Southern Transmission System accounted for \$8,992,396 in Riverside's last TRR filing, but in the present filing, Riverside forecasts the cost to be \$12,138,255, an increase of 35 percent.<sup>14</sup> SoCal Edison asserts that given the limited testimony and evidence showing that such a cost increase is justified, the Commission should set Riverside's TRR for hearing.<sup>15</sup>

16. Further, SoCal Edison protests that it is unclear whether Riverside's proposed increase in A&G expenses is based upon a forecast of expenses that Riverside can reasonably be expected to incur. Also, SoCal Edison asserts that it is not clear that Riverside developed its forecast for regulatory expenses, which include legal and consulting fees, using a methodology that is consistent with Commission policy. SoCal Edison asserts that Riverside should provide verification that these legal and consultant fees are legitimately regulatory expenses.<sup>16</sup>

17. PG&E, SWP, and SoCal Edison object to 11.5 percent of Riverside's base TRR being transferred to Riverside's general fund. They assert that CAISO ratepayers should not be required to pay a TAC rate that includes amounts that enable Riverside to provide services solely for the benefit of its residents.<sup>17</sup> PG&E suggests that Riverside should recover any required general fund transfers through its retail electric rates, which are charged to the Riverside residents who directly benefit from the transfer.<sup>18</sup> SWP states that Riverside has made no representation that the general fund would be used to fund any transmission related costs, or that it would be put towards anything that would benefit CAISO ratepayers.<sup>19</sup> SoCal Edison maintains that, even if the general fund fee assessment should apply to CAISO ratepayers, it is not evident that the 11.5 percent general fund fee is a reasonable rate. SoCal Edison points out that the City Charter pages included in the workpapers indicate that 11.5 percent is the maximum percentage that could be applied, not the minimum amount or actual amount that will be applied. Finally, SoCal Edison states that while it is not opposed to a reasonable return on equity, Riverside has provided no analysis or evidence that the resulting amount of revenue

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<sup>14</sup> SoCal Edison Protest at 3.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> PG&E Protest at 3-4; SWP Protest at 6-7; SoCal Edison Protest at 4-5.

<sup>18</sup> PG&E Protest at 3.

<sup>19</sup> SWP Protest at 7.

generated by the general fund transfer would yield a just and reasonable return when applying the traditional rate base model used by the Commission.<sup>20</sup>

18. PG&E and SoCal Edison assert that, given the factual issues raised, it is appropriate for Riverside's TRR to be accepted, subject to refund, and set for hearing.<sup>21</sup>

**B. Answer**

19. Riverside asserts that the intervenors have not supported their objections to Riverside including in its proposed TRR the payments it makes to the City's general fund. Riverside argues that the transfer to the City's general fund represents a return on investment to Riverside residents that is akin to the returns that CAISO transmission customers pay to SoCal Edison and PG&E shareholders. Riverside argues that it is required by law to include revenues received from the CAISO through its TRR in the calculation of its annual transfer to the City's general fund.<sup>22</sup> Riverside's general fund transfer is established according to municipal law and is approved by its local regulatory authority.

20. Further, Riverside argues that, contrary to SoCal Edison's assertions, it has provided adequate cost supports for the upgrades to the Southern Transmission System by providing a breakdown of costs by month, specifying debt service, operations and maintenance expenses, Authority and Agency costs, and accompanying workpapers.<sup>23</sup> Further, Riverside asserts that the Commission has expressly approved Riverside's recovery of its Southern Transmission System Entitlement costs.<sup>24</sup> Similarly, Riverside asserts that the Commission should deny SoCal Edison's protest of Riverside's proposed increased A&G costs. Riverside argues that although it based its estimate of its fiscal year 2012 costs as of the time of the preparation of the analysis, it now acknowledges that due to subsequent events, it has reduced this forecast.<sup>25</sup> Finally, Riverside contests the intervenors' protests of its proposed regulatory expenses as not being fully supported, but in an effort to resolve this issue, Riverside agrees to provide supplemental documentation

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<sup>20</sup> SoCal Edison Protest at 4-5.

<sup>21</sup> PG&E Protest at 5; SoCal Edison Protest at 2 and 5.

<sup>22</sup> Riverside Answer at 6.

<sup>23</sup> *Id.* at 7-11.

<sup>24</sup> *See City of Anaheim, California*, Opinion No. 483, 113 FERC ¶ 61,091, at P 1, 47, 58 (2005), *reh'g denied*, Opinion No. 483-A, 114 FERC ¶ 61,311 (2006).

<sup>25</sup> Riverside Answer at 11-13.

of its costs to parties that sign a non-disclosure certificate and agree to abide by the terms of the Commission's Model Protective Order.

### **III. Discussion**

#### **A. Procedural Matters**

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

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant SDG&E'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.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest 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.

#### **B. Standard of Review**

24. The Commission has addressed the standard 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).<sup>26</sup> 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 CAISO's 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."<sup>27</sup> The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit 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."<sup>28</sup> Subsequently, the court upheld the

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<sup>26</sup> See *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).

<sup>27</sup> *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

<sup>28</sup> *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

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."<sup>29</sup>

25. However, in *TANC*, the court ruled that the Commission had no authority to order Vernon to pay refunds under section 205 of the FPA. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under section 205 of the FPA over wholesale electric energy sales.<sup>30</sup> The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."<sup>31</sup>

26. Therefore, while Riverside is not within the Commission's jurisdiction under FPA section 205, we find that it is appropriate to apply the just and reasonable standard of section 205 to Riverside's TO Tariff 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.

27. Furthermore, Riverside is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA. However, we note that Riverside has agreed to refund any payment it receives from the CAISO for Riverside's revised rates in excess of those ultimately approved by the Commission.<sup>32</sup>

### **C. Hearing and Settlement Judge Procedures**

28. Riverside's proposed TO Tariff rate revisions 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.

29. Our preliminary analysis indicates that Riverside's TRR 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 revisions for filing, make them effective as of August 1, 2011, as requested, and set all issues, except those decided below, for hearing and settlement judge procedures.

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<sup>29</sup> *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>30</sup> *Id.* at 673-74.

<sup>31</sup> *Id.* at 674.

<sup>32</sup> Riverside's Petition at 26.

30. 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 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.<sup>33</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>34</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 continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

#### **D. Other Issues**

31. We will accept Riverside's proposal to make permanent its ETC Pass-Through Clause mechanism effective January 1, 2012. We find that the continuation of the ETC Pass-Through Clause mechanism is just and reasonable and will ensure that Riverside continues to recover, through its TRR, the costs of its transmission Entitlements.

32. Additionally, we will accept Riverside's proposal to include in its TO Tariff language that will permit Riverside, in its capacity as a Participating TO, to coordinate and cooperate with the CAISO regarding deliverability analyses for resources that are connected to Riverside facilities. The new tariff language is needed to ensure compliance with Resource Adequacy obligations under the CAISO Tariff. Also, we will accept Riverside's additional revisions to its TO Tariff to conform Riverside's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU.

33. Finally, 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 by Part 381.<sup>35</sup> Riverside explains that it is a municipal utility

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<sup>33</sup> 18 C.F.R. § 385.603 (2011).

<sup>34</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 the date 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>).

<sup>35</sup> 18 C.F.R. § 381.108 (2011).

organized under the laws of California. Therefore, we find that Riverside is exempt from the filing fee required for a rate filing.

The Commission orders:

(A) Riverside's proposed TO Tariff rates, as incorporated in revised tariff provisions, are hereby conditionally accepted for filing, effective August 1, 2011, as discussed in the body of this order.

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

(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, 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 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 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.