

140 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. and
Public Service Electric and Gas Company

Docket No. ER12-2274-000

ORDER ON ABANDONMENT COST RECOVERY FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 17, 2012)

1. On July 19, 2012, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM) filed with the Commission, on behalf of Public Service Electric and Gas Company (PSE&G) proposed tariff revisions to its Open Access Transmission Tariff (OATT). The proposed tariff revisions seek to recover in PSE&G's cost-of-service formula rate prudently incurred costs associated with the abandonment of the Branchburg-Roseland-Hudson 500 kV project (BRH Project). In this order, we find that the BRH Project was abandoned for reasons beyond PSE&G's control and, therefore, we grant PSE&G's request to recover the prudently-incurred project costs associated with its abandonment. We also find, however, that the instant filing lacks sufficient information for the Commission to determine the reasonableness of certain abandoned plant costs. Accordingly, we accept and suspend the proposed tariff revisions to recover the BRH Project abandoned plant costs in PSE&G's formula rate, to become effective September 17, 2012, subject to refund. We also establish hearing and settlement judge procedures for the cost issues discussed herein.

I. Background

2. According to PSE&G, the BRH Project was included in PJM's regional transmission expansion plan (RTEP) in 2008 for the purpose of resolving 20 thermal and reactive reliability criteria violations expected to occur between 2013 and 2023. PSE&G

¹ 16 U.S.C. § 824d (2006).

states that the proposed BRH Project was to consist of a 500 kV transmission line and was to traverse 50-70 miles of heavily-populated and environmentally-sensitive areas in New Jersey. PSE&G further states that it estimated the BRH Project would cost approximately \$1.1 billion and would be in service by the summer of 2013.²

3. On October 30, 2009, PSE&G submitted revisions to the Commission pursuant to sections 205 and 219 of the FPA and Order No. 679³ to implement transmission rate incentives for the BRH Project effective January 1, 2010. On December 30, 2009, the Commission granted the requested incentives with one modification.⁴ Specifically, the Commission granted a 125 basis point adder rather than the requested 150 basis point adder to PSE&G's return on equity (ROE). In addition, the Commission granted recovery of 100 percent of Construction Work In Progress (CWIP), and recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment was a result of factors beyond PSE&G's control.

4. PSE&G states that in January 2010, PJM published a revised load forecast indicating that the reliability criteria violations that led to the development of the BRH Project could be fewer and less severe than those in the 2008 RTEP. According to PSE&G, in light of these changes, PJM explored alternatives to the BRH Project and ultimately developed the Northeast Grid Reliability Project (NGR Project).

5. PSE&G states that the NGR Project is an RTEP baseline reliability project involving the construction of approximately 40 miles of 230 kV overhead and underground circuits. According to PSE&G, at the September 8, 2010 Transmission Expansion Advisory Committee (TEAC) meeting, PJM staff recommended that the NGR Project be included in the 2010 RTEP and that the BRH Project be removed from the 2010 RTEP. PSE&G states that on October 13, 2010, the PJM Board of Managers (Board) approved this change to the RTEP.

6. PSE&G further states that on November 9, 2010, PSE&G submitted a letter to the Commission giving notice of the PJM's decision to eliminate the BRH Project from the 2010 RTEP and to replace it with the NGR Project. Accordingly, on October 4, 2011, the

² Transmittal at 7.

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ *Public Service Electric and Gas Company*, 129 FERC ¶ 61,300 (2009) (BRH Incentive Order).

Commission denied rehearing of the BRH Incentive Order as moot, and found that the transmission rate incentives granted for the BRH Project were no longer applicable, except for PSE&G's opportunity to recover prudently-incurred abandonment costs through a separate section 205 filing.⁵

7. PSE&G also states that the North Central Reliability Project (NCR Project) is another baseline RTEP project, similar to the BHR Project, for which the Commission granted transmission rate incentives, including recovery of 100 percent CWIP and recovery of prudently-incurred abandonment costs.⁶ PSE&G states that it expects to begin construction of the NCR Project in 2012 and that the PJM-specified in service date is June 2014.⁷

II. PSE&G Filing

8. PSE&G seeks to recover \$3,623,275 of what it states are prudently-incurred abandonment costs associated with the BRH Project. PSE&G asserts that it prudently incurred a total of \$7,813,114 associated with the BRH Project but transferred \$1,896,677 to the NGR Project and \$1,456,231 to the NCR Project, leaving \$4,460,206 in total abandonment costs associated with the BRH Project. PSE&G further states that because certain of those costs were incurred prior to the effective date of the BRH Incentive Order, PSE&G is seeking to recover only 50 percent of the pre-incentive costs, or \$836,931.⁸

9. PSE&G further asserts that the BRH Project was abandoned for reasons beyond its control and that it prudently incurred the costs associated with the project. PSE&G states that after PJM revised its load forecast in January 2010, it directed its BRH project management consultant on March 30, 2010, to: (1) provide a status update on consultant's activities to date; (2) stop all work associated with the BRH Project; and (3) close-out the BRH Project by individual project discipline. PSE&G states that by April 2010, 84 percent of the total BRH Project costs had been incurred, including up-to-date activities and close-out costs. PSE&G also contends that between May 2010 and August 2010, costs were significantly ramped down, and by September 2010, 100 percent

⁵ 137 FERC ¶ 61,010 (2011) (BRH Rehearing Order).

⁶ *PJM Interconnection, L.L.C. and Public Service Electric and Gas Company*, 135 FERC ¶ 61,229 (2011).

⁷ Transmittal at 10.

⁸ Exhibit PEG-2 at 1 shows total pre-incentive costs of \$1,673,862.

of the total BRH Project costs had been incurred. PSE&G also claims that there has been no recovery of BRH Project costs to date, and therefore there will be no double recovery of BRH Project costs.

10. PSE&G explains that if it had sought to recover BRH Project costs through its formula rate, the first opportunity to do so would have been through its October 15, 2010 Annual Update filing setting rates for the upcoming rate year. However, PSE&G states that it chose not to include the costs in that update because PJM's September 8, 2010 TEAC presentation established that PJM staff was going to recommend to the PJM Board that the NGR Project be included in the RTEP and that the BRH Project be removed. To ensure that BRH Project costs are not recovered twice, PSE&G proposes to remove the CWIP column for the BRH Project and add a BRH Project Abandonment Recovery Costs column in its formula rate.⁹

11. PSE&G proposes to collect these costs over a five-year amortization period. PSE&G states that the Commission's general policy is that abandoned plant costs should be recovered over the life of the facilities as if they had gone into service. However, PSE&G believes that because the rate impact of recovering the costs over a five-year period is relatively small, with an overall impact to all PJM zones of less than one-half of one percent, its proposed amortization period is reasonable. Therefore, full recovery would be realized by the end of 2017. PSE&G notes that it would also be amendable to a one-year amortization period as recently implemented in *Southern California Edison Company*, 137 FERC ¶ 61,252, at P 27 (2011).¹⁰

12. PSE&G requests that the Commission accept its proposed treatment for reflecting abandoned plant costs for the BRH Project in its formula rate effective September 17, 2012. PSE&G also requests that, to the extent necessary, the Commission grant waivers of certain of the Commission's cost support regulations,¹¹ including: (1) waiver of the full Period I and Period II data requirements; (2) waiver to provide work papers related to Period I and Period II data; (3) waiver of the requirements for the submissions of cost of service statements; and (4) waiver of the requirements requesting the determination of if and the extent to which a proposed change constitutes a rate increase based on Period I-Period II billing determinants.¹²

⁹ Transmittal at 19-20.

¹⁰ Transmittal at 22-23.

¹¹ See 18 C.F.R. § 35.13 (2012).

¹² Transmittal at 24.

III. Notice, Interventions, and Responsive Pleadings

13. Public notice of the PSE&G's Filing was published in the *Federal Register*, 77 Fed. Reg. 44,608 (2012), with interventions and comments due on or before August 9, 2012. Timely motions to intervene were filed by PJM and Dominion Resources Services, Inc. A timely motion to intervene and protest was jointly filed by the New Jersey Division of Rate Counsel, Pennsylvania Office of Consumer Advocate, and Maryland Office of People's Counsel (collectively, Joint Consumer Advocates). On August 21, 2012, PSE&G filed a motion for leave to answer and answer to the protest.

14. Joint Consumer Advocates raise two issues regarding PSE&G's proposal: (1) the proper scope of abandonment costs and whether PSE&G is entitled to half of the pre-incentive expense; and (2) the appropriate amortization period. Joint Consumer Advocates acknowledge that transferring some of the costs associated with the initial BRH Project development to other PSE&G projects is reasonable.

15. On its first point, Joint Consumer Advocates contend that PSE&G has not supported its request for recovery of 50 percent of the costs incurred prior to the date the Commission granted the transmission rate incentives that included recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment was a result of factors beyond PSE&G's control. Therefore, Joint Consumer Advocates object to PSE&G recovering any costs prior to the January 1, 2010 effective date of the BRH Incentive Order.

16. The Joint Consumer Advocates also question PSE&G's incurrence of BRH Project costs after March 2010, the date that PSE&G purportedly knew the project was likely to be cancelled and that PSE&G requested its consultant to stop all work associated with the BRH Project. While the Joint Consumer Advocates acknowledge there was a ramp down in project expenditures from April 2010 to October 2010, they contend that the amount of these costs is suspect and that PSE&G has provided no details regarding the exact nature of the expenses or how they had been ramped down. Therefore, Joint Consumer Advocates argue that at least some of the costs PSE&G claims were incurred after March 2010 may not be considered to be reasonably incurred, and request that the Commission require PSE&G to provide further documentation as to these costs.

17. On their second point, Joint Consumer Advocates state that they support a one-year amortization period, provided there is no return on the unamortized balance. Joint Consumer Advocates note that a one-year amortization will avoid four years of carrying costs and reduce overall costs by \$953,368.

18. In its answer, PSE&G asserts that the Commission should deny the Joint Consumer Advocates protest regarding its ability to recover 50 percent of its pre-incentive abandonment recovery costs because the request is in accordance with well-established Commission precedent. PSE&G claims that the Commission specifically

found in Opinion No. 295-A that, “During the amortization period the utility is permitted to earn a return on the unamortized portion of the fifty percent of its investment that is being recovered through rates.”¹³ Accordingly, PSE&G concludes that it is entitled to recover 50 percent of its pre-incentive order costs through its formula rates.

19. PSE&G also asserts that the Commission should deny the Joint Consumer Advocates’ protest because PSE&G has adequately documented why there were costs incurred after March 2010, clearly stated the nature of those expenses, and delineated how those costs were ramped down. For instance, PSE&G states that, in light of its obligation as well as the logistical realities that preclude simply stopping major project work, it could only reduce, not completely stop, the incurrence of costs associated with the BRH Project. Since the PJM Board had not yet approved the removal of the BRH Project from the RTEP, PSE&G argues that it would not have been prudent for them to entirely stop incurring costs associated with the construction of the BRH Project, because PJM’s revised load forecast did not relieve PSE&G of its obligation to construct the project, and the PJM baseline assumption remained that the BRH Project would be built.¹⁴

20. PSE&G further asserts that the Commission should reject as unsubstantiated the Joint Consumer Advocates’ argument that some of the ramp down costs may not have been reasonably incurred. PSE&G states that while Joint Consumer Advocates purport to challenge the prudence of the costs incurred during the ramp down timeframe, Commission precedent is clear that the Joint Consumer Advocates must do more than just raise unsubstantiated allegations regarding the prudence of those expenses. PSE&G contends the Joint Consumer Advocates must create serious doubt as to the prudence of an expenditure before the burden shifts back to PSE&G to demonstrate that the expenditure in question was prudent.¹⁵

¹³ *Id.* (quoting Opinion No. 295-A at 61, 781).

¹⁴ PSE&G Answer at 5-6.

¹⁵ PSE&G Answer at 6-7 (citing *Trans-Allegheny Interstate Line Company*, 119 FERC ¶ 61,219, *order on reh’g*, 121 FERC ¶ 61,009 (2007); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,108 (2006); *PJM Interconnection, LLC*, 115 FERC ¶ 61,052, at P 12, n.10 (2006); *Duke Energy Corp.*, 87 FERC ¶ 61,249, at 61,966 and n.4 (1999); *Central Maine Power Co.*, 60 FERC ¶ 61,285, at 61,964 n.17 (1992); *Philadelphia Electric Co.*, 58 FERC ¶ 61,060, at 61,132 and n.2 (1992)).

21. PSE&G asserts with respect to post-incentive abandonment recovery costs that Commission precedent supports permitting utilities to earn a return on the unamortized balance of abandoned plant in the context of Order No. 679 abandonment incentives.¹⁶ PSE&G contends, for example, that the Commission permitted Southern California Edison Company to earn a return on abandonment costs associated with the abandoned Arizona segment of the Devers-Palo Verde II transmission project.¹⁷ In addition, PSE&G states that the Commission has issued numerous orders recognizing that allowing abandoned plant recovery ensures that investors will recover a “return on” and “return of” their investment.¹⁸

22. Finally, PSE&G asserts that the Commission should grant a one-year or a five-year amortization period, and deny the Joint Consumer Advocates’ protest that PSE&G not be permitted to collect a return on the unamortized balance of the abandonment costs.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer

¹⁶ PSE&G Answer at 8 (citing, *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, 116 FERC ¶ 61,057 (2006), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007)).

¹⁷ *Southern California Edison Company*, 137 FERC ¶ 61,252 (2011).

¹⁸ PSE&G Answer at 9 (citing, *Northeast Utilities Service Company and National Grid USA*, 125 FERC ¶ 61,183, at PP 99-100 (2008) (“abandonment ensures that investors will recover a return on an investment”); *Central Maine Power Company*, 125 FERC ¶ 61,079, at P 88 (2008) (stating “abandonment ensures that investors will recover a return on an[] investment”), *order denying reh’g*, 135 FERC ¶ 61,136 (2011); *Southern California Edison Company*, 123 FERC ¶ 61,293, at P 51 (2008) (stating “abandoned plant recovery will provide assurance to investors that they will be able to recover a return on and of their investments”); *PPL Electric Utilities Corporation Public Service Electric and Gas Company*, 123 FERC ¶ 61,068 at P 56 (stating “the abandoned plant recovery ensures that investors will recover a return on and of investment” (emphasis in original), *order denying reh’g*, 124 FERC ¶ 61,229, at P 16 (2008)).

to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answer filed by PSE&G because it provided information that assisted us in our decision-making process.

B. Commission Determination

24. We find that PSE&G is eligible to recover its prudently incurred costs associated with the abandonment of the BRH Project, and thus we grant PSE&G's request to recover those costs. We find that during the development of the BRH Project circumstances arose that resulted in PSE&G's abandonment of the project, and that those circumstances were beyond PSE&G's control. As discussed below, we conclude that PSE&G has demonstrated that it qualifies to recover 100 percent of the prudently-incurred project costs for the BRH Project expended on or after January 1, 2010. In addition, we find that PSE&G is entitled to recover 50 percent of the prudently-incurred project costs expended prior to January 1, 2010.

25. In the BRH Incentive Order, the Commission granted PSE&G's request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment was a result of factors beyond PSE&G's control. As discussed above, PJM originally included the BRH Project in its 2008 RTEP in order to address certain reliability needs. PJM subsequently removed the BRH Project from the 2010 RTEP after revising its load forecast. PJM's removal of the BHR Project from the RTEP, which led to the ultimate abandonment of the project, was beyond PSE&G's control, and thus we grant PSE&G's request to recover its prudently incurred BRH Project costs.

26. We reject the Joint Consumer Advocate's claim that PSE&G is not entitled to recover any costs prior to the January 1, 2010 effective date of the BRH Incentive Order. As noted by PSE&G, our policy pursuant to Opinion No. 295 dictates that PSE&G is eligible to recover 50 percent of BRH Project related costs incurred prior to the issuance of the BRH Incentive Order, provided those costs are found to be prudently incurred.

27. We consider the appropriate amortization period on a case-by-case basis. Here, we are persuaded by the Joint Consumer Advocate's argument that a one-year amortization period is reasonable in this case. This outcome is consistent with *Southern California Edison Company*,¹⁹ where the Commission found that a one-year amortization period would be appropriate for the recovery of abandonment costs in light of the

¹⁹ 137 FERC ¶ 61,252, at P 27 (2011)

relatively small amount to be recovered here.²⁰ Additionally, a one-year amortization period would reduce the total amount collected by PSE&G by \$953,368 in avoided carrying costs, compared to a five-year amortization period.

28. We also reject the Joint Consumer Advocates argument that PSE&G should not be allowed to recover costs incurred after March 2010, the date that PSE&G purportedly knew the project was likely to be cancelled. While PSE&G ramped down its activities and expenditures on the BRH Project between March 2010 and September 2010 PSE&G continued to incur some costs during that period because it was still obligated to develop and construct the project. It was not until not until October 2010 when PJM officially removed that project from the RTEP the PSE&G was relieved of its obligation. Accordingly, it was reasonable for PSE&G to incur some level of project related costs between March 2010 and September 2010.

29. While we find that PSE&G has supported its request to recover the costs associated with its abandonment of the BRH Project, PSEG has failed to provide sufficient detailed information on its costs, which raise a reasonable question as to the prudence of certain expenditures. For example, with respect to post project shut-down costs, i.e. those subsequent to PJM's October 2010 determination to remove the BRH Project from the RTEP, the Commission finds that the work papers included with PSE&G's Filing do not provide a sufficient explanation of the identity or the reason for costs incurred. PSE&G simply stated that the costs were related to trailing charges, adjustments, and transfers. In addition, PSE&G's exhibit regarding post-September 2010 costs shows costs incurred by PSE&G for the BRH Project after September 2010, which is inconsistent with PSE&G's statement that 100 percent of the costs for the project were incurred by September 2010. While PSE&G is correct that it does not have to establish the prudence of an expenditure in its case-in-chief, this presumption of prudence can be rebutted at hearing whenever another party "creates serious doubt as to the prudence of an expenditure."²¹ The hearing we establish below will provide parties with further discovery to determine if they can meet that burden. The ultimate burden of proof on prudence remains with PSE&G.

²⁰ In *Southern California Edison Company*, the company proposed to recover \$11.028 million.

²¹ See *Iroquois Gas Transmission System, L.P.*, 87 FERC ¶ 61,295, at 62,168-62,170 (1999). The Commission also has the option of requiring the utility to demonstrate the prudence of an expenditure in the order setting the matter for hearing or in a later order. *Id.* at 62,168 (citing *Minnesota Power & Light Company*, 11 FERC ¶ 61,312, at 61,653 n.44 (1980)).

30. We also grant PSE&G's request for waiver of section 35.13. Nonetheless, to the extent that parties at the hearing ordered herein can show the relevance of additional information needed to evaluate PSE&G's proposal, the presiding judge can provide for appropriate discovery of such information. Additionally, we grant waiver of the 60-day notice requirement to allow the tariff sheets to become effective September 17, 2012.

C. Suspension, Hearing, and Settlement Judge Procedures

31. As discussed above, the specific amount of abandoned plant costs that PSE&G proposes to recover as prudently-incurred costs raises issues of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

32. Our preliminary analysis indicates that PSE&G's request to recover \$3,623,275 of costs associated with its abandonment of the BRH Project has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that this request is separate from PSE&G's demonstration that the factors leading to its abandonment of the BRH Project were beyond its control and that it, therefore, qualifies to recover the associated prudently-incurred abandoned plant costs. Accordingly, we will accept PSE&G's prudently-incurred abandoned plant cost filing associated with the BRH Project, nominally suspend it to be effective September 17, 2012,²² subject to refund, and set the specific amount of abandoned plant costs that PSE&G may recover for hearing and settlement judge procedures.

33. While we are setting this matter for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.²³ If the parties desire, they may, by

²² Under *West Texas Utilities*, 18 FERC ¶ 61,189, at 61,374 (1982), the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable and may be substantially excessive, the Commission would generally impose a five-month suspension. In the instant filing, we find that the question of a nominal suspension or five-month suspension is immaterial since there will be a de minimus effect on rates.

²³ 18 C.F.R. § 385.603 (2012).

mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁴

34. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order 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 the presiding judge.

The Commission orders:

(A) PSE&G's request to recover project abandoned plant costs because the abandonment was beyond its control is granted based on the specific circumstances presented in this case, as discussed in the body of this order.

(B) The proposed tariff revisions are hereby accepted, suspended for a nominal period, effective September 17, 2012, subject to refund and subject to the outcome of the hearing established herein, 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 the prudence of the abandoned plant costs PSE&G will include in its formula rate and the justness and reasonableness of the resulting rates. 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 (2012), 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 the 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

²⁴ 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 (5) 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).

make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of this order, 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 this proceeding 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.