

144 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hillman Power Company, L.L.C.

Docket Nos. ER13-2076-000
EL13-89-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED RATE
SCHEDULE, INSTITUTING SECTION 206 PROCEEDING, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2013)

1. On July 31, 2013, Hillman Power Company, L.L.C. (Hillman) submitted its proposed rate schedule for Reactive Supply and Voltage Control from Generation Sources Service (reactive power) to be collected pursuant to Schedule 2 of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff).¹ Hillman will provide this reactive power service to MISO through its approximately 20 MW wood and tire-derived fuel fired generation facility located in Hillman Township, Michigan (Hillman Facility). As discussed below, the Commission accepts Hillman's proposed rate schedule for filing, suspends it for a five-month period, to become effective the first day of the month thereafter following the date Hillman becomes a registered Market Participant, subject to refund and conditioned on Hillman meeting all requirements specified in Schedule 2 and sections 1.267 and 1.384 of the Tariff. We also establish hearing and settlement judge procedures. Finally, we institute a Federal Power Act (FPA) section 206 proceeding² in Docket No. EL13-89-000, establish a refund effective date, and consolidate the instant proceedings for purposes of hearing and settlement procedures.

¹ Hillman, FERC Electric Tariff, Reactive Supply Tariff, [Reactive Supply Service, FERC Electric Rate Schedule No. 1, 0.0.0.](#)

² 16 U.S.C. § 824e (2006).

I. Background

2. Hillman is a Delaware organized limited liability company and the owner/operator of the Hillman Facility. Hillman states that it is a qualifying facility pursuant to the Commission's regulations. The Hillman Facility is located within the MISO region and is interconnected to the electric transmission system owned by Michigan Electric Transmission Company, LLC (Michigan Electric) and operated by MISO. Hillman sells its output under a long-term power purchase agreement to Consumers Energy Company (Consumers). The Hillman Facility is a small power production facility constructed in 1987 which uses wood and to a lesser extent tire-derived fuel to generate a capacity of approximately 20 MW of electricity. Hillman states that the Hillman Facility is capable of dynamically injecting or absorbing reactive power to support transmission voltages at all times. The Hillman Facility also includes certain limited transmission facilities such as step-up transformers, substation facilities, and generation lead lines which interconnect it to the Michigan Electric transmission system. Hillman notes that the Hillman Facility's turbo generator was manufactured in 1953 and then moved to the plant during the production facility's construction in 1987.

II. Details of Filing

3. Hillman requests an annual revenue requirement of \$111,659 (to be collected in monthly installments of \$9,304.92) for providing reactive power under Schedule 2 of the MISO Tariff.³ Hillman states that it developed this revenue requirement consistent with Commission policy using the *American Electric Power Service Corporation* methodology.⁴ Hillman notes that it has not previously filed a revenue requirement for reactive power, and, thus, this filing does not supersede or supplement any previous rate schedules.⁵ Hillman states that the Hillman Facility has never been an investor-owned, vertically integrated utility, nor have its costs been included in the rate base of a load-serving entity.⁶ According to Hillman, accounting and engineering records were used to identify the following four components of the Hillman Facility generation plant associated with reactive power: 1) generators and exciters; 2) generation step-up transformers; 3) accessory electrical equipment; and 4) the remaining total production plant used to provide reactive power and operate the exciters, or balance of plant.⁷

³ Transmittal Letter at 2.

⁴ *Id.* (citing *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

⁵ *Id.* at 5.

⁶ Ex. No. Hil-1 at 5.

⁷ Transmittal Letter at 3; Ex. No. Hil-1 at 6.

Hillman states that at this time it is only seeking to recover costs associated with the fixed capability component of reactive supply service related to the Hillman Facility. However, Hillman reserves the right to seek compensation for any other reactive power revenue requirement component, including heating losses, opportunity costs from not generating real power, start-up costs or to make any other change.

4. Hillman asserts that a lack of data for the Hillman Facility related to plant investment has required the use of several proxies to determine the revenue requirement. Hillman notes that where generators do not have detailed investment information, the Commission has previously accepted investment information that is comparable to the costs isolated in *AEP*.⁸ Hillman states that it used ratios for turbine, generation step-up transformer, and accessory equipment investment to total plant investment which were developed in *Northeastern Power Company*.⁹ Hillman also states that it used allocators accepted in *AEP* to determine the portion of the total generator cost that is directly attributable to the generator and exciter and the portion of accessory electrical equipment costs attributable to the generator and exciter.

5. Hillman states that because it is a merchant generator not subject to traditional regulation, it developed a proxy to calculate the return on rate base.¹⁰ Specifically, the proxy for return on rate base uses a hypothetical capital structure comprised of 50 percent equity and 50 percent debt. Hillman states that because Hillman is located within MISO, the hypothetical capital structure utilizes the standard MISO rate of return on common equity of 12.38 percent. Hillman asserts that the Commission accepted this return on equity in a number of recent reactive power filings.¹¹ Hillman states that to calculate the cost of long-term debt it used an average of the last six months of the Moody's Baa Corporate Bond Yield.¹²

⁸ Ex. No. Hil-1 at 12 (citing *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090 (2003); *Liberty Electric Power, LLC*, Docket No. ER03-88-000 (Dec. 30, 2002) (delegated letter order)).

⁹ *Id.* (citing *Northeastern Power Co.*, Docket No. ER12-1587-000 (May 29, 2012) (delegated letter order) (*Northeastern*)).

¹⁰ Transmittal Letter at 3.

¹¹ Ex. No. Hil-1 at 17 (citing *Prairie Power Inc.*, 135 FERC ¶ 61,025 (2011); *Great River Energy*, 133 FERC ¶ 61,138 (2010); *Dynegy Midwest Generation, Inc.*, 121 FERC ¶ 61,025 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2008)).

¹² Transmittal Letter at 3.

6. Hillman requests an effective date for the proposed revenue requirement of October 1, 2013. Hillman states that Schedule 2 of the MISO Tariff provides that “Qualified Generator status is effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month.”¹³

III. Notice and Responsive Pleadings

7. Notice of Hillman’s July 31, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 49,504 (2013), with interventions and protests due on or before August 21, 2013. Consumers filed a timely motion to intervene and protest. MISO filed a timely motion to intervene and comments. On August 26, 2013, Michigan Electric filed a motion to intervene out-of-time. On September 4, 2013, Hillman filed an answer.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant the late-filed motion to intervene of Michigan Electric, given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept Hillman’s answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Protests and Comments

10. Consumers asserts that numerous aspects of Hillman’s proposed revenue requirement are unclear, inappropriate, and inadequately supported.¹⁴ Consumers argues that the Commission should reject Hillman’s proposal or, at a minimum, set the filing for evidentiary hearing and settlement procedures. First, Consumers argues that the 12.38

¹³ *Id.*

¹⁴ Consumers Energy Protest at 2.

percent return on equity used by Hillman was approved by the Commission for transmission service in MISO, but is inappropriate for ancillary services, which are generation services. Consumers asserts that the appropriate proxy is the state commission-approved return on equity for the nearest regulated generator, Consumers, which is 10.3 percent. Consumers further argues that if Consumers' return on equity is used as a proxy, for consistency, Consumers' capital structure should be used to determine Hillman's return on rate base. Consumers adds that Hillman's proposed return on equity and hypothetical capital structure raise questions regarding the appropriateness of Hillman's proposed adjustments to accumulated deferred income taxes.¹⁵

11. Consumers notes that Hillman does not provide any information about the generator used in the Hillman Facility during the years 1953-1987. Consumers argues that knowing whether the generator has been the subject of other Commission rate filings is relevant in developing costs for Hillman's revenue requirement.¹⁶ Consumers also argues that the generating facilities in *Northeastern* from which Hillman derives a 14.47 percent allocation factor to calculate the portion of generator and exciter investment used to provide reactive power are significantly larger than the Hillman Facility, which renders this allocation factor unsuitable. Consumers further argues that Hillman should be required to produce a manufacturer's letter detailing generator or exciter costs or, if such information is unavailable, use data from plants similar in size and vintage to the Hillman Facility to develop a proxy.¹⁷

12. Consumers notes that Hillman provides no explanation for the design power factor used in the development of the revenue requirement. Consumers argues that Hillman must provide information from the manufacturer of its generator or, at minimum, explain the source for this figure.¹⁸ Consumers also argues that Hillman does not adequately justify its use of a 0.15 percent balance of plant allocator which was used in *AEP*. Consumers argues that Hillman must be required to specify which Hillman-specific data are unavailable and why the proposed proxy value is appropriate. Finally, Consumers contends that much of Hillman's cost data is unsupported and it is unclear whether these costs are original costs, the net book value currently on Hillman's books or the price Hillman paid for the assets. As an example, Consumers notes that Hillman represents that the present value of the Hillman Facility is \$7.3 million while, when the plant was constructed in 1987, news reports valued the plant at approximately \$20 million.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

13. In its comments, MISO states that it takes no position with respect to the justness and reasonableness of Hillman's proposed revenue requirement, but would like to clarify several aspects of Schedule 2 of the Tariff. MISO clarifies that before a generator can receive payments for reactive power, the generator must first meet the qualifications outlined in Schedule 2. MISO states that one of the prerequisites for Schedule 2 recovery is that the unit must be a Generation Resource that qualifies as a Qualified Generator under the Tariff. MISO states that Schedule 2 provides that any "...**Generation Resource** may collect charges associated with its [reactive power service] capability under this Schedule 2, where the Transmission Provider determines that the Generation Resource is a Qualified Generator..."¹⁹ MISO explains that under the Tariff, a Generation Resource must be a registered Market Participant before it may receive revenue associated with Schedule 2.²⁰ In other words, under the Tariff, Market Participant status is required to qualify as a Generation Resource, an entity must be a Generation Resource to qualify as a Qualified Generator, and an entity must be a Qualified Generator to qualify for Schedule 2 payments. MISO states that Hillman is currently not a Market Participant; therefore, at this time, it cannot qualify as a Generation Resource, or a Qualified Generator, under the Tariff. MISO asserts that even with a FERC-approved revenue requirement on file that takes effect October 1, 2013, Hillman will not be able to recover its revenue requirement under Schedule 2 until it has met all of the other qualifications outlined in Schedule 2.

14. Additionally, MISO clarifies that Schedule 2 does not guarantee exact recovery of the approved revenue requirement in equal monthly installments. MISO states that Qualified Generators receive a *pro rata* distribution of the Schedule 2 revenue collected each month, rather than a pre-set, equal monthly installment; thus, once the Hillman Facility meets all of the eligibility requirements outlined in Schedule 2, it will be eligible to receive its *pro rata* share of revenues in accordance with the applicable Schedule 2 provisions.²¹

2. Answer

15. Hillman argues that Consumers has not shown any flaw in the Commission's policy to use the accepted return on equity of interconnected utilities as a conservative

¹⁹ MISO Comments at 3 (citing Tariff, Schedule 2, § II.A (emphasis added by MISO)).

²⁰ *Id.* (citing Tariff, § 1.267). Generation Resource is defined in the Tariff as a Generator within or Pseudo-tied into the MISO Balancing Authority Area and that, among other things, "is registered to participate in the Energy and Operating Reserve Markets."

²¹ *Id.* at 2-3.

proxy for merchant generators.²² Hillman asserts that Consumers does not explain the relevance of its request to require Hillman to document whether the Hillman Facility was the subject of any Commission rate proceedings between 1953 and 1987; nor does Consumers provide any facts to contradict Hillman's statement that the Hillman Facility has not been the subject of any prior Commission rate filings. Thus, the Commission should disregard Consumers' argument.²³

16. Hillman asserts that Consumers has failed to substantiate its claim that the 14.47 percent allocation factor for the portion of generator and exciter investment used to provide reactive power is not suitable or the relevance of the size difference in the Hillman Facility and the proxy facilities used in *Northeastern*.²⁴ Hillman further asserts that Consumers fails to cite any Commission precedent that would require Hillman to either provide a manufacturer's letter supporting the generator and exciter allocator or use plants of a similar size and vintage to develop a proxy. Additionally, Hillman states that Consumers does not acknowledge the Commission's previous acceptance of proxy generator and exciter allocators.²⁵ Hillman states that while it does not have the original cost data or manufacturer's records, Consumers has not shown that Hillman deviated from the *AEP* method or violated Commission policy. In response to Consumers' request that Hillman substantiate its proposed design power factor with support from the manufacturer, Hillman submitted a photograph of the nameplate on the Hillman Facility's generator.²⁶

17. Hillman contends that Consumers has not justified why Hillman's use of the 0.15 percent balance of plant allocator in *AEP* is inappropriate. Hillman notes that Commission precedent provides that generators not subject to the Commission's Uniform System of Accounts may use the balance of plant allocator developed in *AEP*, noting that the Commission approved the use of the same allocator in *Prairie Power, Inc.*²⁷ In response to Consumers' question regarding Hillman's cost data, Hillman argues that

²² Hillman Answer at 4.

²³ *Id.*

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 5 (citing *AEP*; *Northeastern*; *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090 (2003); *Liberty Electric Power, LLC*, Docket Nos. ER03-88-000 (Dec. 30, 2002) (delegated letter order)).

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 6-7 (citing *Prairie Power, Inc.*, 135 FERC ¶ 61,025 (2011)).

Consumers has not shown why Hillman should use an undocumented cost of \$20 million, which would substantially raise the proposed revenue requirement.²⁸

18. In response to MISO, Hillman asserts that MISO asks for a tariff interpretation that would establish a new precondition for generators to collect their reactive power revenue requirements based on ambiguity in the Tariff. Hillman argues that MISO essentially seeks a Commission declaratory ruling to clarify that Qualified Generator status is a precondition to a generator's ability to receive its reactive power revenue requirement. Hillman states that this interpretation conflicts with the Commission's ruling that there is no such precondition. Hillman states that the Commission has previously ruled that "there is no rational basis for requiring a generation resource that already has a revenue requirement accepted by the Commission to provide uncompensated service for 60 days" in rejecting MISO's attempt to claim a 60-day review period for Qualified Generator applications before a generator's reactive power revenue requirement could take place.²⁹ Hillman further states that the Commission rejected MISO's attempt to alter the effective date of the reactive power revenue requirement for Bluegrass Generation Company, L.L.C., finding "no reason why Bluegrass should not receive compensation for the service it has provided since [the Commission] accepted and [made] its rate schedule effective."³⁰ Hillman argues that MISO is attempting to delay the effectiveness of Hillman's proposed revenue requirement by requiring the Hillman Facility to receive Qualified Generator status prior to Commission approval. Hillman acknowledges that it must fulfill MISO's administrative requirements, but argues that MISO is attempting to impose a new, overly burdensome precondition for reactive power compensation.³¹

19. Hillman disputes MISO's position that Market Participant status is a precondition for collecting a reactive power revenue requirement. Hillman argues that MISO has not previously imposed such a requirement, noting that a generator without Market Participant status, T.E.S. Filer City Station Limited Partnership (T.E.S. Filer), is currently being compensated by MISO for reactive power.³² Hillman states that MISO has not

²⁸ *Id.* at 7.

²⁹ *Id.* at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,046, at P 43 (2005) (*MISO I*)).

³⁰ *Id.* (quoting *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 52 (2007) (*Bluegrass*)).

³¹ *Id.* at 9.

³² *Id.* at 10 (citing *T.E.S. Filer City Station Limited Partnership*, 131 FERC ¶ 61,203 (2010) (*T.E.S. Filer*)).

justified why T.E.S. Filer may receive compensation for reactive power, while Hillman may not.

3. Commission Determination

20. Hillman's proposed rate schedule raises 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.

21. Our preliminary analysis indicates that Hillman's proposed revenue requirement 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 Hillman's proposed rate schedule for filing, suspend it for five months, to become effective the first day of the month thereafter following the date Hillman becomes a registered Market Participant, subject to refund, and conditioned on Hillman meeting all requirements specified in Schedule 2 and the MISO Tariff, and set it for hearing and settlement judge procedures.³³

22. We agree with MISO that before Hillman can qualify to receive payments under Schedule 2 it must first meet the qualifications in Section II of Schedule 2, which requires that the unit must be a Generation Resource that qualifies as a Qualified Generator under the terms of the MISO Tariff. The Tariff states that a "Generation Resource is a Generator within the [MISO] Balancing Authority Area or an External Resource that is Pseudo-tied into the [MISO] Balancing Authority Area and that (i) *is registered to participate* in the Energy and Operating Reserve Markets...."³⁴ The MISO Tariff also defines a Market Participant as "[a]n entity that (i) *has successfully completed the registration process* with the Transmission Provider and is qualified by the Transmission Provider as a Market Participant...."³⁵ Should a Generation Resource intend on collecting charges for reactive power, Schedule 2 of the Tariff stipulates that any Generation Resource approved after May 1, 2004 "may collect charges associated with its [reactive power] capability under this Schedule 2, where the Transmission Provider determines that the Generation Resource is a Qualified Generator...."³⁶ Read together,

³³ In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in that order, we would generally impose a five-month suspension. In this proceeding, we find that the proposed rates may be substantially excessive.

³⁴ Tariff, § 1.267 (emphasis added).

³⁵ Tariff, § 1.384 (emphasis added).

³⁶ Tariff, Schedule 2, § II.A

Schedule 2 and sections 1.267 and 1.384 of the Tariff stipulate that to collect a reactive power revenue requirement, a generator must register as a Market Participant, obtain Generation Resource status, and obtain Qualified Generator status, in that order.³⁷ Therefore, we condition our acceptance of Hillman's reactive power revenue requirement on Hillman meeting all requirements specified in Schedule 2 and sections 1.267 and 1.384 of the Tariff.

23. We reject Hillman's argument that MISO is seeking to apply a review process that is more extensive and burdensome than the one the Commission rejected in *MISO I* and *Bluegrass*. MISO's requirement that a Generation Resource must be a Market Participant before offering a service, including an ancillary service such as reactive power, into the market is not a new requirement.³⁸ Further, we note that the Commission's decision in *MISO I*, as affirmed in *Bluegrass*, dealt with the effective date of a rate schedule that was accepted prior to the Commission's acceptance of the revisions to Schedule 2 specifying the technical requirements for a generator to obtain Qualified Generator Status.³⁹ Therefore, *MISO I* and *Bluegrass* are not applicable to the circumstances before us, where the Schedule 2 requirements were fully established prior to Hillman's filing.

24. In light of the Court of Appeals for the District of Columbia Circuit decision in another reactive power case,⁴⁰ where the Court remanded for further consideration issues that went to whether the Commission could suspend the filing given that a rate had not been put on file previously, to ensure customers are protected against unjust and unreasonable rates or charges, we will institute an FPA section 206 proceeding in Docket No. EL13-89-000. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) of the FPA requires the Commission to establish a refund effective date that is no earlier than publication of the notice of its

³⁷ We note that Schedule 2 of MISO's Tariff provides that Qualified Generator Status is "effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month."

³⁸ Although Hillman cites to *T.E.S. Filer* to dispute MISO's position that Market Participant status is a precondition for collecting a reactive power revenue requirement, *T.E.S. Filer* involved an uncontested offer of settlement. As noted in the order approving the settlement, and consistent with the Commission's long-standing policy, the Commission's approval of an uncontested settlement does not constitute precedent regarding any issue in the proceeding.

³⁹ *Bluegrass*, 118 FERC ¶ 61,214 at P 52.

⁴⁰ *TNA Merchant Projects v. FERC*, 616 F.3d 588 (D.C. Cir. 2010).

initiation of the proceeding, but no later than five months after that date. We establish a refund effective date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL13-89-000 is published in the *Federal Register*.⁴¹

25. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by June 30, 2014. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions, or by February 28, 2015.

26. While we are setting these matters for a 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.⁴² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁴¹ While section 206 of the FPA, as amended, requires the Commission to specify a refund effective date, which we have done above, here, where we are not dealing with a complaint asking that the Commission lower existing rates but rather where we are dealing with a request essentially to adopt new increased rates, a proposed revenue requirement can be effective no earlier than the date the Commission makes any such revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures. We note that Schedule 2 of MISO's Tariff provides that Qualified Generator Status is "effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month." See *T.E.S. Filer City Station Ltd. Partnership*, 130 FERC ¶ 61,239 (2010). See also *Indiana Municipal Power Agency*, 114 FERC ¶ 61,008 (2006); *Illinois Municipal Electric Agency*, 114 FERC ¶ 61,009 (2006).

⁴² 18 C.F.R. § 385.603 (2013).

otherwise, the Chief Judge will select a judge for this purpose.⁴³ The settlement judge shall report to the Chief Judge and the Commission within 60 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 a presiding judge.

27. In light of the common issues of law and fact presented in Docket Nos. ER13-2076-000 and EL13-89-000, we will consolidate the two proceedings for purposes of settlement, hearing and decision.

The Commission orders:

(A) Hillman's proposed rate schedule for reactive supply and voltage control service is hereby conditionally accepted for filing and suspended for a five-month period, to become effective the first day of the month after the date Hillman becomes a registered Market Participant, subject to refund, and conditioned on Hillman meeting all requirements specified in Schedule 2 and sections 1.267 and 1.384 of the Tariff, 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 Hillman's proposed revenue requirement, 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 Paragraphs (E) and (F) below.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of a section 206 proceeding in Docket No. EL13-89-000.

(D) The refund effective date established in Docket No. EL13-89-000 pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

⁴³ 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>).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 days of the date of this order.

(F) Within 60 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 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) 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 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.

(H) Docket Nos. ER13-2076-000 and EL13-89-000 are hereby consolidated for the purposes of settlement, hearing and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.