

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

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Delaware Division of the Public Advocate
Delaware Municipal Electric Corporation, Inc.
Delaware Public Service Commission
Maryland Office of People's Counsel
Maryland Public Service Commission
New Jersey Board of Public Utilities
New Jersey Division of Rate Counsel
Office of the People's Counsel of the District of Columbia
Public Service Commission of the District of Columbia

v.

Docket No. EL13-48-000

Baltimore Gas and Electric Company
Pepco Holdings, Inc.
Potomac Electric Power Company
Delmarva Power & Light Company
Atlantic City Electric Company

ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued August 21, 2014)

1. On February 27, 2013, pursuant to section 206 of the Federal Power Act (FPA),¹ Complainants² filed a complaint against Baltimore Gas & Electric Company (BGE),

¹ 16 U.S.C. § 824e (2006).

² Complainants are the Delaware Division of the Public Advocate; Delaware Municipal Electric Corporation, Inc.; Delaware Public Service Commission; Maryland

(continued...)

Pepco Holdings, Inc. and its operating affiliates³ (PHI) (collectively, BGE/PHI or Respondents), contending that the base return on equity (ROE) currently set at 10.8 percent (for facilities placed into service before January 1, 2006) and 11.3 percent (for facilities placed into service on and after January 1, 2006) in Respondents' formula rates for Network Integration Transmission Service under PJM Interconnection LLC's (PJM) Open Access Transmission Tariff (OATT), is unjust and unreasonable. The current rates resulted from a Settlement in Docket No. ER05-515-000 that the Commission accepted in 2006 (2006 Settlement).⁴ Complainants contend that, due to changes in the capital markets since then, the ROE should be no higher than 8.7 percent, and that, as a result, ratepayers are currently overcompensating BGE/PHI by approximately \$35.5 million annually.⁵ Complainants request that the Commission establish the earliest possible refund effective date, assign the issues to a settlement judge and promptly transfer them for evidentiary hearing, should negotiations fail.

2. In addition, Complainants maintain that the formula rate protocols, as well as the manner in which Respondents implement them, are deficient and therefore unjust and unreasonable, as they fail to provide interested parties: (a) the information necessary to understand, replicate and evaluate the implementation of the formula rate for either the correctness of Annual Update inputs and calculations or the reasonableness and prudence of the costs to be recovered in the formula rate; and (b) adequate procedures under which customers may review, evaluate and challenge Annual Update inputs, contrary to established Commission precedent.⁶

Office of People's Counsel, Maryland Public Service Commission; New Jersey Board of Public Utilities; New Jersey Division of Rate Counsel; Office of the People's Counsel of the District of Columbia; and Public Service Commission of the District of Columbia. On March 22, 2013, the Delaware Attorney General filed a notice substituting itself for the Delaware Public Advocate, whose position had since become vacant.

³ Pepco Holdings, Inc.'s operating affiliates are Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company.

⁴ *Baltimore Gas and Electr. Co., et al.*, 115 FERC ¶ 61,066 (2006).

⁵ Complaint at PP 16, 44.

⁶ Complainants cite *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (MISO Paper Hearing Order); *Public Serv. Electr. and Gas Co.*, 124 FERC ¶ 61,303 (2008) (*PSE&G*), *Va. Electr. and Power Co.*, 123 FERC ¶ 61,098 (2008) (*VEPCO*) and *American Electr. Power Serv. Corp.*, 124 FERC ¶ 61,306 (2008) (*AEP*), among other cases.

3. In this order, we establish hearing and settlement judge procedures, and set a refund effective date of February 27, 2013.

I. The Complaint

A. ROE

4. Complainants offer testimony by their witness Matthew I. Kahal, who states that, due to substantial changes in the capital markets since the Commission approved the 2006 Settlement, the market cost of capital for creditworthy utilities like Respondents has declined sharply and by some measures is at or close to an historic low. In particular, Mr. Kahal explains that since the participants negotiated the 2006 Settlement, long-term utility bond yields have dropped from six percent to four or five percent, and 10-year Treasury bond yields have dropped from 4.0-5.0 percent, to 1.5-2.0 percent. In Mr. Kahal's view, these declines stem from ongoing weakness in the U.S. and global macro economy, the inflation outlook and international events, which have prompted the Federal Reserve to implement long-term quantitative easing policies (through 2015 or until "maximum employment is achieved") that have pushed short-term Treasury rates close to zero, in order to promote liquidity and economic activity by keeping the cost of capital low and making credit more abundant. According to Mr. Kahal, all of these forces have exerted downward pressure on interest rates and capital costs, including utility cost of equity, and as a result, Respondents' base ROE is inconsistent with the current and projected cost of capital, and should be reduced significantly.⁷

5. To facilitate reevaluation of the current ROE, Mr. Kahal performed two discounted cash flow (DCF) analyses which differ only in terms of their growth rate inputs. Mr. Kahal's first DCF analysis uses *Value Line* earnings retention growth values from 2012, 2013 and 2016, averaged together,⁸ to calculate the "b" in the sustainable growth rate formula " $g = br + sv$," consistent with Opinion No. 445.⁹ In contrast, Mr. Kahal's second DCF analysis, which he describes as his "sensitivity case," uses a five-year projected *Value Line* growth rate instead, which he believes better reflects long-term growth projections.¹⁰

⁷ Kahal Test. at 9-15.

⁸ Complaint at PP 33-34; Kahal Test. at 29-31.

⁹ *S. Cal. Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070, at 61,262-263 (2000).

¹⁰ Mr. Kahal states that his "sensitivity case" DCF analysis tracks his testimony in state proceedings and suggests that there will be stronger growth over the next five years

(continued...)

6. Complainants state that in compliance with Commission policy,¹¹ both of Mr. Kahal's DCF analyses update the Northeast Regional proxy group which Respondent witness William E. Avera used in the 2005 filing that the current Settlement rates resolved. Accordingly, most of the companies in Mr. Kahal's 11-member proxy group operate under the PJM OATT; those outside of PJM belong to Regional Transmission Organizations that are similar to PJM in structure and operation. Mr. Kahal added two companies to Dr. Avera's original proxy group which were not members of PJM, the New York Independent System Operator or ISO-New England at the time of his study, and excluded six others which are no longer publicly traded, no longer classified as an electric utility; or presently involved in a merger.¹²

7. Mr. Kahal calculated the dividend yields for each proxy company for each month from July through December 2012, using monthly Standard & Poor's *Stock Guide* data. He estimated the growth rate using Institutional Brokers Estimation System (IBES) and *Value Line*. He obtained high, low and average DCF estimates for each proxy company. After excluding two companies due to abnormally low DCF results, Mr. Kahal derived a 6.67-10.33 percent zone of reasonableness, an 8.16 percent median and an 8.5 percent

than the Commission's DCF methodology reflects for the near term. Complaint at P 39; Kahal Test. at 31-33, 35.

¹¹ Complainants cite *Atlantic Path 15, LLC*, 133 FERC ¶ 61,153, at P 14 (2010), *Nev. Hydro Co., Inc.*, 133 FERC ¶ 61,155, at PP 7-8 (2010) and *Startrans IO, L.L.C.*, 133 FERC ¶ 61,154, at P 17 (2010), among other cases. Complaint at P 29.

¹² Mr. Kahal's proxy screening criteria include publicly-traded companies with electric utility operations who additionally: (a) pay dividends and have not recently cut or suspended normal dividend payments; (b) operate primarily or substantially within the Northeast region, consistent with Dr. Avera's approach in Docket No. ER05-515-000; (c) are included in the *Value Line Investment Survey* data base and are classified as electric utilities; (d) have a security analyst long-term earnings-per-share growth rate (as published by thomsonreuters.com); (e) are not involved in a merger or acquisition; (f) have an investment-grade credit rating of BBB- or better; and (g) have annual revenues above \$1 billion. Mr. Kahal notes that all of his proxy companies have credit ratings ranging from BBB to A-, or within one notch of BGE and PHI, except FirstEnergy Corp., which, with a BBB- rating, is two notches below the Respondents, and therefore makes his results slightly conservative as applied to BGE/PHI. Complaint at PP 26-31; Kahal Test. at 6-7; 20-26. Likewise, Mr. Kahal states that unlike BGE/PHI, several of his proxy companies have substantial merchant generation assets that heighten their risk profiles and for this reason as well, make his DCF results conservative as applied to BGE/PHI. Kahal Test. at 7.

midpoint under his first DCF analysis,¹³ and a 6.78-10.33 percent zone of reasonableness, 8.72 percent median and 8.56 percent midpoint for his “sensitivity case” DCF analysis.¹⁴ Mr. Kahal states that he conservatively recommends an 8.7 percent median ROE, noting that Respondents are neither a single company nor a diverse group.¹⁵

8. As a final matter, Complainants contend that the Commission should also consider the fact that because BGE and PHI recover their transmission costs through formula rates, the certainty of their cost recovery reduces Respondents’ regulatory risk.¹⁶

B. Formula Rate Protocols

9. Complainants state that BGE’s and PHI’s protocols are substantially identical and that as a result, their flaws are identical as well.¹⁷ Complainants further explain, and offer testimony from witnesses John Farber and Jatinder Kumar to show, that numerous BGE/PHI protocol provisions track practices which the Commission has already found unacceptable in several cases in which the Commission sought to ensure that formula rates, and the way utilities implement them, do not impair or impede the Commission’s and participants’ abilities to replicate, evaluate and challenge the formula rate inputs, calculations and resulting charges.¹⁸

10. Specifically, Complainants challenge the following provisions and practices as failing to satisfy the Commission’s minimum standards regarding scope of participation, transparency and challenge procedures: (1) denying discovery of or the right to challenge the accuracy, reasonableness and prudence of cost and expense inputs and calculations in the Annual Update, whether they rest on Form No. 1 data or not;¹⁹ (2) denying discovery

¹³ Complaint at P 38; Kahal Test. at 35.

¹⁴ Complaint at P 39; Kahal Test. at 35.

¹⁵ Complaint at P 39; Kahal Test. at 35-36.

¹⁶ Complaint at P 41; Kahal Test. at 37.

¹⁷ Complaint at PP 13 & n.8, 51 & n.115, 52; Farber Aff. at P 10, n.3; Kumar Aff. at P 7, n.3.

¹⁸ Complaint at PP 48-53, 60-69, 72-88; Farber Aff. at PP 8-9, 13-17, 23-30, 43-46; Kumar Aff. at PP 11-16, 22-61; *see* n.6, *supra*.

¹⁹ Complaint at PP 60-69, 89; Farber Aff. at PP 8, 13, 15-17, 22, 28, 34, 38-39, 43-46; Kumar Aff. at PP 11-12, 15-16, 22-23, 25-26, 29-35, 37-48, 50-55; MISO Paper Hearing Order, 139 FERC ¶ 61,127 at P 15 & n.15.

that would enable the participants to review, verify and challenge the accounting, booking and allocation of costs;²⁰ (3) failing to include, as part of the Annual Update, detailed cost support and explanations that would obviate extensive discovery regarding unreported adjustments to account balances that are recorded in the Form No. 1, material changes in accounting and allocation practices, all changes since the last Annual Update, and all information necessary to replicate the calculation of the formula results and compare them to prior years;²¹ (4) imposing cut-off dates for raising preliminary and formal challenges, as well as complaints, regarding the inputs into the formula or the resulting charges;²² (5) failing to provide, as part of the Annual Update, populated formula rate templates and underlying workpapers in native format, including all worksheets, with formulas and links intact;²³ (6) failing to provide sufficient time to analyze the Annual Update and its underlying documentation;²⁴ (7) failing to require a written response to a preliminary challenge;²⁵ (8) failing to specify that the utility bears the burden of proof regarding the justness, reasonableness and prudence of the charges resulting from its application of the formula;²⁶ and (9) failing to define “interested party”

²⁰ Complaint at PP 61-63, 89; Farber Aff. at PP 15, 17, 23-25, 45; Kumar Aff. at PP 11-12, 16, 26, 29-30, 33-52, 55; MISO Paper Hearing Order, 139 FERC ¶ 61,127 at P 15 & n.15.

²¹ Complaint at PP 52-53, 58, 60-64, 68-70, 73-75; Farber Aff. at PP 17, 21, 29, 44; Kumar Aff. at PP 11-12, 14-16, 22-23, 25-26, 30-43, 48, 50, 52; MISO Paper Hearing Order, 139 FERC ¶ 61,127 at P 15 & n.15.

²² Complaint at PP 78-79, 89; Kumar Aff. at PP 12, 54; *PSE&G*, 124 FERC ¶ 61,303 at P 17, citing *VEPCO*, 123 FERC ¶ 61,098 at P 46, *Yankee Atomic Electr. Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992), *N.C. Electr. Membership Corp. v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) and cases cited therein.

²³ Complaint at P 80; Kumar Aff. at PP 38, 52.

²⁴ Complaint at PP 81-83, 89; Farber Aff. at P 43; Kumar Aff. at PP 12, 54.

²⁵ Complaint at P 84, 89; Kumar Aff. at PP 12, 53.

²⁶ Complaint at PP 86-87, 89; Kumar Aff. at PP 12, 55; MISO Paper Hearing Order, 139 FERC ¶ 61,127 at n.12 (citing *VEPCO*, 123 FERC ¶ 61,098 at P 47 and *AEP*, 124 FERC ¶ 61,306 at P 36); *PSE&G*, 124 FERC ¶ 61,303 at P 17.

as all parties having standing to bring a section 206 complaint, and to receive Annual Update information that is sufficient to replicate the calculation of the formula results.²⁷

II. Notice and Responsive Pleadings

11. Notice of the Complaint was published in the *Federal Register*, 78 Fed. Reg. 14784 (2013), with comments due on March 19, 2013, later extended to April 3, 2013.

12. The following entities filed timely motions to intervene: Old Dominion Electric Cooperative; Easton Utilities Commission; LSP Transmission Holdings, LLC; Public Power Association of New Jersey (Public Power); Southern Maryland Electric Cooperative, Inc. (Southern Maryland); Edison Electric Institute and BGE. Public Power's and Southern Maryland's interventions include comments supporting the Complaint and the relief it requests.

13. On March 19, 2013, BGE filed dual motions to: (1) dismiss the complaint as to BGE or alternatively sever BGE from the instant proceeding and address any BGE issues in a separate docket; and (2) defer the April 3, 2013 comment date as to claims against BGE, pending Commission action on BGE's motion to dismiss or sever. BGE argues that Complainants failed to comply with Rule 206(b)(9)(i) because they did not recite what alternative dispute resolution procedures they had used to resolve their issues with BGE or if not, why not. BGE also argues that Complainants' efforts to resolve their issues with PHI does not satisfy Rule 206(b)(9)(i) as to their Complaint against BGE.²⁸ BGE does not contend that Complainants failed to comply with any of Rule 206(b)(9)'s other requirements.

14. On March 25, 2013, the Commission denied BGE's motion to defer the comment date as to claims against BGE. On April 3, 2013, Respondents filed separate answers to the complaint. BGE claims that Complainants failed to meet their burden to show that the existing rate is unjust and unreasonable, and that their proposed rate is just and reasonable. Based on the testimony of its witness, Dr. William E. Avera, BGE contends that Complainants' DCF analysis is flawed because it rests on a regional proxy group, which BGE argues is contrary to Commission precedent that assertedly favors national proxy groups. BGE further alleges that Complainants miscalculated and improperly sourced the growth rate, and erroneously eliminated high-end DCF values for proxy companies whose low-end DCF values were outliers. BGE also claims that Commission

²⁷ Complaint at PP 88-89; Kumar Aff. at P 12; MISO Paper Hearing Order, 139 FERC ¶ 61,127 at P 12.

²⁸ BGE March 19, 2013, Motion to Dismiss and Alternative Motion to Sever at 9.

precedent deems any ROE within the zone of reasonableness to be just and reasonable, and proffers its own “FERC DCF” analysis, based on a proxy group comprised of selected electric utilities with credit ratings between A- and BBB, from which it develops a range that includes its current ROE.²⁹

15. BGE asserts that rather than set its ROE for hearing, the Commission should reconsider the reasonableness of the DCF model itself, because, compared with the results of four other models (non-utility DCF, capital asset pricing model, expected earnings and risk premium), as well as with gas pipeline ROEs, BGE’s current ROE appears modest.³⁰ Further, based on the testimony of its additional witnesses, Dr. Susan F. Tierney and Ms. Ellen Lapson, BGE argues that because utilities currently need access to sufficient capital to fund the transmission investment necessary to protect reliability and national security, modernize aging infrastructure, reduce congestion, connect remote renewable resources to the grid and increase wholesale market competition, it would be inappropriate to reduce their ROEs now.³¹ Finally, with respect to the formula rate protocols, BGE states that it “has no allegations to refute” because Complainants only submitted evidence related to PHI.³² BGE also submitted testimony by Paul D. Russell, which states that BGE has fully responded to all information requests it has received since BGE’s formula rates took effect in 2006.³³

16. On April 3, 2013, PHI filed an answer to the Complaint that tracks BGE’s and likewise relies on the testimony of witnesses Avera, Tierney and Lapson,³⁴ but also moves to dismiss the Complaint, claiming that Complainants failed to balance other market interests related to transmission investment, historically low capital costs and the disparity between gas and electric ROEs.³⁵ Based on the additional testimony of witness

²⁹ BGE Answer at 5-12; Ex. BGE-100 at 15-38, 52, 80-82; Ex. BGE-103.

³⁰ BGE Answer at 20-21; Ex. BGE-100 at 54-82.

³¹ BGE Answer at 14-17; Ex. BGE-200 at 6-10, 14-16; Ex. BGE-300 at 8-16, 23-25.

³² BGE Answer at 12.

³³ Russell Aff. at P 4.

³⁴ Ex. PHI-100 (Avera Test.); Ex. PHI-200 (Tierney Test.); Exh. PHI-300 (Lapson Test.).

³⁵ PHI Answer at 19-34.

Alan C. Heintz, PHI further asserts that Complainants have not shown its Protocols are unjust and unreasonable, or that PHI unjustly or unreasonably implements them.³⁶

17. On April 18, 2013, Complainants filed an answer to PHI's motion to dismiss the Complaint. On April 29, 2013 and May 3, 2013, PHI and BGE, respectively, filed answers to Complainants' answer. On May 14, 2013, Complainants filed a letter in response to BGE/PHI's answers. On July 9, 2013, PHI filed a motion to supplement its April 3, 2013 answer and motion to dismiss, as well as its April 29, 2013 answer to Complainants' answer. On July 24, 2014, Complainants filed an answer to PHI's motion.

III. Discussion

A. Procedural Matters

18. 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.

19. 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 an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers following Respondents' April 3, 2013 answers to the Complaint and will, therefore, reject them. We also reject PHI's belated motion to supplement, as it adds nothing that PHI could not have included in its answer, within the time limit prescribed by Rule 206(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206(f) (2013). Accordingly, we need not entertain Complainants' answer thereto.³⁷

³⁶ *Id.* at 34-66; Ex. PHI-400 at 11-17.

³⁷ For this reason, we reject the Complainants' April 18, 2013, May 14, 2013 and July 24, 2013 answers, PHI's April 29, 2013 answer and July 7, 2013 motion, and BGE's May 3, 2013 answer. We note that PHI captioned its answer to the Complaint as a "Motion to Dismiss and Answer." Regardless of how styled, it is in fact an answer, and we will treat it as one. *See, e.g., J. William Foley, Inc. v. United Illuminating Co.*, 142 FERC ¶ 61,125, at n.23 (2013) (citing *Stowers Oil & Gas Co., et al.; Northern Natural Gas Co., Div. of Internorth, Inc.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) ("Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.")).

B. Determinations

20. We find that the Complaint substantially complies with our regulations and therefore decline to deny it or to dismiss BGE from the procedures we order herein.

21. We further find that, because the Complaint addresses identical ROEs and substantially identical formula rate protocols as between BGE and PHI, it raises common questions of law and fact which are best addressed in the same proceeding. We therefore decline to sever BGE from the procedures we order herein.

1. ROE Complaint

22. We find that the ROE Complaint raises disputed issues of material fact that we cannot resolve based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures we order below. Accordingly, we will set the rate for investigation and a trial-type evidentiary hearing under section 206 of the FPA.

23. The Commission recently issued Opinion No. 531,³⁸ in which the Commission changed its practice for determining the ROE for public utilities. Accordingly, we expect the participants' evidence and DCF analyses to be guided by our decision in Opinion No. 531.

24. While we are setting the rate for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures begin. 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.³⁹ 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.⁴⁰ 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,

³⁸ See *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Electr. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

³⁹ 18 C.F.R. § 385.603 (2013).

⁴⁰ 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>).

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.

25. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,⁴¹ we will set the refund effective at the earliest date possible, i.e., February 27, 2013, as requested.

26. 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 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by August 31, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by June 30, 2016.

2. Formula Rate Protocols Complaint

27. In a comprehensive series of orders, the Commission set minimum standards governing the scope of participation, transparency and challenge procedure provisions of formula rate protocols, to ensure their justness and reasonableness.⁴² The Commission has recently provided further guidance regarding these three areas of concern in several additional orders,⁴³ and has also posted on its website general guidance for formula rate

⁴¹ See, e.g., *Seminole Electr. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Electr. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁴² MISO Paper Hearing Order, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014).

⁴³ *The Empire Dist. Elec. Co.*, 148 FERC ¶ 61,030 (2014); *Louisville Gas and Elec. Co. and Ky. Utils. Co.*, 148 FERC ¶ 61,031 (2014); *UNS Elec., Inc.*, 148 FERC ¶ 61,032 (2014); *Westar Energy, Inc.*, 148 FERC ¶ 61,033 (2014); *Kansas City Power &*

(continued...)

updates,⁴⁴ to help utilities prepare their annual updates and annual update informational filings, and avoid common deficiencies. These minimum standards and our additional guidance are designed to ensure that formula rates, and the way utilities implement them, are just and reasonable.

28. In light of the detailed protocols concerns that Complainants have identified, we find that Respondents' formula rate protocols may not satisfy our minimum standards and additional guidance, and may be unjust and unreasonable. Accordingly, we will establish hearing and settlement judge procedures to ensure that Respondents' formula rate protocols meet, if not exceed, our minimum standards and additional guidance as identified herein, regarding the scope of participation, transparency and challenge procedures.⁴⁵

The Commission orders:

(A) 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 section 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 this complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) 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 fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

Light Co; KCP&L Greater Mo. Operations Co., 148 FERC ¶ 61,034 (2014); *Black Hills Power, Inc.*, 148 FERC ¶ 61,035 (2014). We note that the Commission has also prohibited limitations on interested parties' section 206 rights, as well as cut-off dates for challenges to formula rates. *See, e.g., Va. Elec. and Power Co.*, 123 FERC ¶ 61,098 (2008), at P 46 and n.33. We expect any settlement that the participants reach regarding this Complaint, or the compliance filing following its adjudication, to reflect this standard as well.

⁴⁴ See Staff's Guidance on Formula Rate Updates, <http://www.ferc.gov/industries/electric/indus-act/oatt-reform/staff-guidance.pdf>

⁴⁵ See nn.43-44, *supra*.

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.

(C) 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.

(D) 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.

(E) The refund effective date in Docket No. EL13-48-000 is February 27, 2013.

By the Commission. Commissioner Norris is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.