

150 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Geronimo Wind Energy, LLC

Docket No. EL15-10-000

ORDER ON PETITION FOR DECLARATORY ORDER AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 12, 2015)

1. On October 23, 2014, Geronimo Wind Energy, LLC (Geronimo) filed a petition for declaratory order regarding transmission service over a transmission line running from Center to Maple River, North Dakota (Center-Maple River Line). In this order, we set the petition for hearing and settlement judge procedures.

I. Background

2. Geronimo states that it is currently developing and attempting to obtain financing for the 200 MW Courtenay Wind Farm in Stutsman County, North Dakota (Courtenay Project). Geronimo states that it negotiated a 200 MW Power Purchase Agreement (PPA) with Xcel Energy for the output of the Courtenay Project. Geronimo plans to interconnect the Courtenay Project at the Jamestown Substation, which is owned by Otter Tail Power Company (Otter Tail) and connects to 115 kV transmission lines owned by Otter Tail and to the Center-Maple River Line. Geronimo states that in November 2012, it submitted to Midcontinent Independent System Operator, Inc. (MISO) two requests for 100 MW of interconnection service (200 MW total). Geronimo states that it thereafter executed a generator interconnection agreement for the Courtenay Project with MISO.¹ Geronimo explains that when the Courtenay Project is connected to the 115 kV bus of the Jamestown Substation, Courtenay Project's output will flow over the Center-Maple River Line.

¹ The generator interconnection agreement was accepted on November 18, 2014, subject to the outcome of the proceeding in Docket No. ER12-309. *See Midcontinent Indep. System Operator, Inc.*, 149 FERC ¶ 61,129 (2014).

3. Geronimo states that Otter Tail is a public utility that owns transmission facilities in North Dakota, South Dakota, and Minnesota and that joined MISO in 2001. Geronimo states that Minnkota Power Cooperative, Inc. (Minnkota) is a non-jurisdictional cooperative, with all of its transmission facilities located within the Otter Tail balancing authority area. Further, Geronimo notes that Northern Municipal Power Agency (Northern) is an association of 12 municipal power agencies, which owns approximately 15 percent of the Minnkota transmission system. Geronimo states that Minnkota acts as operating agent for Northern, and that neither Minnkota nor Northern has joined MISO. Geronimo states that Otter Tail and Minnkota have jointly planned and operated their transmission systems for over 50 years, through interconnection agreements and transmission facilities agreements.

4. Geronimo states that, on October 31, 1966, Otter Tail and Minnkota filed a “230 kV Interconnection Agreement,” with the Federal Power Commission as Otter Tail Electric Rate Schedule No. 151 (1966 Agreement).² Geronimo adds that the agreement created a joint system out of certain 230 kV transmission facilities, some of which were owned by Otter Tail and some of which were owned by Minnkota.³

5. Geronimo explains that Otter Tail and Minnkota executed several supplements to the 1966 Agreement: (1) Supplement No. 4, executed December 22, 1978, stated that Minnkota would modify and uprate the Center-Maple River Line from 230 to 345 kV and that Minnkota would be the sole owner of the uprated 345 kV line;⁴ (2) Supplement No. 4 also stated that “[a]ll other provisions of the 230 kV Agreement shall apply where applicable to this Supplement No. 4;⁵ and (3) Supplement No. 5, executed in 1981, when Minnkota transferred to Northern its ownership of the Center-Maple River Line and its rights and obligations under the 1966 Agreement. Geronimo states that Minnkota thereafter acted as an agent for Northern with respect to the rights it had transferred to Northern. Geronimo adds that in Supplement No. 6, executed in 1986, Northern transferred ownership of a 47.74 mile portion of the Center-Maple River Line to Otter Tail, which ran west from the Jamestown Substation.

² Geronimo Petition at 5 (citing Otter Tail Power Co., FPC Electric Rate Schedule No. 151 (Oct. 31, 1966)).

³ Exhibit A to the agreement identified the “Center-Fargo 230 kV line” as one of the facilities included in the joint system. The “Center-Fargo 230 kV line” is referred to as “Center-Maple River transmission line” in Supplement No. 4 to the 1966 Agreement.

⁴ Geronimo Petition at 6 (citing 1966 Agreement, Supplement No. 4 § 1.02).

⁵ *Id.* (citing 1966 Agreement, Supplement No. 4 § 3.01).

6. Geronimo further explains that Otter Tail and Minnkota, along with several other parties, also entered into a Transmission Facilities Agreement on November 30, 1978 (1978 Agreement), to ensure that transmission service would be available for the jointly-owned Coyote 1 Generating Station, located near Center, North Dakota.⁶ Geronimo states that this required constructing or upgrading various transmission facilities, including the Center-Maple River Line. After the 1978 Agreement was filed, Geronimo explains, Otter Tail and Minnkota executed Supplement No. 4 to the 1966 Agreement “to provide for an equitable division of the cost and ownership of the facilities to be constructed by them in connection with the [1978 Agreement].”⁷

II. Geronimo’s Petition

7. Geronimo’s petition requests that the Commission confirm that (1) the 1966 Agreement between Otter Tail and Minnkota gave Otter Tail the right to provide transmission service over the Center-Maple River Line; (2) Otter Tail’s transmission rights over the Center-Maple River Line have been assigned to MISO; and (3) the rate provided by the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) is the only rate that may be charged for transmission service provided by MISO over the Center-Maple River Line.

8. Geronimo states that Minnkota informed Geronimo that Minnkota's consent is required before MISO can transmit over the jointly-owned Center-Maple River Line and that Minnkota must be compensated under its non-jurisdictional Open Access Transmission Tariff (OATT).

9. Geronimo contends that the 1966 Agreement provided both Otter Tail and Minnkota with the right to transmit energy over the entire system without any requirement that Minnkota grant its consent or that Minnkota be compensated. Geronimo states that the 1966 Agreement provides that Otter Tail and Minnkota will both “allow the other to transmit electric power and energy through its system between the several points of interconnection as defined in th[e] Agreement” so long as the “system has

⁶ *Id.* at 7 (citing Coyote 1 Station Transmission Facilities Agreement by and between Minnesota Power & Light Co., Minnkota Power Coop., Inc., Montana-Dakota Utilities Co., Northwestern Public Service Co., and Otter Tail Power Co. (Nov. 30, 1978) (1978 Agreement)).

⁷ *Id.* at Attachment B, 45 (Supplement No. 4 at 1).

capacity in excess of that required” by its owner for the owner’s own needs.⁸ According to Geronimo, this is the only limitation on the rights provided, and, subject to this limitation, the 1966 Agreement permits Otter Tail and Minnkota to transmit power over facilities that are part of the joint system, including the transmission of power on behalf of third parties.

10. Geronimo asserts that the 1966 Agreement between Otter Tail and Minnkota permitted the parties to assign their interests under the agreement.⁹ Geronimo submits that, when Otter Tail joined MISO in 2001, it “transferred to [MISO] . . . those rights it controlled” under the 1966 Agreement and points out that the 1966 Agreement was incorporated into the MISO Tariff as Grandfathered Agreement No. 313 in Attachment P.¹⁰ Geronimo argues that Otter Tail’s transfer of rights to MISO and the incorporation of the agreement into the MISO Tariff provides MISO with the right to offer transmission service over the lines covered by the agreement.

11. Geronimo argues that, while Otter Tail and Minnkota may have initially used the joint system primarily to transmit power to load in their service territories, the 1966 Agreement did not preclude them from transmitting power for third parties. Geronimo argues that, under the 1966 Agreement, Otter Tail has the right to transmit power over the entire joint system, not just over the facilities it owned. Geronimo asserts that nothing in the 1966 Agreement entitles either party to compensation when the other party transmits

⁸ *Id.* at 14 (citing 1966 Agreement, Art. II. § 2.01(a) (reciprocal use provision)). In its entirety, the reciprocal use provision states:

The interconnection of transmission facilities will effect savings in capital investment by the Parties. In consideration thereof, each Party will allow the other to transmit electric power and energy through its system between the several points of interconnection as defined in this Agreement to the extent that such system has capacity in excess of that required for its own needs.

⁹ *Id.* at 8 (citing 1966 Agreement § 3.06 (“This agreement shall be binding upon the respective Parties, their successors and assigns, on and after the effective date hereof.”)).

¹⁰ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236, at P 194 (2004) (*MISO*)).

power over the joint facilities and, absent language to the contrary, no such entitlement should be read into it.¹¹

12. Geronimo argues that, if the Commission were to disagree that the 1966 Agreement provides Otter Tail and Minnkota the right to transmit power over the joint facilities on behalf of third parties, the Commission should nevertheless find that MISO may provide transmission service over the Center-Maple River Line to serve MISO load. Geronimo asserts that MISO has stepped into the shoes of Otter Tail, and, therefore, even if the 1966 Agreement limited transmission service over the joint facilities to service for native load, both MISO and Northern are authorized to use the facilities to transmit to serve their respective loads. Geronimo contends that, because the output of the Courtenay Project will serve Northern States Power Company, a MISO member, it is therefore serving MISO load.¹²

13. Geronimo states that, after Otter Tail joined MISO, Minnkota sought to ensure that its grandfathered agreements with Otter Tail did not subject Minnkota to MISO or Commission control. The Commission set for hearing the issue of whether various grandfathered agreements, including the 1966 Agreement, provided for service that had now become MISO-provided service.¹³ Geronimo states that Minnkota entered into a settlement agreement with MISO and Otter Tail, which acknowledged Minnkota's rights under the 1966 Agreement to use the joint facilities without having to request transmission service from MISO (2005 Settlement). Geronimo argues that the settlement agreement specifically provides that Otter Tail's rights under the 1966 Agreement to transmit power over the joint facilities are incorporated into the MISO Tariff and shall be treated "as [MISO] OATT service."¹⁴ Geronimo thus argues that the Commission-approved settlement verifies that Otter Tail transferred its rights under the 1966 Agreement to MISO and that MISO may exercise those rights to provide transmission service.

14. Geronimo argues that the issues presented fall within the exclusive jurisdiction of the Commission. However, if the Commission finds that a state court or some other forum has concurrent jurisdiction, the Commission nevertheless should exercise its discretion to assert primary jurisdiction and address the issues. Geronimo states that the

¹¹ *Id.* at 16-17.

¹² *Id.* at 17-18.

¹³ *Id.* at 9 (citing *MISO*, 108 FERC ¶ 61,236, at P 196).

¹⁴ *Id.* at 10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL04-104-000, Settlement Agreement 2 § 2.2 (Apr. 1, 2005)).

Courtenay Project's PPA requires that the project achieve commercial operation no later than December 31, 2015 and therefore requests expedited consideration on the petition.

III. Notice of Filing and Responsive Pleadings

15. Notice of Geronimo's petition was published in the *Federal Register*, 79 Fed. Reg. 64,588 (2014), with interventions and protests due on or before November 24, 2014.

16. Otter Tail, Great River Energy, and MISO filed timely motions to intervene. Minnkota filed a timely motion to intervene and protest. On December 5, 2014, Geronimo filed a motion to answer and answer to Minnkota's protest (Geronimo December 5 Answer). On December 15, 2014, Minnkota filed an answer to Geronimo's answer. On December 16, 2015, Geronimo filed a limited answer to Minnkota's answer (Geronimo December 16 Answer). On December 22, 2014, Minnkota filed a motion to supplement the record. On December 31, 2014, Geronimo filed an answer to Minnkota's motion (Geronimo December 31 Answer).

Minnkota Protest

17. Minnkota states that it does not dispute that the 1966 Agreement gives Otter Tail the right to transmit power through Minnkota-owned facilities, including the Center-Maple River Line, to serve Otter Tail's load and that, as a general matter, Otter Tail has transferred control of Otter Tail's facilities and contract rights to MISO. However, Minnkota states that it fundamentally disagrees with Geronimo's interpretation of the rights provided under the reciprocal use provision. Minnkota states that, contrary to Geronimo's belief, the reciprocal use provision of the 1966 Agreement is limited to allowing Minnkota and Otter Tail to use excess capacity in their respective transmission facilities to serve their native loads.¹⁵ Minnkota contends that Geronimo does not have sufficient rights to transmit the output of the Courtenay Project over the Minnkota-owned and controlled transmission facilities.¹⁶ Minnkota asserts that the 2005 Settlement cited by Geronimo does not support Geronimo's interpretation.

18. Minnkota further asserts that Geronimo's position conflicts with the intent of the parties to the 1966 Agreement. According to Minnkota, the parties to the 1966 Agreement have interpreted the 1966 Agreement to mean that only service to each

¹⁵ Minnkota Protest at 8.

¹⁶ *Id.* at 12. Minnkota notes that each party (Minnkota and Otter Tail) owns discrete segments of the transmission system (rather than joint ownership rights over the entirety of the facilities) and that Minnkota owns "the great majority" of the 210-mile Center-Maple River Line. *Id.* at 5.

party's native load is contemplated by the reciprocal use provision.¹⁷ Minnkota argues that the 1966 Agreement, as supplemented, must be read in conjunction with the 1978 Agreement. According to Minnkota, any excess capacity available on the Center-Maple River Line exists as a result of the 345 kV uprate governed by the 1978 Agreement, which limits reciprocal use of the parties' transmission facilities to native load uses only.¹⁸

19. In addition, Minnkota argues that, when Otter Tail joined MISO in 2001 and transferred to MISO control of its transmission facilities and contract rights, that transfer did not give MISO an unfettered right to use Minnkota's transmission system. Rather, Minnkota asserts that third-party use of the Minnkota-Otter Tail jointly integrated system is subject to compensation to Minnkota under its OATT and other reasonable terms and conditions of service.¹⁹

20. Furthermore, Minnkota states that it is not avoiding its obligation or commitment to provide open access, non-discriminatory service to third parties like Geronimo. Rather, Minnkota states that it is simply asking that Geronimo request and pay for service under the Minnkota OATT like all other third parties.²⁰ Minnkota contends that Geronimo's interpretation of the 1966 Agreement would cause an unjust and unreasonable result and would otherwise harm Minnkota, its consumer-owned member cooperatives, and the consumers that they serve.²¹ Minnkota submits that it is not a member of MISO and, therefore, does not receive distributions of transmission service revenues collected by MISO for transmission service provided under the MISO Tariff. To the extent that Minnkota's transmission facilities are used to provide open access service, Minnkota states that its OATT must be used in order to ensure just compensation. Minnkota states that Geronimo's interpretation would deprive Minnkota of a source of revenue for the use of its transmission facilities.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 13-14 (citing 1978 Agreement § 3.2 (“[e]ach Party shall have the right to tap at its own expense . . . the facilities . . . for deliveries to its own loads”) and 1978 Agreement § 5.4 (“This Agreement is not intended to and shall not create rights of any character whatsoever in favor of any person . . . other than the Parties hereto, and the obligations herein assumed are solely for the use and benefit of the Parties)).

¹⁹ *Id.* at 27.

²⁰ *Id.* at 36.

²¹ *Id.* at 22.

21. Minnkota requests that the Commission decline to exercise jurisdiction over this dispute. If, however, the Commission decides to hear this proceeding, Minnkota requests that the Commission (1) deny the relief requested in the Petition insofar as it requests a reading of the 1966 Agreement contrary to the intent of the parties to the agreement and provides Geronimo with transmission service across Minnkota's transmission facilities without compensation to Minnkota and (2) deny the request for expedited consideration.²²

Geronimo December 5 Answer

22. Geronimo argues that the parties to the 1966 Agreement used clear and unambiguous language to establish a right to use each other's facilities. Geronimo further argues that Minnkota's protest fails to highlight any ambiguity in the reciprocal use agreement and that Minnkota's interpretation requires the insertion of new language.²³ Geronimo asserts that the affidavit accompanying Minnkota's protest is lacking in evidentiary value and contains only bare assertions regarding the intent of the parties to the 1966 Agreement, and thus should be given no weight by the Commission.²⁴ Geronimo further asserts that none of the arguments in Minnkota's protest regarding the intent of the parties to the 1966 Agreement contradicts the plain meaning of the 1966 Agreement.²⁵

23. Geronimo contests Minnkota's argument that the 1978 Agreement governs use of the Center-Maple River Line and that it limits reciprocal use of the parties' transmission facilities to native load uses only.²⁶ Geronimo also contests Minnkota's argument that the 2005 Settlement does not support the conclusion that MISO has the right to provide transmission service over the Center-Maple River Line.²⁷

24. Geronimo disputes Minnkota's argument that any transmission revenue Minnkota would not be able to extract in connection with transmission service provided by MISO constitutes harm to Minnkota. Geronimo submits that Minnkota's grant of access to its

²² *Id.* at 42.

²³ Geronimo December 5 Answer at 4.

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 5-10.

²⁶ *Id.* at 10-12.

²⁷ *Id.* at 13-14.

transmission system was a bargained-for right offered in exchange for the reciprocal right granted by Otter Tail.²⁸

25. Geronimo argues that Minnkota's concerns regarding MISO's use of Minnkota's transmission rights are undermined by MISO's current use of the Center-Maple River Line. Geronimo states that, on November 1, 2014, MISO began providing transmission service for the output of Great River Energy's 99 MW Spiritwood Station.²⁹ Geronimo claims that, like the Courtenay Project, Spiritwood Station interconnects to MISO at the same Otter Tail substation and its output flows over the same portion of the Center-Maple River Line not owned by Otter Tail. Geronimo states that its review of Minnkota's Open Access Same-Time Information System (OASIS) indicates that no transmission service reservation has been made with Minnkota for this service. Geronimo also states that MISO granted Spiritwood Station Network Resource Interconnection Service (which it has also offered to the Courtenay Project) despite there being no indication that MISO has required that Great River Energy make a transmission service request with Minnkota.³⁰

26. Geronimo asserts that the Commission should grant its request for expedited consideration and submits that it worked for as long as it reasonably could to reach a settlement regarding Minnkota's claim for compensation. Geronimo states that in the spring of 2014, it and Minnkota agreed on a settlement rate, but in the fall of 2014, Minnkota informed Geronimo that, in addition to this rate, Minnkota would reserve the right to assess additional charges to the Courtenay Project in connection with the transmission service.

Minnkota Answer

27. Minnkota reiterates the arguments made in its original protest. Minnkota further asserts that Geronimo fails to refute key considerations set forth in Minnkota's protest.³¹ In response to Geronimo's claim that Minnkota's position is undermined by "MISO's current use of the Center-Maple River Line," Minnkota states that it has always required, and will continue to require, that third-party customers taking (or seeking to take)

²⁸ *Id.* at 14-15.

²⁹ *Id.* at 15 (citing David Shaffer, *Long-Idled Great River Power Plant Finally Flips the Switch*, Minneapolis Star Tribune (Nov. 1, 2014), available at <http://www.startribune.com/business/281121792.html>).

³⁰ *Id.* at 15-16.

³¹ Minnkota Answer at 1-9.

transmission service over its transmission system reserve and pay for appropriate service under its OATT.³² Minnkota further states that though Minnkota and MISO work together on coordinating transmission service when a transmission service path involves both of their systems, Minnkota is the primary responsible party for granting service on the Minnkota system, not MISO.

28. Minnkota also states that the “settlement rate” was never considered a settlement by Minnkota, but was a negotiated discounted rate off the otherwise applicable rate for transmission service set forth in Minnkota’s OATT. Minnkota explains that the “additional charges” were for ancillary services and costs of upgrades that may be required to provide transmission service to the Courtenay Project output, and that these charges are standard charges under both the Minnkota OATT and the MISO Tariff. Minnkota states that Geronimo’s claim that Minnkota first informed Geronimo of these charges in the fall of 2014 neglects the fact that these charges are posted on Minnkota’s OASIS.³³

Geronimo December 16 Answer

29. Geronimo reiterates its request for expedited consideration. Geronimo also states that it has reviewed Minnkota’s answer and believes that the issues raised have been fully addressed in Geronimo’s petition and in Geronimo’s previous answer.

Minnkota December 22 Motion

30. In response to Geronimo’s claim that a third party is currently using the Center-Maple River Line and that no transmission service reservation has been made with Minnkota for this service, Minnkota moves for leave to supplement the record. Minnkota states that, as indicated in a print-out from Minnkota’s OASIS page attached as Exhibit A to the motion, the customer has reserved, under Minnkota’s OATT, transmission capacity on a long-term firm point-to-point basis for its use of Minnkota’s facilities (the Center-Maple River Line) to transmit the output of the customer’s recently commissioned generating facility. Minnkota states that this transmission reservation is direct evidence of Minnkota’s consistent treatment of customers that require the use of Minnkota’s transmission facilities.

³² *Id.* at 10 (citing Geronimo December 5 Answer at 15).

³³ *Id.* at 12-13.

Geronimo December 31 Answer

31. Geronimo asserts that Minnkota failed to explain in its December 22 Motion that the third party customer did not make its transmission service request until after Geronimo's December 16 Answer. Geronimo states that Minnkota also failed to explain that the service request was made as part of a settlement in which the customer will pay an amount less than Minnkota's full transmission rate.

32. Additionally, Geronimo claims that, unlike Geronimo's Courtenay Project, the Spiritwood Station is a generation facility that has already been constructed and is already operating. Geronimo claims that MISO began providing transmission service over the Center-Maple Rive Line for the output of Spiritwood Station on November 1, without the customer making any request for service from Minnkota, and that the customer appears to thereafter have reached a settlement with Minnkota in order to reduce its exposure to a Minnkota claim for compensation. Geronimo argues that the customer's decision to reduce its risk by settling does not mean that any MISO customer taking service over the Center-Maple River Line should be required to pay a transmission rate to Minnkota and that the situation of an already-built generation facility differs from that of a planned project such as the Courtenay Project.

IV. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make Minnkota, Otter Tail, Great River Energy, and MISO parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Geronimo and Minnkota because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

35. Geronimo's petition for declaratory order raises issues of material fact which cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

36. Given the nature of this jointly planned system, with individual components owned by different transmission owners, one of which is a MISO member, and one of which is not, the issues raised by Geronimo's petition are complex. These include not only interpretation of the 1966 Agreement, but also the potential impacts on MISO's operations that could occur if it is ultimately discovered that MISO controls capacity on

only discrete non-contiguous components of this system owned by Otter Tail. We find that hearing and settlement judge procedures will provide the parties with a forum for addressing such issues, and we encourage the parties to use the settlement procedures to seek a mutually agreeable comprehensive solution to all of the issues raised by the petition.

37. Accordingly, we will set the petition for declaratory order for hearing and settlement judge procedures.

38. 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.³⁴ 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.³⁵

39. The settlement judge shall report to the Chief Judge and the Commission within thirty (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) 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, 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 in Docket No. EL15-10-000 concerning the issues raised in Geronimo's petition for declaratory order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

³⁴ 18 C.F.R. § 385.603 (2014).

³⁵ 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 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).

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), 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 make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(C) 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.

(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 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. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.