

150 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Great Plains, LLC

Docket Nos. ER09-548-002
EC11-108-001
(consolidated)

ORDER ACCEPTING AND SUSPENDING FILING AND
ESTABLISHING HEARING, AND SETTLEMENT JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued March 26, 2015)

1. In this order, we address the May 20, 2013 compliance filing (May 20 Filing) submitted, under section 205 of the Federal Power Act (FPA),¹ by ITC Great Plains, LLC (ITC Great Plains) pursuant to the Commission's March 16, 2009 order.² In the Incentives Order, the Commission conditionally accepted tariff sheets, proposed for the Southwest Power Pool, Inc. (SPP) open access transmission tariff (Tariff). The tariff sheets set forth ITC Great Plains' formula rates and formula implementation protocols to recover the costs of transmission facilities that it planned to build or own in the SPP region. The Commission also granted, in part, ITC Great Plains' request for a transmission incentive permitting it to create regulatory assets that would include start-up and development costs incurred prior to the effective date of ITC Great Plains' formula rate.³ The May 20 Filing requests authorization for ITC Great Plains to commence the amortization of the authorized regulatory assets. For the reasons discussed below, we will accept for filing the May 20 Filing, and suspend it for a nominal period, to become effective July 19, 2013, as requested, subject to refund. We will also establish

¹ 16 U.S.C. § 824d (2012).

² *ITC Great Plains, LLC*, 126 FERC ¶ 61,223 (2009) (Incentives Order).

³ *Id.* PP 74-76.

hearing and settlement judge procedures. Additionally, we will consolidate Docket Nos. ER09-548-002 and EC11-108-001 for purposes of hearing and settlement judge procedures.

I. Background

2. ITC Great Plains is a transmission-only, Michigan utility authorized to do business in Kansas and Oklahoma. It is a wholly-owned subsidiary of ITC Grid Development, LLC, which is wholly owned by ITC Holdings Corp. (ITC Holdings). In September 2006, ITC Great Plains became an independent transmission company member of SPP. On June 5, 2007, the Kansas Corporation Commission (Kansas Commission) granted ITC Great Plains' request for a certificate of convenience and authority for the limited purpose of building transmission projects in Kansas. Pursuant to the Kansas Commission's order, ITC Great Plains must amend its certificate of convenience for each project that it plans to build in Kansas.

3. In its January 15, 2009 application (Application), ITC Great Plains proposed to construct two transmission projects, the approximately 170-mile-long Kansas portion of a 765/345-kV transmission line from Spearville, Kansas, to Axtell, Nebraska (KETA Project), and the 180-mile-long, 765-kV, V-shaped transmission line, in Kansas, from a substation near Wichita, to a new substation to be built in Comanche County, and from there to an existing substation near Spearville (Kansas V-Plan Project)⁴ (together, the Projects). In the Application, ITC Great Plains invoked Order No. 679,⁵ and requested rate incentives for the Projects, including, as pertinent here, inclusion of certain project-related, pre-commercial costs as regulatory assets. Additionally, ITC Great Plains requested a rate incentive to include certain costs related to start-up and corporate development costs as a regulatory asset. ITC Great Plains proposed to record these costs

⁴ The Kansas V-Plan Project is the northern half of SPP's 765-kV transmission project known as the X-Plan, whose hub is located near Mooreland, Oklahoma, and with connections going northerly into Spearville and Wichita, Kansas, and southerly into Texas and the Oklahoma City areas. The Kansas V-Plan Project represents the Spearville to Wichita portion of the X-Plan. See Application, Testimony of Carl A. Huslig at 25-26, Ex. No. GP-100. The Kansas V-Plan plus a transmission line to the Oklahoma border are referred to as the Kansas Y-Plan.

⁵ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007). The Commission issued Order No. 679 in response to FPA section 219, 16 U.S.C. § 824s (2012).

in Account 182.3, “Other Regulatory Assets,” and accrue carrying charges on these amounts.

4. The Commission granted both requests in the Incentives Order. However, it conditioned exercise of regulatory asset treatment for both the project-related pre-commercial costs and the start-up and corporate development costs on ITC Great Plains demonstrating, in a section 205 filing submitted prior to amortizing the regulatory assets, that the pre-commercial costs and start-up costs are just and reasonable.⁶ Additionally, the Commission conditionally accepted the proposed tariff sheets that set forth formula rates and formula implementation protocols to recover the cost of the transmission facilities including the requested incentives, suspended them, and set them for hearing and settlement judge procedures.

5. On February 3, 2010, the Commission accepted a settlement agreement (Settlement) between ITC Great Plains and the other parties to the proceeding, including the Kansas Commission.⁷ The Settlement substantially revised the formula rate implementation protocols proposed by ITC Great Plains in the May 20 Filing (Settlement Protocols).⁸

II. May 20 Filing

6. In the May 20 Filing, ITC Great Plains requests authorization to commence the amortization of three regulatory assets as granted in the Incentives Order – a “Start-Up and Development Regulatory Asset” and the project-specific regulatory assets for both the KETA Project and the Kansas V-Plan Project.

7. ITC Great Plains estimates the costs of the Start-Up and Development Regulatory Asset as approximately \$12.5 million. This regulatory asset would comprise start-up and corporate development costs incurred prior to the effective date of the ITC Great Plains formula rate. ITC Great Plains states that this estimate includes the costs associated with its efforts to establish its formula rate, to obtain public utility status in Kansas and

⁶ Incentives Order, 126 FERC ¶ 61,223 at P 76.

⁷ *ITC Great Plains, LLC*, 130 FERC ¶ 61,088 (2010). On November 16, 2004, the Settlement Judge had certified to the Commission the uncontested Settlement, which did not include the issues raised in requests for rehearing and clarification of the Incentives Order. *ITC Great Plains, LLC*, 129 FERC ¶ 63,013 (2009).

⁸ ITC Great Plains, Uncontested Offer of Settlement, Explanatory Statement, Docket No. ER09-548-000, at 7 (filed Oct. 28, 2009).

Oklahoma, and to obtain necessary approvals and authorizations from state regulators in Kansas and Oklahoma.

8. ITC Great Plains maintains that the transaction costs associated with the August 19, 2009 acquisition of two substations⁹ from Mid-Kansas fall within the scope of the Start-Up and Development Regulatory Asset granted by the Incentives Order. It contends that without the purchase of these substations, it could not have built the KETA Project, the Kansas V-Plan Project, or any other project in SPP.¹⁰ Thus, ITC Great Plains has included within this regulatory asset a total of \$121,250 for acquisition-related transaction costs consisting of mainly legal and engineering expenses.¹¹ Moreover, ITC Great Plains explains that it included, as part of its section 203 filing, in Docket No. EC11-108-000, a standard, hold harmless commitment under which ITC Great Plains would hold transmission customers harmless from costs associated with the acquisition of the substations for a period of five years to the extent that such costs exceeded acquisition-related savings. Consistent with that hold harmless commitment, ITC Great Plains claims that the benefits of and the consumer savings that will result from the

⁹ The Flat Ridge Substation is a 138-kV interconnection station located in Barber County, Kansas, connected within Mid-Kansas' Medicine Lodge to Harper 138-kV line. The Elm Creek Substation is a 230-kV substation located in Cloud County, Kansas, connected within the 230-kV transmission line from Mid-Kansas Energy Cooperative, Inc.'s (Mid-Kansas) West Concordia Substation to Westar Energy Inc.'s East Manhattan Substation. The jurisdictional facilities associated with the transaction consist of rate schedules, tariffs, asset purchase agreements, and interconnection facilities. ITC Great Plains' acquisition of the two substations, filed in Docket No. EC11-108-000, was authorized by *ITC Great Plains, LLC*, 137 FERC ¶ 62,037 (2011), which also required ITC Great Plains to make appropriate compliance filings under FPA section 205 to implement the proposed transaction. ITC Great Plains complied in its May 20 Filing, which includes recovery of the costs of the two substations and was filed in Docket Nos. ER09-548-002 and EC11-108-001.

¹⁰ May 20 Filing at 4 n.17. ITC Great Plains states that SPP interprets its Tariff as requiring an entity to be a Transmission Owner before it can be allowed to build transmission in the SPP region; purchase of these substations made ITC Great Plains a Transmission Owner.

¹¹ *Id.* at 6. The acquisition-related transaction costs include \$82,910 for external legal expenses, \$8,696 for external engineering and environmental services and \$29,643 for internal labor expenses. *Id.*, Ex. No. ITC-200: Direct Testimony of Benjamin R. Reynolds on Behalf of ITC Great Plains, LLC at 7:7-12 (Reynolds Testimony).

KETA Project, the Kansas V-Plan Project, and its other transmission projects, which together total a transmission investment of more than \$220 million, through December 31, 2012, significantly exceed the substation-related transaction costs that it is seeking to recover.¹²

9. In the Application, ITC Great Plains stated that this regulatory asset includes carrying charges that will accrue from the date of the Incentives Order until the earlier of the KETA Project or Kansas V-Plan project going into service or upon ITC Great Plains amassing \$100 million in plant-in-service Gross Property, Plant, and Equipment costs.¹³ In the May 20 Filing, ITC Great Plains reports that the KETA Project went into service in 2012, and ITC Great Plains' total in-service Gross Property, Plant and Equipment costs exceed \$100 million.¹⁴

10. ITC Great Plains explains that this regulatory asset will be allocated among the projects identified in the formula rate and recovered from the customers that pay the costs of the projects.¹⁵ Thus, for projects whose costs are included in the formula rate and assessed regionally, the allocated share of the regulatory asset would also be assessed regionally; however, the allocated share of the regulatory asset pertaining to projects whose costs are allocated locally would be paid by local customers.¹⁶

11. The project-specific regulatory asset costs for the KETA Project, which include carrying charges through December 31, 2012, total approximately \$2.8 million.¹⁷ ITC

¹² *Id.* at 6.

¹³ Application at 14.

¹⁴ May 20 Filing at 4.

¹⁵ *Id.*, Ex. No. ITC-100: Prepared Direct Testimony of Alan K. Myers on Behalf of ITC Great Plains, LLC at 7:7-14 (Myers Testimony).

¹⁶ *Id.*, Myers Testimony at 6:19-23 – 7:1-6.

¹⁷ *Id.* at 8 & n.28. Carrying charges continue to accrue until such time as the regulatory assets are included in the rate base. Thus, carrying charges continue to accrue until the effective date of the authorization to begin amortization of the KETA Project regulatory asset. ITC Great Plains will begin to record monthly amortization expense on regulatory asset for the KETA Project in the first month following issuance of a Commission order approving recovery of the regulatory asset. *Id.*; Reynolds Testimony at 17:12-19.

Great Plains explains that the KETA Project has been constructed in two phases. Costs incurred for Phase I were accrued as a regulatory asset from July 2008 through October 2009; costs for Phase II were accrued from July 2008 through June 2010. The project-specific regulatory asset costs for the Kansas V-Plan Project, which include carrying charges through December 31, 2012, total approximately \$4.5 million.¹⁸ ITC Great Plains states that construction activities for the Kansas V-Plan Project commenced in July 2011, at which time the accrual of the project-specific pre-commercial costs to the regulatory asset ceased other than the accrual of carrying charges. Thus, ITC Great Plains is currently accruing carrying charges only on the regulatory asset for the Kansas V-Plan Project. According to ITC Great Plains, these carrying charges will accrue from the issue date of the Incentives Order until the project goes into service. For administrative convenience, and to minimize the accumulation of carrying charges beyond the in-service date of the Kansas V-Plan Project, ITC Great Plains requests authorization to begin the amortization of the project-specific Kansas V-Plan project regulatory asset in the month following the in-service date of the project, conditioned on its making an informational filing to notify the Commission when the project has been placed in service.¹⁹

12. For all three regulatory assets (the Start-Up and Development Regulatory Asset, and the two Project-Specific Regulatory Assets of the KETA Project and of the Kansas V-Plan Project), ITC Great Plains intends to amortize the amounts recorded in Account 182.3 to Account 566, Miscellaneous Transmission Expenses, over a ten-year period. According to ITC Great Plains, all three regulatory assets also incur carrying charges that are based on the actual weighted average cost of capital calculated in ITC Great Plains' formula template for that year.²⁰ ITC Great Plains states that the carrying charges are compounded monthly so that the effective monthly carrying charge rate, when applied and compounded monthly, is the rate that will yield the same amount as semi-annual compounding. According to ITC Great Plains, this is similar to the method used by the Commission for capitalizing financing costs on construction work in progress.²¹ ITC Great Plains also contends that the equity portion of the carrying charges is calculated using the after-tax return on equity of 12.16 percent.²² Finally, ITC Great

¹⁸ *Id.* at 8 & n.29.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 2-3.

²¹ *Id.*, Ex. No. ITC-200: Direct Testimony of Benjamin R. Reynolds on Behalf of ITC Great Plains, LLC at 7:19-22 to 8:1 (Reynolds Testimony).

²² *Id.*, Reynolds Testimony at 8:16-18.

Plains asserts that it has received allocations of other administrative and general costs under the modified Massachusetts allocation method employed by its parent company, ITC Holdings, and that it has included these allocations in the total cost of each regulatory asset.²³

13. ITC Great Plains states that its formula rates use a projected test year methodology with a true-up to actual costs for establishing charges. ITC Great Plains states that the projected rate does not include recovery of the regulatory assets. ITC Great Plains states that if the Commission authorizes the amortization and recovery of the regulatory assets in 2013, it will include such costs in the true-up that is calculated in June 2014 and is based upon 2013 actual costs.²⁴ ITC Great Plains will also include such regulatory asset amortization in future projected rates.²⁵

14. ITC Great Plains requests that the authorization for it to begin amortizing these regulatory assets be made effective 60 days after the date of the May 20 Filing. It asserts that Part 35 of the Commission's regulations²⁶ is inapplicable to the May 20 Filing. Nevertheless, it requests waiver of regulations that may be found applicable to the extent necessary to permit Commission acceptance of this filing, including waiver of any eTariff filing requirements.

III. Notice of Filing and Responsive Pleading

15. Notice of the May 20 Filing was published in the *Federal Register*, 78 Fed. Reg. 32,383 (2013), with interventions and protests due on or before June 10, 2013. On June 10, 2013, the Kansas Commission filed a protest. On June 25, 2013, ITC Great Plains filed a motion for leave to answer the protest, and an answer.²⁷

²³ ITC Great Plains states that the modified Massachusetts allocation method is set forth in the Settlement. *Supra* note 7.

²⁴ On May 30, 2014, in Docket No. ER09-548-000, ITC Great Plains filed "Informational Filing of 2013 True-Up Adjustment."

²⁵ May 20 Filing, Reynolds Testimony at 7:6-14.

²⁶ *Id.* at 9.

²⁷ On September 2 and 3, 2014, respectively, the Kansas Commission and ITC Great Plains filed requests that the Commission promptly issue its order in these proceedings.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁸ the notice of intervention filed by the Kansas Commission serves to make it a party to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure²⁹ prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept ITC Great Plains' answer because it has provided information that assisted us in our decision-making process.

B. Kansas Commission Protest

17. The Kansas Commission protests that ITC Great Plains' request for authorization to commence amortizing the regulatory assets is just and reasonable only if ITC Great Plains complies with all of the terms and conditions found in the Settlement Protocols. It also protests that the May 20 Filing may be deficient and not in compliance with the Settlement Protocols because ITC Great Plains failed to provide all parties with sufficient information to fully evaluate the true-up adjustment.³⁰

18. The Kansas Commission asserts that ITC Great Plains has not complied with section 2.b.(iv) of the Settlement Protocols, which requires ITC Great Plains to provide supporting documentation for all data, adjustments and allocations not otherwise available in the FERC Form No. 1 that are used in the formula rate. According to the Kansas Commission, ITC Great Plains has submitted insufficient worksheets and supporting explanations to enable the Kansas Commission to determine whether the costs over which ITC Great Plains seeks amortization and recovery are just and reasonable. The Kansas Commission objects that the documents filed by ITC Great Plains to support the May 20 Filing are merely totals by month and by category. It contends that this lack of detail does not provide it with sufficient information to determine whether those costs are just and reasonable.³¹

²⁸ 18 C.F.R. § 385.214 (2014).

²⁹ 18 C.F.R. § 385.213(a) (2014).

³⁰ Protest at 3-4.

³¹ *Id.*

19. The Kansas Commission gives the example of ITC Exhibit No. ITC-201 (tables appended to the Reynolds Testimony), which includes: legal costs totaling \$266,407.39 in November 2008; Education and Outreach costs totaling \$454,872.49 in December 2008; and Other Administrative General and Support Costs totaling \$1,097,130.00 between October 2006 and August 2009. The Kansas Commission contends that ITC Great Plains has not provided any explanatory worksheets or other supporting information that would permit evaluation of whether these amounts are reasonable.³² The Kansas Commission argues that more time is necessary to pursue discovery with ITC Great Plains to determine whether these costs should be included.

20. The Kansas Commission also states that the May 20 Filing does not clarify whether the Kansas Commission would be estopped from challenging any of the figures in the May 20 Filing in the future, when ITC adjusts its formula rates. To illustrate its concern, the Kansas Commission cites the filing that it anticipated ITC Great Plains would make, in June 2014,³³ to enable collection of revised rates as of January 1, 2015. The Kansas Commission is concerned that it would be precluded, in 2014 or another time, from challenging the justness and reasonableness of the costs in the May 20 Filing. Thus, the Kansas Commission reserves the right to challenge any of the data in the May 20 Filing in a subsequent proceeding, given that ITC Great Plains has not provided sufficient meaningful explanatory worksheets or other supporting information to enable proper analysis of the May 20 Filing.

21. Finally, the Kansas Commission requests that the Commission not approve the May 20 Filing until after the Kansas Commission and all other interested intervenors have had a reasonable opportunity to conduct necessary discovery to determine whether the instant submittal is consistent with the Settlement and the Settlement Protocols.³⁴

C. ITC Great Plains Answer

22. ITC Great Plains contends that the Settlement Protocols, including section 2.b.(iv), do not apply to the May 20 Filing which seeks authorization to begin amortizing the regulatory assets. Instead, the Settlement Protocols apply to the annual submission of a true-up adjustment to the rates charged under the formula rate and they set forth a series

³² *Id.* at 4.

³³ *See supra* note 24.

³⁴ Protest at 5.

of process requirements that would apply to such adjustments.³⁵ The May 20 Filing, by contrast, only seeks authorization to begin amortizing the regulatory assets. Thus, according to ITC Great Plains, the Kansas Commission's protest, that the May 20 Filing is deficient, is inapposite because ITC Great Plains was not required to follow the Settlement Protocol process that applies to annual formula rate true-ups.³⁶

23. ITC Great Plains contends that the information in the May 20 Filing is more than sufficient to support the recovery requested there. Nevertheless, ITC Great Plains includes, with its answer, an attachment with additional data to address the Kansas Commission's concerns.³⁷

24. ITC Great Plains argues that the Kansas Commission's request for discovery regarding the May 20 Filing is without merit because the right of discovery applies only to cases set for hearing, and the Kansas Commission did not request that the May 20 Filing be set for hearing. Moreover, ITC Great Plains maintains that the Kansas Commission did not identify with precision or particularity disputed issues of material facts.

25. ITC Great Plains disagrees with the Kansas Commission's request to reserve the right to challenge the various cost items included in the regulatory assets when ITC Great Plains makes future adjustments to its formula rate. ITC Great Plains states that the Incentives Order requires ITC Great Plains to demonstrate, in a section 205 filing, that the costs are just and reasonable, and that parties will be able to challenge those costs at that time. ITC Great Plains continues that there is no indication in the Incentives Order that the Commission intended those same costs to be open to dispute multiple times. Thus, ITC Great Plains contends, the Kansas Commission has the right to challenge these costs only in the section 205 proceeding in which the costs are filed with the Commission, i.e., the instant proceeding.³⁸

³⁵ To date, ITC Great Plains made annual informational filings of true-up adjustments for 2009 through 2013.

³⁶ Answer at 2-4.

³⁷ *Id.* at 3, 6 n.4.

³⁸ *Id.* at 6 (citing Incentives Order, 126 FERC ¶ 61,223 at P 76).

D. Commission Determination

26. ITC Great Plains' proposal raises issues of material fact that cannot be resolved based on the record before us, and is more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that ITC Great Plains' proposal has not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposal for filing, suspend it for a nominal period, make it effective July 19, 2013, subject to refund, and set it for hearing and settlement judge procedures. Because of the existence of common issues of law and fact, we will consolidate the proceedings in Docket Nos. ER09-548-002 and EC11-108-001 for purposes of hearing and decision.

27. While we are setting this matter 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.³⁹ If the parties desire, they may, by mutual agreement, request a specific judge as a 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 appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

28. During these proceedings, the Kansas Commission and other parties to these proceedings will have the opportunity to challenge the submitted data and to pursue discovery to obtain information concerning ITC Great Plains' proposed costs in its regulatory assets recovery. However, we agree with ITC Great Plains that such challenge and discovery may take place only in the hearing and settlement judge proceedings established here, and that the Kansas Commission may not reserve the right to future challenges to the May 20 Filing.

³⁹ 18 C.F.R. § 385.603 (2014).

⁴⁰ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five (5) days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) ITC Great Plains' proposal is hereby accepted for filing and suspended for a nominal period, to become effective July 19, 2013, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act (FPA), particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues outlined above. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) 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.

(D) 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.

(E) 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.

(F) The proceedings in Docket Nos. ER09-548-002 and EC11-108-001 are hereby consolidated for the purposes of settlement, hearing, and decision. The settlement judge or presiding judge, as appropriate, shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.