

152 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TransSource, LLC

v.

Docket No. EL15-79-000

PJM Interconnection, LLC

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 24, 2015)

1. In this order, the Commission establishes hearing and settlement judge procedures regarding a complaint filed on June 23, 2015, pursuant to section 206 of the Federal Power Act (FPA),¹ by TransSource, LLC (TransSource) against the PJM Interconnection, LLC (PJM). TransSource is seeking to build three network upgrades interconnected to the PJM transmission system to obtain Incremental Auction Revenue Rights (Incremental ARR)s² and Incremental Capacity Transfer Rights (Incremental CTRs).³ At the core of

¹ 18 C.F.R. § 385.206 (2015).

² Under the PJM Tariff, a customer may request specific Incremental ARR)s and agree to fund the upgrades necessary to provide for such Incremental ARR)s on the PJM system. PJM, Intra-PJM Tariffs, OATT, Attachment K, Appendix § 7.8 (Elective Upgrade Auction Revenue Rights) (0.0.0). *See also* a parallel provision in Schedule 1, § 7.8 of the PJM Operating Agreement. Additionally, under the PJM Tariff, a participant that funds transmission upgrades may be entitled to receive Incremental ARR)s associated with such upgrades; to the extent such upgrades are simultaneously feasible with outstanding ARR)s. PJM, Intra-PJM Tariffs, OATT, Subpart C, Incremental Auction Revenue Rights § 231 (0.0.0).

³ Under the PJM Tariff, a customer may request specific Incremental CTR)s and agree to fund the upgrades necessary to provide for such Incremental CTR)s on the

(continued...)

the complaint is an allegation that affected transmission owners have inflated the scope of the system enhancements needed to accommodate TransSource's requested upgrades. TransSource alleges that PJM violated its Open Access Transmission Tariff (Tariff) by refusing to provide TransSource work papers that underlie the System Impact Studies that PJM prepared to evaluate the upgrades necessary to accommodate TransSource's interconnection request.⁴ TransSource also contends that the scope of mitigation in the System Impact Studies is excessive and intended to stymie its requested network upgrades. TransSource further claims that in performing the System Impact Studies, PJM fails to rely, to the extent reasonably practicable, on existing transmission planning studies.

2. TransSource also seeks waiver of the deadlines set forth in section 206.2 (Retaining Queue Position) of PJM's Tariff, which provides that a new service customer must return an executed Facilities Study Agreement and deposit to PJM within 30 days of receiving the agreement.⁵ In this order, we will establish hearing and settlement judge procedures.

I. TransSource's Complaint

3. The Complaint alleges that PJM violated section 213(b) of the FPA and sections 205.4.2 and 210 of the PJM Tariff.⁶ Specifically, TransSource claims that PJM has repeatedly refused to provide underlying data and work papers which TransSource has requested, and believes it is entitled to, under the PJM Tariff.⁷ TransSource states

PJM system. PJM, Intra-PJM Tariffs, OATT, Attachment DD, Definitions § 2.35 (Incremental Capacity Transfer Right) (13.0.1). Additionally, under the PJM Tariff, a participant that funds transmission upgrades may be entitled to receive Incremental CTRs associated with such upgrades; to the extent such upgrades increase the import capability into a Locational Deliverability Area. PJM, Intra-PJM Tariffs, OATT, Subpart C, Incremental Capacity Transfer Rights § 234 (0.0.0).

⁴ PJM, Intra-PJM Tariffs, OATT, Part VI, Subpart A System Impact Studies and Facilities Studies § 205.4.2 (Materials for Customers) (1.0.0). Section 205.4.2 of the PJM Tariff provides, in part, that "the Transmission Provider shall provide a copy of the System Impact Study and ... related work papers to all New Service Customers that had New Service Requests evaluated in the study and to the affected Transmission Owner(s)."

⁵ TransSource July 7, 2015 Second Supplement and Request for Waiver.

⁶ TransSource June 23, 2015 Complaint at 1.

⁷ *Id.*

that it needs such underlying data and work papers to evaluate continued development of its three queue positions: Z2-053 (Bridgewater-South River); Z2-069 (Bridgewater-Hoboken); and Z2-072 (Indian River-New Church).⁸ TransSource also argues that PJM's refusal to provide the requested data prevents TransSource from securing the financing necessary to fund the development of those queue positions.⁹

4. TransSource asks the Commission to order PJM to provide to TransSource all of the data and work papers used to create the System Impact Studies. TransSource also asks the Commission to suspend all necessary deadlines for TransSource to retain its queue positions until no earlier than 180 days after all requested data and work papers are provided to TransSource.¹⁰

5. TransSource states that, on March 31, 2015, PJM provided the System Impact Studies for TransSource's three queue positions (March Studies). TransSource asserts that it challenged the results of the System Impact Studies on April 2, 2015, on belief of material defects, and requested all data and work papers associated with the cost estimates included in the studies.¹¹ TransSource claims that the PJM transmission owners affected by the TransSource queue positions intentionally assigned an excessive scope of mitigation in an effort to defeat TransSource's network upgrade requests. TransSource states that PJM then used that inaccurate data to calculate the necessary upgrades without independent analysis.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2. On July 14, 2015 PJM withdrew the projects because TransSource did not make its deposit or execute the Facilities Study Agreement required to take the next step in the interconnection process, the Facilities Study. *See* TransSource July 17, 2015 Answer at 2. PJM was required to withdraw the positions pursuant to section 206.2 (Retaining Queue Position) of its Tariff. *See* PJM, Intra-PJM Tariffs, OATT, Part VI, Subpart A System Impact Studies and Facilities Studies § 206.2 (Retaining Queue Position) (0.0.0).

¹¹ TransSource June 23, 2015 Complaint at 2.

¹² *Id.* at 2-3.

6. TransSource states that, on April 10, 2015, PJM rescinded the three system impact studies, and, on June 10, 2015, PJM provided revised results (June Studies).¹³ TransSource states the June Studies estimated \$1.1 billion in upgrade costs to obtain a total of 261.1 MWs of Incremental ARRs and 471 MWs of Incremental CTRs associated with queue positions Z2-069 and Z2-053, and \$587 million in upgrades to obtain 204.6 MWs of Incremental ARRs and 26 MWs of Incremental CTRs associated with queue position Z2-072. Furthermore, TransSource states that PJM conceded to TransSource that the changes occurred because of material errors by PJM analysts.¹⁴ TransSource contends that, on twelve occasions, it asked PJM to explain how it determined the scope of mitigation used in its System Impact Studies and requested access to the underlying data inputs.¹⁵

7. TransSource explains that the scope of work in the System Impact Studies determines the amount of the deposit that TransSource must make to PJM in order to retain its queue positions. TransSource represents that, if it misses the deposit deadline, it will potentially lose \$6 million in monthly Incremental ARR revenues.¹⁶

II. TransSource's First Motion to Supplement

8. On June 29, 2015, TransSource filed a Motion to Supplement its Complaint. TransSource notes discrepancies in upgrade cost estimates between a Facilities Study (i.e., withdrawn queue position X4-038 – TMI-PPL) prepared in part with information from a preliminary PLS.CADD model.¹⁷ TransSource states the Facilities Study estimated it would cost \$14,216,290 to upgrade the Reading-Roseland line, but that one of the June Studies estimates \$142,712,324 to upgrade this line. TransSource argues this

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ PLS-CADD is a computer aided design application that allows for modeling of the physical characteristics of the power line and associated structures. The system allows engineers to model the expected new load and how it impacts the characteristics of the line. *See*, PJM's June 10, 2015 Answer, Attachment B, Affidavit of James G. Flaherty, at P 9.

cost difference is unexplained, and that PJM violated its Tariff by not using the Facilities Study to inform the March and June Studies.¹⁸

III. TransSource's Second Motion to Supplement and Request for Waiver of Tariff Deadlines

9. On July 7, 2015, TransSource filed a combined request for a waiver of Tariff deadlines and second supplement to the complaint in which it requests waiver of all relevant Tariff deadlines so that TransSource can retain its queue positions until action can be taken on the complaint. TransSource again claims potential material injury if it misses the deadlines, arguing that PJM does not allow material changes to a system impact study once the Facilities Study Agreement for that queue position has been executed. TransSource states that, given the extension of time on the comment period the Commission granted on July 1, 2015, an order could not be issued before the deposit deadlines pass.¹⁹

IV. Notice of Filings and Responsive Pleadings

10. Notice of TransSource's filing was published in the Federal Register, 80 Fed. Reg. 38,186, with interventions and protests due on or before July 6, 2015. As noted above, TransSource filed a supplement to the complaint on June 29, 2015. On June 30, 2015, PJM filed a motion requesting a 7-day extension of time to file an answer to the complaint. On July 1, 2015, TransSource filed two answers in opposition to the PJM request for a 7-day extension. Also on July 1, 2015, the Commission issued a notice of extension of time extending the comment deadline 4-days until July 10, 2015. Thereafter, on July 7, 2015, TransSource filed the above-mentioned motion for an immediate waiver of Tariff deadlines and second motion to supplement complaint. Also on July 7, 2015, TransSource filed a withdrawal of one of the June 30, 2015 motions to answer. On July 9, 2015, the Commission issued a notice of supplemental complaint, providing for a comment deadline of July 17, 2016, and PJM filed a motion to intervene and protest TransSource's request for waiver of Tariff deadlines. On July 10, 2015, PJM filed an answer to the complaint. On July 17, 2015, TransSource filed an answer. On July 20, 2015, PJM filed a motion to respond to TransSource's July 17, 2015 answer. Finally, on September 18, 2015, PJM filed a motion to respond, response to TransSource's answer and request that the Commission rule on PJM's motion to dismiss the complaint.

¹⁸ TransSource June 29, 2015 Supplement.

¹⁹ TransSource July 7, 2015 Second Supplement and Request for Waiver.

11. A motion for investigative process of the Independent Market Monitor for PJM (Market Monitor) was filed on August 6, 2015. TransSource filed an answer in support of the Market Monitor's motion on August 13, 2015. PJM filed an answer to both the Market Monitor's motion and TransSource's answer on August 24, 2015. Finally, TransSource filed an answer to PJM on August 27, 2015.

12. Motions to intervene were filed on June 29, 2015, by Potomac Electric Power Company and Exelon Corporation. The Market Monitor filed a motion to intervene on June 30, 2015. Further motions to intervene were filed on July 6, 2015 by Public Service Electric & Gas Company and July 7, 2015 by PPL Electric Utilities Corporation and FirstEnergy Service Company.²⁰ American Municipal Power, Inc. filed a motion to intervene on July 8, 2015. A further motion to intervene was filed on July 9, 2015, by Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company. Out-of-time motions to intervene were submitted by ITC Lake Erie Connector, LLC, NRG Companies,²¹ and Midcontinent MCN, LLC on July 15, 16, and 17, 2015, respectively.

A. PJM's Answer to Complaint

13. PJM argues that the complaint should be dismissed for failing to state a claim upon which to base a cause of action. PJM asserts that TransSource has failed to satisfy the requirements of section 206 of the FPA and Rule 206 of the Commission's regulations because the complaint is based on inaccurate and unsubstantiated facts and allegations and is procedurally flawed.²² PJM states that TransSource has the burden of proof and must demonstrate based on substantial evidence that the tariff provision in effect is unjust and unreasonable. In addition, PJM states that a complaint must clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements, and must explain how the action or inaction violates applicable statutory standards or regulatory requirements. PJM asserts that, given TransSource's

²⁰ FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Monongahela Power Company, West Penn Power Company, the Potomac Edison Company, and Trans-Allegheny Interstate Line Company (collectively, FirstEnergy).

²¹ NRG Companies are Boston Energy Trading and Marketing LLC, NRG Power Marketing LLC, and GenOn Energy Management, LLC.

²² PJM July 10, 2015 Answer at 2.

failure to comply with all or a portion of the mandatory requirements of Rule 206(b), the Commission must dismiss this Complaint.²³

14. PJM represents that, notwithstanding TransSource's allegations, all data and work papers that underlie the instant System Impact Studies were previously provided to TransSource by PJM in full compliance with the PJM Tariff. PJM further claims that TransSource was seeking production of PLS.CADD files, which neither PJM nor the affected transmission owners used in creating the instant System Impact Studies. Therefore, PJM argues that PLS.CADD files are not related work papers which must be provided to TransSource under section 205.4.2 (Materials for Customers) of the PJM Tariff. PJM argues that such a request is premature at this time in the study process.²⁴

15. In response to TransSource's allegations that PJM rescinded the March Studies due to material errors, PJM states that the studies had to be rescinded because TransSource did not indicate to PJM that it wanted Incremental CTRs included until after the March Studies had been issued.²⁵ While PJM was reworking the studies, it states it discovered that some upgrades and costs were missed due to an oversight. PJM claims it notified TransSource of the omission prior to issuing the June Studies.²⁶

16. PJM also concedes that there was a typographical error in the base case data emailed to TransSource on June 26, 2015. However, PJM states that the relevant base case analysis used in the studies was correct.²⁷ PJM also notes that the Facilities Study findings referenced by TransSource in its first supplement were contingent upon conducting a more detailed analysis of the state of the towers, which have been in service for over 80 years.²⁸

²³ *Id.* at 16.

²⁴ *Id.* at 8.

²⁵ *Id.* at 6.

²⁶ *Id.* at 7.

²⁷ *Id.* at 11.

²⁸ *Id.* at 10-11.

17. PJM also contends that TransSource's allegation that transmission owners intentionally assigned an overly broad scope of mitigation to TransSource's queue positions is unfounded.²⁹ PJM points out that TransSource does not name the experts it relied upon and there is no documentation or evidence to support the allegations.³⁰

18. PJM claims that TransSource also provided no evidence to support the allegation that PJM violated section 2.10 (Responsibilities of the Transmission Provider and Transmission Owners) of its Tariff,³¹ which requires it be responsible for the preparation of all new service request studies required by the Tariff. PJM contends that TransSource has not alleged any violations of this provision and states that it has complied with section 2.10.³²

B. PJM's Protest of Waiver Request

19. PJM argues that the Commission should deny TransSource's request for waiver because TransSource is incorrect in stating that changes to System Impact Studies are not allowed after a Facilities Study Agreement has been executed and the deposit has been paid. PJM states that TransSource is misrepresenting a provision in one of its operating manuals which prohibits changes to the project by the customer. However, PJM states that provision does not prevent PJM from altering identified upgrades needed to support the customer's project.³³ PJM also states that deposits paid by TransSource are refundable and will be held in escrow until the Commission issues a decision in this docket.³⁴ PJM argues that in order to hold its queue positions, TransSource is required to submit the executed Facilities Study Agreements it has had in its possession since June 10, 2015, along with the requisite deposits.³⁵ PJM notes that should TransSource

²⁹ *Id.* at 21.

³⁰ *Id.* at 18.

³¹ We interpret PJM's reference to § 2.10 of its Tariff to mean § 210 (Responsibilities of the Transmission Provider and Transmission Owners).

³² *Id.* at 28.

³³ PJM July 9, 2015 Protest at 2-3.

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 5.

decide to move forward, it is responsible for at most \$525,000 for all three projects.³⁶ In addition, PJM claims that granting the waiver would adversely impact third parties lower in the queue whose projects may be dependent on the outcome of TransSource's requested upgrades.³⁷

C. Market Monitor's Motion

20. On August 6, 2015, the Market Monitor filed a motion requesting "the establishment of an investigative process, including any or all of hearing, settlement judge procedures, investigation and/or technical conference in order to obtain full information about the facts and circumstances related to the complaint filed by TransSource, LLC on June 23, 2015."³⁸ The Market Monitor states that it "has been in discussions attempting to understand or resolve the dispute," but that the "positions taken by PJM and TransSource are difficult to reconcile."³⁹

21. In addition, the Market Monitor states that TransSource "does not request substantive relief, but only what appear to be reasonable requests for additional information."⁴⁰ The Market Monitor does not take a position on whether cost estimates in the System Impact Studies are justified.⁴¹

22. The Market Monitor states that it would "prefer the assignment of an administrative law judge under hearing or settlement procedures because this would provide the best option for an efficient and careful development of the factual record."⁴² In addition, the Market Monitor states that it would support Commission action to suspend applicable interconnection study process deadlines for 60 days.⁴³

³⁶ *Id.* (fn 12).

³⁷ *Id.* at 6.

³⁸ Market Monitor August 6, 2015 Motion.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

D. TransSource's Answer to Market Monitor's Motion

23. TransSource contends that it still has not received all underlying data and work papers, including the PLS.CADD files, to which it believes it is entitled.⁴⁴ TransSource agrees with the Market Monitor that the situation requires the assignment of an administrative law judge with authority to authorize full discovery under Subpart D of Part 385 of the Commission's regulations, including subpoena power under 18 C.F.R. § 385.409. TransSource further asserts that any investigative process lacking subpoena power will result in insufficient facts to support any decision by the Commission.⁴⁵

E. PJM's Answer to Market Monitor's Motion

24. PJM argues that the breadth of the Market Monitor's request is beyond the scope of the complaint, and that, if the Market Monitor believes there are problems with PJM's interconnection process, those issues should be raised in the appropriate forum.⁴⁶ However, PJM states it has worked with TransSource to provide all the data TransSource has requested, with the exception of the PLS.CADD files, since the complaint was filed.⁴⁷ PJM also continues to contend that the complaint is based on broad and unsubstantiated claims, but signals its willingness to establish informal meetings with TransSource, the Market Monitor, and the affected transmission owners to "discuss the results of the System Impact Study and answer any questions or provide any other related data and work papers still needed for TransSource to execute the Facilities Study Agreement and submit the study deposits."⁴⁸

F. TransSource's Answer to PJM's August 24, 2015 Motion

25. TransSource filed an answer to PJM's answer to the Market Monitor's motion on August 27, 2015, declining PJM's proposal to informally discuss the System Impact Studies, in lieu of establishment of a formal investigative process, as previous meetings have been unsuccessful.⁴⁹ TransSource also reiterates its support of the Market

⁴⁴ TransSource August 13, 2015 Answer at 1.

⁴⁵ *Id.* at 2.

⁴⁶ PJM August 24, 2015 Answer at 5.

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 8.

⁴⁹ TransSource August 27, 2015 Answer at 1.

Monitor's motion.⁵⁰ Additionally, TransSource raises concerns regarding PJM's modeling process and how it is possible that its consultant, Siemens, can use PJM's prescribed modeling process and identify twenty-six affected circuits, while PJM has identified seventy-six, nearly three times as many. TransSource states that PJM's answer has been that it did not use its approved and published modeling process to evaluate TransSource's System Impact Studies, but instead used "internal data that may include confidential data."⁵¹ Additionally, TransSource argues that it is unable to obtain PLS.CADD files, which are an accepted measure of the state of the circuit, including its rating, and are necessary to resolve discrepancies in the data PJM has provided.⁵²

V. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

27. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant late-filed motions to intervene from ITC Lake Erie Connector, LLC, NRG Companies, and Midcontinent MCN, LLC given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept PJM's and TransSource's answers filed here, because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

29. We find that the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set the complaint

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 3.

⁵² *Id.* at 3-4.

for investigation and a trial-type evidentiary hearing under section 206 of the FPA for all issues raised in this proceeding, including, but not limited to, how the cost estimates for the project were developed, and whether PJM undertook an independent analysis of these costs. The Commission will address TransSource's request for waiver following the completion of the hearing and settlement judge procedures.

30. While TransSource raises a number of issues, the central issue is whether the facilities identified in the System Impact Studies, for which TransSource would be required to pay, are necessary to accommodate TransSource's interconnection request. Under Order No. 2003⁵³ and PJM's "but for" test in its Tariff,⁵⁴ interconnecting customers may only be assessed the costs of those facilities necessary to accommodate their project. Material issues of fact have been raised as to whether the facilities meet this definition and whether TransSource had the necessary data to evaluate whether those facilities were necessary to accommodate the interconnection.

31. 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.⁵⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁵³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at Appendix C -- Standard Large Generator Interconnection Procedures, at 5 (2003) ("Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment ... necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System."), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁵⁴ Section 217.3 (Local and Network Upgrades) of PJM's Tariff states that new service customers must pay the costs of the upgrades necessary to accommodate their service requests *and* that would not have been incurred but for such request. *See* PJM, Intra-PJM Tariffs, OATT, Part VI, Subpart B Agreements and Cost Responsibility § 217.3 (Local and Network Upgrades) (0.0.0) (effective June 1, 2007; superseded September 17, 2010).

⁵⁵ 18 C.F.R. § 385.603 (2015).

otherwise, the Chief Judge will select a judge for this purpose.⁵⁶ 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, 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.

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 regarding the TransSource 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 (2015), 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 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.

⁵⁶ 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>).

(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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.