

152 FERC ¶ 61,253  
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.

Southwest Power Pool, Inc.

Docket No. ER15-2324-000

ORDER ACCEPTING TARIFF REVISIONS IMPLEMENTING FORMULA RATES,  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2015)

1. In this order, we accept Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to add formula rate templates and implementation protocols to accommodate the recovery of an annual transmission revenue requirement for each of the following five municipal member utilities of SPP member Missouri River Energy Services<sup>1</sup> (Missouri River): (1) Moorhead, Minnesota (Moorhead); (2) Orange City, Iowa (Orange City); (3) Pierre, South Dakota (Pierre); (4) Sioux Center, Iowa (Sioux Center); and (5) Watertown, South Dakota (Watertown) (collectively, Missouri River Members), effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

**A. The Integrated System**

2. The Integrated System is the backbone of the bulk electric transmission system across seven states in the Upper Great Plains region consisting of approximately 9,500 miles of high voltage transmission lines. Spanning the Eastern and Western Interconnections of the U.S. electric grid, the Integrated System includes the combined transmission facilities of Western Area Power Administration – Upper Great Plains

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<sup>1</sup> Missouri River is a municipal joint action agency formed under Chapter 28E of the Iowa Code and existing under the joint action laws of the States of Iowa, Minnesota, North Dakota, and South Dakota. SPP states that, as municipally owned utilities, the Missouri River Members are not “public utilities” as defined in section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e) (2012) (FPA). SPP Transmittal at 2 & n.16.

region, Basin Electric Power Cooperative (Basin Electric), and Heartland Consumers Power District (Heartland) (collectively, Integrated System Parties). It also includes, through facility credits, facilities owned by NorthWestern Corporation (NorthWestern) and Missouri River. The collaborative development of the Integrated System has resulted in transmission facilities that are highly integrated, and in some instances jointly-owned, among the Integrated System Parties and with other transmission owners in the region. The Integrated System is planned to be transferred to the functional control of SPP effective October 1, 2015.

### **B. Missouri River Members**

3. SPP states that the Missouri River Members own transmission facilities within the Integrated System's footprint and have long term power supply arrangements with Missouri River under which each member purchases from Missouri River all supplemental power requirements above the amounts purchased from the Western Area Power Administration (Western). SPP explains that Missouri River will act as the SPP Market Participant for the portion of power supplied by Missouri River for each municipal member and that Missouri River will be responsible for acquiring the transmission service in SPP for the supplemental portion of electrical load used by each of the five Missouri River Members.<sup>2</sup>

### **C. The Instant Filing**

4. On July 31, 2015, SPP made the instant rate filing on behalf of the Missouri River Members, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations. SPP's proposed revisions to its Tariff are designed to govern SPP's transmission service using the facilities of the Missouri River Members when the Integrated System Parties transfer functional control of their facilities to SPP.<sup>3</sup>

5. In the instant filing, SPP submits proposed modifications to Attachment H of the Tariff to accommodate each Missouri River Member's recovery of its revenue requirement for its transmission facilities. Specifically, SPP proposes to include in Attachment H: (1) Addendum 30, Moorhead's formula rate template and protocols; (2) Addendum 31, Orange City's formula rate template and protocols; (3) Addendum 32, Pierre's formula rate template and protocols; (4) Addendum 33, Sioux Center's formula rate template and protocols; and (5) Addendum 34, Watertown's formula rate template and protocols. The formula rate templates and supporting documentation calculate the

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.* at 1.

revenue requirement for each municipal member. SPP states that the protocols, which are identical for each Missouri River Member, provide for notice and review by interested parties, as well as opportunities to challenge the proposed formula rate prior to the effective date each year.<sup>4</sup> Additionally, SPP requests approval to revise Attachment T, Rate Sheet for Point-To-Point Transmission Service, to add a reference to each Missouri River Member formula rate template on the Upper Missouri Zone (Zone 19) rate sheet. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.<sup>5</sup> Finally, SPP requests the inclusion of one agreement between Watertown and Northwest Energy dated July 27, 2011, in the index of Grandfathered Agreements in Attachment W of the Tariff.<sup>6</sup>

6. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Terry J. Wolf, Missouri River's Manager of Transmission Services; (2) Ronald Kennedy, Director in the Transmission Strategy Practice at Missouri River's consultant, MCR Performance Solutions; (3) Nancy Lund, Administration and Finance Manager at Moorhead; (4) Kent Anderson, Finance Office, Orange City; (5) Twila Hight, Finance Officer, Pierre; (6) Darryl Ten Pas, Finance Director, Sioux Center; (7) Adam Karst, Director of Administration, Watertown; and (8) James Pardikes, Vice President and head of the Transmission Strategy Practice at Missouri River's consultant, MCR Performance Solutions.<sup>7</sup>

7. Missouri River explains that the Missouri River Member facilities to be transferred to SPP consist of: (a) Moorhead, 28 miles of 115 kV transmission line, five 115kV substations, and one 230/115kV substation; (b) Orange City, 5 miles of 69kV transmission line and three 69 kV substations; (c) Pierre, 9 miles of 115kV transmission line and three 115kV substations; (d) Sioux Center, 0.5 miles of 69 kV transmission line and two 69kV substations; and (e) Watertown, 14 miles of 115kV transmission line and four 115kV substations.<sup>8</sup> SPP states that it has consulted with Missouri River to

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<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 8 & n.30.

<sup>6</sup> Attachment W includes an index of Grandfathered Agreements that are active under the SPP Tariff.

<sup>7</sup> SPP Transmittal at 6 & n.24, Ex No. SPP-1, Direct Panel Testimony of Terry Wolf, Ronald Kennedy, Nancy Lund, Kent Anderson, Twila Hight, Darryl Ten Pas and Adam Karst, and Ex. No. SPP-19, Direct Testimony of James Pardikes.

<sup>8</sup> SPP Transmittal at 6.

determine that all of the above listed facilities meet the definition of transmission facilities and are appropriate for inclusion in the SPP Tariff.<sup>9</sup>

8. SPP states that the proposed Missouri River Member formula rates use historical financial and load data to develop their annual transmission revenue requirements. SPP explains that the historical financial data will be based on the most recent audited financial statements for each of the Missouri River Members. SPP states that the formula rate for each of the Missouri River Members includes a return on rate base, added to transmission operation and maintenance expenses, depreciation expenses, and other expenses allocated to transmission. SPP notes that revenue credits are subtracted from this figure to determine the net annual transmission revenue requirement for each Missouri River Member. SPP states that the Missouri River Members will use the Energy Information Administration's Form 412 to detail the relevant annual transmission revenue requirement inputs and assign them appropriately to the Commission's uniform system of accounts.<sup>10</sup>

9. SPP notes that, by March 15 of each year, the Missouri River Members will each submit an informational filing to the Commission allowing for review of the applicable formula rate, as well as any corrections, adjustments, or disputes in the preceding rate year. SPP further explains that, by May 1 of each year, each of the Missouri River Members will cause to be posted to the Missouri River public page on SPP's website, its populated formula rate template and supporting schedules.<sup>11</sup>

10. SPP states that the Missouri River Members are requesting identical return on equity (ROE) components for their proposed formula rates. Missouri Members' ROE witness James Pardikes asserts that the proposed ROE reflects the collective role of Basin Electric and its affiliate generation and transmission cooperatives as the dominant transmission owners in the Missouri River Members' footprints. SPP states that, accordingly, the proposed base ROE of 10.37 percent is the average of the base ROEs of SPP's transmission owners (excluding independent transmission companies), and is nearly identical to Basin Electric's requested base ROE of 10.3732 percent, as submitted in Docket No. ER15-1775. SPP also notes that the Missouri River Members are

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *Id.* at 7.

requesting a 50 basis point adder for joining a regional transmission organization (RTO), consistent with Commission precedent.<sup>12</sup>

11. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Missouri River Members' revenue requirements, formula rates, and formula rate protocols, Missouri River Members have voluntarily agreed to allow their revenue requirements, formula rates, and formula rate protocols to be treated as being accepted, subject to refund with interest at Commission interest rates. SPP further states that Missouri River Members have informed SPP that they make this voluntary commitment without waiving or in any way limiting or altering their non-jurisdictional status.<sup>13</sup>

12. SPP states that it has filed these proposed revisions to its Tariff at Missouri River Members' request and on Missouri River Members' behalf. SPP adds that it is not independently supporting or justifying the Missouri River Members' annual transmission revenue requirements, but merely modifying the Tariff to accommodate Missouri River Members' recovery of transmission service revenues for their transmission facilities.<sup>14</sup>

13. SPP requests waiver of the requirement in 18 C.F.R. § 35.13 concerning the Period I and Period II data requirements. SPP asserts that waiver is appropriate because the Commission generally grants requests for waiver for the full cost of service filing requirements prescribed by section 35.13 in transmission formula rate cases and because Missouri River and the Missouri River Members are not subject to the general rate regulations of the Commission.<sup>15</sup>

#### **D. Notice of Filing and Responsive Pleadings**

14. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 46,974 (2015), with interventions and protests due on or before August 21, 2015. Timely motions to intervene were filed by South Central MCN, LLC, NorthWestern, Heartland, Basin Electric, and Nebraska Public Power District. Missouri Public Service Commission filed a notice of intervention. Missouri River and Missouri River Members filed a timely motion to intervene and comments. Western filed a timely motion to

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<sup>12</sup> *Id.*, and Ex. No. SPP-19, Pardikes Testimony at 7-10.

<sup>13</sup> SPP Transmittal at 9 & n.33.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 10.

intervene and request for clarification. On August 31, 2015, Missouri River filed an answer.

## **II. Discussion**

### **A. Procedural Matters**

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

16. 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 unless otherwise ordered by the decisional authority. We accept Missouri River's answer because it has provided information that assisted us in our decision-making process.

### **B. Responsive Pleadings**

#### **1. Comments and Protest**

17. Missouri River and Missouri River Members filed comments in support of the filing, including the proposed formula rate template and protocols and ROE.<sup>16</sup> Missouri River and Missouri River Members assert that the proposed formula rates and protocols provide an appropriate means of collecting the necessary annual transmission revenue requirements for Missouri River Members in a manner wholly consistent with Commission precedent. They argue interested parties will have notice and ample opportunity to examine and challenge any proposed rate changes. They also contend that the proposed ROE component of the rates is nearly identical to the ROE proposed by Basin Electric, which is the dominant SPP transmission owner in the Missouri River Members' footprints. Missouri River and Missouri River Members also provide affirmation letters that they assert detail the sources and auditing of their financial information and certify that each of the members will make statements and workpapers publicly available, and will notify SPP of any new allocation methodology prior to changing it in subsequent financial statements.<sup>17</sup>

18. Western argues that there is a lack of detail in SPP's filing as to which facilities Missouri River Members are proposing to include in their annual transmission revenue requirements for the Upper Missouri Zone, and the basis upon which Missouri River

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<sup>16</sup> Missouri River and Missouri River Members Comments at 5.

<sup>17</sup> *Id.*

Members' transmission facilities are qualified under Attachment AI of the SPP Tariff. Specifically, Western asserts that certain components that make up a substation bus would not qualify under Attachment AI if they were added to support a radial load to one eligible customer, and that there is a lack of detail regarding which specific substation facilities are included, and the Attachment AI basis for the inclusion of those facilities. Western contends that this lack of detail makes it impossible for Western to determine whether all of the Missouri River Member transmission facilities proposed in the SPP filing qualify under Attachment AI of the SPP Tariff, and are therefore, appropriate costs to be included in the Upper Missouri Zone. Western requests that the Commission require more detailed information regarding the specific transmission facilities (particularly components within the Missouri River Member substations), and the basis for qualification of such facilities, that Missouri River Members intend to transfer to SPP's functional control as part of their annual transmission revenue requirement for recovery within the Upper Missouri Zone.<sup>18</sup>

## 2. Answer

19. In its answer, Missouri River provides one-line diagrams of each of the Missouri River Members' facilities as additional evidence that the Missouri River Members' transmission facilities to be included in their annual transmission revenue requirements meet the Attachment AI criteria for transmission facilities. Missouri River asserts that, with the addition of these diagrams, the eligibility of those facilities as transmission assets under the applicable SPP and Commission definitions has been demonstrated.<sup>19</sup>

## C. Standard of Review

20. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional transmission revenue requirements in an opinion reviewing the transmission revenue requirement filed by the City of Vernon, California (Vernon).<sup>20</sup> In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's jurisdiction under FPA section 205. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of the California Independent System

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<sup>18</sup> Western Request for Clarification at 6-8.

<sup>19</sup> Missouri River Answer at 2-3.

<sup>20</sup> See *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement was "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."<sup>21</sup> The Commission explained that, in *Pac. Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia held that the Commission had statutory authority to review Vernon's transmission revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."<sup>22</sup> Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."<sup>23</sup>

21. However, in *TANC*, the court rejected the Commission's authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under FPA section 205 over wholesale electric energy sales.<sup>24</sup> The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."<sup>25</sup>

22. Therefore, while Missouri River Members are not within the Commission's jurisdiction under FPA section 205, we find that, based on the precedent cited above, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP's proposed rates filed on behalf of Missouri River Members.<sup>26</sup> To determine the justness and reasonableness of Missouri River Members' proposed rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

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<sup>21</sup> *Id.* P 44.

<sup>22</sup> *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

<sup>23</sup> *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>24</sup> *Id.* at 673-74.

<sup>25</sup> *Id.* at 674.

<sup>26</sup> *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

23. Furthermore, Missouri River Members are not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.<sup>27</sup> However, we note that Missouri River Members have agreed to allow their revenue requirements, formula rates, and formula rate protocols to be treated as being accepted, subject to refund with interest at Commission interest rates.<sup>28</sup>

#### **D. Commission Determination**

##### **1. RTO Participation Adder**

24. As discussed below, we conditionally grant Missouri River Members' request for a 50 basis point adder to their base ROEs for their participation in SPP. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.<sup>29</sup> The purpose of the rule that FPA section 219 directed the Commission to establish is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.<sup>30</sup> The Commission subsequently issued Order No. 679,<sup>31</sup> which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

25. We find that, as conditioned below, Missouri River Members' requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.<sup>32</sup> We

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<sup>27</sup> *Id.* P 41.

<sup>28</sup> SPP Transmittal at 9 & n.33.

<sup>29</sup> 16 U.S.C. § 824s(a), (b) (2012).

<sup>30</sup> *Id.*

<sup>31</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 61,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>32</sup> *See, e.g., Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245, at P 30 (2014) (granting 50 basis point adder for continued RTO participation); *Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238, at P 26 (2012) (granting 50 basis point adder for RTO participation); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 25 (2012).

condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash flow analysis or otherwise shown to be just and reasonable, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis or otherwise shown to be just and reasonable, as those may be determined in the hearing and settlement procedures ordered below. Further, our approval of this incentive is conditioned on Missouri River Members' continuing membership in SPP.

## 2. Hearing and Settlement

26. We find that, apart from the 50 basis point adder issue addressed above, SPP's proposed Tariff revisions filed on behalf of Missouri River Members raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below.

27. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Tariff revisions, effective October 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

28. We will accept Missouri River Members' commitment to provide refunds, with interest, as of October 1, 2015. Missouri River Members are not subject to Commission-imposed refund obligations under section 205 of the FPA and the Commission has previously accepted commitments by non-jurisdictional transmission owners that they will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.<sup>33</sup>

29. While we are setting SPP's proposed Tariff revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.<sup>34</sup> 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.<sup>35</sup> The

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<sup>33</sup> See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

<sup>34</sup> 18 C.F.R. § 385.603 (2015).

<sup>35</sup> 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

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.

30. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Missouri River Members are not subject to section 205 of the FPA, they are not subject to the Commission's cost of service regulatory filing requirements. However, to the extent that parties at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing, to become effective October 1, 2015, as requested, subject to refund, as discussed in the body of the order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the 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 justness and reasonableness of SPP's proposed Tariff revisions. 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 (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.

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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) 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 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.