

152 FERC ¶ 61,248
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. ER15-1976-000

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 a formula rate template and implementation protocols to accommodate the recovery of an annual transmission revenue requirement for SPP member East River Electric Power Cooperative, Inc. (East River),¹ 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 transmission lines rated 115 kV through 345 kV. 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

¹ East River is a wholesale electric power supply cooperative serving 24 rural electric cooperatives and one municipally owned electric system in eastern South Dakota and western Minnesota. SPP states that, as an electric cooperative borrower from the Rural Utilities Service (RUS), East River is not subject to the Commission's jurisdiction over public utilities under the Federal Power Act, 16 U.S.C. § 824(f) (2012) (FPA).

Plains region, Basin Electric Power Cooperative (Basin Electric), and Heartland Consumers Power District (collectively, Integrated System Parties). It also includes, through facility credits, facilities owned by Northwestern Energy and Missouri River Energy Services (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. The Instant Filing

3. On June 24, 2015, SPP made the instant rate filing on behalf of East River, 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 East River when East River transfers functional control of its facilities to SPP.²

4. In the instant filing, SPP submits proposed Tariff modifications to Attachment H to accommodate East River's recovery of its revenue requirement for its transmission facilities. Specifically, SPP proposes to include, as Addendum 25 to Attachment H, East River's formula rate and formula rate protocols which calculates East River's revenue requirement. Additionally, SPP requests approval to revise Attachment T, Rate Sheet for Point-To-Point Transmission Service, to add a reference to the East River formula rate template on the Upper Missouri Zone rate sheet. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.³ SPP also requests approval to revise Addendum 2 of Attachment O to include East River as a participant in SPP's planning region.⁴ Finally, SPP requests the inclusion of certain East River Grandfathered Agreements in Attachment W.⁵

5. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Thomas R. Boyko, East River's General Manager; (2) Mark D. Hoffman, East River's

² SPP Transmittal at 1.

³ *Id.* at 8 & n.21.

⁴ *Id.* at 7.

⁵ Attachment W includes an index of Grandfathered Agreements that are active under the SPP Tariff.

Manager of Engineering Services; (3) Bernard A. Cevera, Managing Consultant at East River's consultant Guernsey; and (4) Robert C. Smith, Vice President of GDS Associates, Inc.⁶

6. East River explains that, with the integration of the Integrated System into SPP, the majority of the East River's transmission system will reside within the SPP footprint, with a portion of its most eastern facilities and members residing within the Midcontinent Independent System Operator, Inc.'s boundaries. East River states that East River's membership in SPP is reliant on the Commission's acceptance of certain amendments to the *pro forma* SPP Membership Agreement for East River that were filed in Docket No. ER15-1906-000.⁷

7. East River explains that the facilities it will transfer to SPP consist of approximately 744 miles of electric transmission lines and all or portions of 18 substations with voltage ratings at or above 69 kV.⁸ East River also furnishes a list of Grandfathered Agreements to be included in Attachment W of SPP's Tariff, and asserts that it is important that these Grandfathered Agreements be included in Attachment W to preserve the pre-existing rights and obligations of the parties to those agreements.⁹

8. East River states that it calculated its revenue requirement to be \$16,352,177 based on East River's 2015 Board-approved budget data and 2015 projected capital expenditures.¹⁰ East River explains that the depreciation values used in its formula rate are from East River's 2015 projected budget and explains that a change to fixed inputs, including return on equity (ROE), depreciation rates, capital structure, amortization periods, and any ROE incentives for SPP regional projects may not be made absent a filing with the Commission pursuant to the FPA. East River asserts that the classification, functionalization, and allocation factors included in its formula rate reflect

⁶ *Id.* at 7.

⁷ *Id.* at 5-6. The amendments to the SPP Membership Agreement in Docket No. ER15-1906-000 were accepted via delegated letter order on August 6, 2015. *See Sw. Power Pool, Inc.*, Docket No. ER15-1906-000 (Aug. 6, 2015) (delegated letter order).

⁸ Ex. No. SPP-2, Direct Testimony of Mark. D. Hoffman, at 5; *see also* Ex. No. MDH-1.

⁹ *Id.* at 6-7; *see also* Ex. No. MDH-2.

¹⁰ Ex. No. SPP-3, Direct Testimony of Bernard A. Cevera, at 5.

standard Commission ratemaking.¹¹ East River asserts that its proposed protocols are consistent with recent filings in terms of transparency and with respect to providing fair and reasonable opportunities for review and comment by interested parties.¹²

9. Regarding the requested ROE, East River asserts that the Commission has declined to establish a formal standard of review applicable to revenue requirements filed by non-jurisdictional transmission owners such as East River transferring their facilities to a Regional Transmission Organizations' (RTO) functional control. East River contends that the Commission has permitted non-jurisdictional transmission owners in RTOs to use the same overall rate of return as that of the dominant zonal transmission owner.¹³ East River explains that because there is no dominant transmission owner in SPP's Upper Missouri Zone, the proposed base cost of common equity uses the average of the ROEs on file for the existing SPP transmission owners (excluding ROEs of independent transmission companies) to arrive at a base ROE of 10.37 percent, with a 50 basis point RTO participation adder, for a total ROE of 10.87 percent.¹⁴

10. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of East River's revenue requirement, formula rate, and formula rate protocols, East River has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at the lesser of East River's actual short-term debt costs and Commission interest rates. SPP further states that East River has informed SPP that East River makes this voluntary commitment without waiving or in any way limiting or altering East River's non-jurisdictional status.¹⁵

11. SPP states that it has filed these proposed revisions to its Tariff at East River's request and on East River's behalf. SPP adds that it is not independently supporting or justifying the East River annual transmission revenue requirement, formula rate, or

¹¹ *Id.* at 8-9.

¹² *Id.* at 10-13.

¹³ Ex. No. SPP-5, Direct Testimony of Robert C. Smith, at 5 (citing *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002) (additional citations omitted)).

¹⁴ *Id.* at 5-7.

¹⁵ SPP Transmittal at 9 & n.22; *see also* Ex. No. SPP-1, Direct Testimony of Thomas R. Boyko, at 7.

protocols, but merely modifying the Tariff to accommodate East River's recovery of transmission service revenues for its transmission facilities.¹⁶

12. SPP requests waiver of any provisions in 18 C.F.R. § 35.13 that may be deemed to require cost support for the proposed Tariff revisions in the form of cost-of-service statements.¹⁷

C. Notice of Filing and Responsive Pleadings

13. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 38,191 (2015), with interventions and protests due on or before July 15, 2015. Timely motions to intervene were filed by South Central MCN, LLC, and Xcel Energy Services Inc. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention, as well as comments and a conditional protest. Missouri River Energy Services (Missouri River) and East River filed timely motions to intervene and comments. Western Area Power Administration (Western) filed a timely motion to intervene, comments and a request for clarification. On July 16, 2015, Basin Electric filed a motion to intervene out of time and comments. On July 30, 2015 East River filed an answer.

II. Discussion

A. Procedural Matters

14. 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. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Basin Electric's late-filed motion to intervene and comments, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

15. 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 East River's answer because it has provided information that assisted us in our decision-making process.

¹⁶ SPP Transmittal at 7.

¹⁷ *Id.* at 10.

B. Responsive Pleadings**1. Comments and Protest**

16. East River and Basin Electric filed comments in support of the filing, including the proposed formula rate template and protocols and ROE.¹⁸

17. Missouri Commission asserts that the proposed protocols contain provisions that may not provide interested parties an adequate opportunity to review and seek information related to the annual update and true-up. Specifically, according to Missouri Commission, East River should be required to provide remote access to its annual meetings. In addition, Missouri Commission contends that East River's proposed protocols contain a compressed timeline that does not clearly differentiate the time period for making informational requests and submitting informal complaints. Missouri Commission also alleges that the protocols contain discrepancies in due dates for formal challenges and informational requests.¹⁹

18. Missouri Commission further asserts that the protocols do not provide for a workable populated formula rate template with fully functional spreadsheets together with workpapers in native format with all formulas and links intact. According to Missouri Commission, source documents for formula rate inputs should be clearly identified. Missouri Commission requests that the Commission require East River to include protocol language stating that it will provide supporting documentation and workpapers for data that are used in the annual true-up and projected revenue requirement such that interested parties may replicate their calculations.²⁰

19. Missouri Commission is concerned that the East River's method for determining its ROE is deficient and contends that developing the base ROE using the average of the ROEs on file for the existing SPP transmission owners may not lead to an ROE within the range of reasonableness. Missouri Commission argues that the methodology fails to provide an analysis of what the current range of reasonableness is for SPP transmission owners, and that the use of this average would allow Basin Electric to rely on outdated information that does not reflect current capital market conditions or the results of the application of the Commission's currently approved discounted cash flow methodology. Further, Missouri Commission argues that many of the ROEs used by East River to

¹⁸ East River Comments at 5-7; Basin Electric Comments at 5-7.

¹⁹ Missouri Commission Protest at 2-4.

²⁰ *Id.* at 4-6.

calculate an average ROE were established in settlement negotiations and are thus likely to be arbitrary and increased or decreased when giving consideration to the negotiation of other issues. Missouri River asserts that the Commission should reject East River's methodology as deficient and require East River to provide data and analyses to allow interested parties and the Commission to examine and assess whether East River's filing contains any justification for its use of a 10.37 percent base ROE.²¹

20. Western argues that it appears the cost of some of the listed East River facilities included in East River's revenue requirement are already included in the Basin Electric revenue requirement filed in Docket No. ER15-1775. Western contends this will result in double recovery. Western seeks clarification on whether the costs of these facilities are indeed included in Basin Electric's revenue requirement, and if so whether these costs will be removed from East River or Basin Electric's revenue requirements. Western further requests clarification that East River intends to true-up the last three months of 2015. Finally, Western requests clarification of whether East River's revenue requirement will be reduced to account for other transmission revenue received under Grandfathered Agreement service over the East River facilities included in its revenue requirement.²²

21. Missouri River alleges that the proposed formula rate fails to include data, information, and explanations which are necessary for the formula rate to be approved. Specifically, Missouri River contends the formula rate suffers from a lack of transparency for cost of service data and qualified transmission facilities. Missouri River further contends that the revenue requirement's treatment of Grandfathered Agreements is unclear. Missouri River argues that the treatment of lease payments received from Basin Electric as well as the lack of other revenue credits need to be justified. Finally, Missouri River asserts that additional justification is needed regarding inclusion of construction work in progress in rate base, and East River's proposed cost allocation methods.²³

2. Answer

22. In its answer, East River notes that intervenors have requested additional information regarding the inputs to its proposed revenue requirement and, in response, states that it will request that SPP make East River's historical RUS Form No. 12 data for 2013 and 2014 available on the SPP website. In addition, East River states that it will

²¹ *Id.* at 6-8.

²² Western Comments at 6-8.

²³ Missouri River Comments at 4-5.

post the RUS Form No. 12 for each rate year on the SPP website to ensure that it is accessible and open to review and challenge by interested parties. East River contends that the data provided and transparency included in the process for establishing its revenue requirement are consistent with the Commission's precedent regarding formula rate protocols.²⁴

23. East River clarifies that the facilities noted by intervenors as being included in both East River's rates and Basin Electric's rates are properly included in East River's rates. East River claims that Basin Electric will remove these facilities from its formula rate, and contends that the facilities included in East River's rate meet the SPP Tariff requirements for qualified facilities.²⁵

24. East River argues that its proposed ROE is just and reasonable and contends that an ROE that averages ROEs in effect for other transmission owners within SPP ensures that the ROE falls within the range of reasonable returns for similar entities.²⁶

25. In response to Western's request for clarification regarding the treatment of revenues associated with Grandfathered Agreements under the proposed formula rate, East River states that it commits to implement the formula rate, including the recovery of costs associated with Grandfathered Agreements, consistent with the SPP Tariff and Commission requirements to avoid recovering costs associated with facilities both through Grandfathered Agreement revenues and under the revenue requirement included in the formula rate.²⁷ East River clarifies that its true-up allows interested parties to ensure that there is no double recovery related to transmission facilities that are being transferred to SPP's functional control.

26. East River clarifies that the protocols as proposed include true-up provisions that will apply to the three month period from October 1, 2015 through December 31, 2015. East River further clarifies that it will provide remote access in order to facilitate participation in the annual meeting. Finally, East River clarifies that, while the text of the protocols is unclear, the table containing the proposed protocol timeline at the end of the protocols is the actual schedule. East River commits that it will clarify the text of the

²⁴ East River Answer at 3-4.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6-7.

²⁷ *Id.* at 6.

protocols in a compliance filing as necessary to conform to the schedule contained in the table.²⁸

C. Standard of Review

27. 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).²⁹ 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 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."³⁰ 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."³¹ 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."³²

28. 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

²⁸ *Id.* at 4-5.

²⁹ 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).

³⁰ *Id.* P 44.

³¹ *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

³² *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

energy sales.³³ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”³⁴

29. Therefore, while East River is 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 East River.³⁵ To determine the justness and reasonableness of East River’s proposed rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

30. Furthermore, East River is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.³⁶ However, we note that East River has agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at the lesser of East River’s short term debt costs and Commission interest rates.³⁷

D. Commission Determination

1. RTO Participation Adder

31. As discussed below, we conditionally grant East River’s request for a 50 basis point adder to its base ROE for its 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.³⁸ 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

³³ *Id.* at 673-74.

³⁴ *Id.* at 674.

³⁵ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

³⁶ *Id.* P 41.

³⁷ SPP Transmittal at 9 & n.22; *see also* Ex. No. SPP-1, Direct Testimony of Thomas R. Boyko, at 7.

³⁸ 16 U.S.C. § 824s(a), (b) (2012).

electricity by promoting capital investment in electric transmission infrastructure.³⁹ The Commission subsequently issued Order No. 679,⁴⁰ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

32. We find that, as conditioned below, East River's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁴¹ We 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 East River's continuing membership in SPP.

2. Hearing and Settlement

33. We find that, apart from the 50 basis point adder issue addressed above, SPP's proposed Tariff revisions filed on behalf of East River 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.

34. 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.

35. We will accept East River's commitment to provide refunds, with interest, as of October 1, 2015. East River is not subject to Commission-imposed refund obligations under section 205 of the FPA and the Commission has previously accepted commitments

³⁹ *Id.*

⁴⁰ *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. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴¹ *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).

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.⁴²

36. 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.⁴³ 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.⁴⁴ 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.

37. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because East River is not subject to section 205 of the FPA, it is 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

⁴² See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

⁴³ 18 C.F.R. § 385.603 (2015).

⁴⁴ 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 available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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.

(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.

