

152 FERC ¶ 61,258
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. ER15-2356-000

ORDER ACCEPTING AND SUSPENDING AGREEMENT, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2015)

1. On July 31, 2015, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² an unexecuted Market Participant Service Agreement between SPP as transmission provider, MidAmerican Energy Company (MidAmerican) as customer (Agreement). In this order, we accept the Agreement for filing, and suspend it for a nominal period, to become effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. SPP states that section 2.2(6) of Attachment AE of the SPP Open Access Transmission Tariff (Tariff) requires that all load within the SPP footprint must be registered in the SPP Integrated Marketplace.³ SPP asserts that MidAmerican load is connected to the transmission facilities of Corn Belt Power Cooperative (Corn Belt) and Northwest Iowa Power Cooperative (NIPCO), which have executed the SPP Membership Agreement⁴ and anticipate transferring functional control of certain of their transmission

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ SPP Transmittal at 1 (citing SPP Tariff, Attachment AE, section 2.2(6)).

⁴ *Id.* at 2 (citing Submission of Amendments to SPP Membership Agreement for Corn Belt, East River, and NIPCO of Southwest Power Pool, Inc., Docket No. ER15-1906-000 (filed June 11, 2015)).

facilities to SPP, effective October 1, 2015.⁵ SPP contends that, once the Corn Belt and NIPCO facilities are under the functional control of SPP, the MidAmerican load will be within the SPP footprint. According to SPP, MidAmerican is required to register its load with SPP in accordance with the terms of the SPP Tariff, section 2.2(6) of Attachment AE.

II. Agreement and Request for Waiver

3. SPP notes that, currently, MidAmerican is a financial-only participant in the SPP Integrated Marketplace under the Original MidAmerican Market Participant Agreement. SPP states that, in order for MidAmerican to register its load in the SPP Integrated Marketplace, SPP revised the Original MidAmerican Market Participant Agreement to reflect MidAmerican's status as an asset owner. SPP states that MidAmerican declined to execute a new Agreement. According to SPP, MidAmerican notified SPP that it is unable to commit to becoming an asset owning market participant at this time because it believes that there are market-related and transmission-related issues related to its grandfathered agreements that need to be addressed. SPP states that MidAmerican noted that, while it cannot commit to becoming an asset-owning market participant by October 1, 2015, it is not completely rejecting the possibility at a future point. SPP asserts that section 2.1 of Attachment AE provides that, if a market participant fails or refuses to execute the market participant service agreement, SPP will file an unexecuted market participant service agreement with the Commission. SPP states that, therefore, it has submitted the Agreement in the instant filing.

4. SPP also requests, to the extent necessary, a waiver of the deadlines associated with the registration of a new market participant in the Integrated Marketplace. Specifically, SPP states that section 2.2(1) of Attachment AE provides that, for registration, "[n]ew [m]arket [p]articipants will follow the timeframe as specified in [s]ection 6.4 of the Market Protocols in addition to the detailed model update timing requirements in Appendix E of the Market Protocols."⁶ SPP states that Appendix E of the SPP Market Protocols requires that a new market participant submit its registration application at least six months prior to the start of its participation in the Integrated

⁵ *Id.* (citing Submission of Revenue Requirement, Formula Rate Template and Formula Rate Protocols for Corn Belt Power Cooperative of Southwest Power Pool, Inc., Docket No. ER15-2028-000 (filed June 26, 2015)).

⁶ *Id.* at 2-3 (citing SPP Tariff, Attachment AE, section 2.2(1); SPP Market Protocols, App. E).

Marketplace.⁷ According to SPP, because the MidAmerican load will be in the Integrated Marketplace effective October 1, 2015, MidAmerican is unable to meet the timeframes required by the SPP Market Protocols. SPP claims that it will work with MidAmerican to obtain the information necessary to incorporate the MidAmerican load into the models for the Integrated Marketplace, effective October 1, 2015. Finally, SPP requests an effective date of October 1, 2015 for the Agreement.

III. Notice of Filing and Responsive Pleadings

5. Notice of SPP's July 31, 2015 filing was published in the *Federal Register*, 80 Fed Reg. 46,973 (2015), with interventions and protests due on or before August 21, 2015. MidAmerican filed a timely motion to intervene and protest. Corn Belt and NIPCO filed timely motions to intervene, comments, and answers to MidAmerican's protest.⁸ On September 10, 2015, SPP filed an answer to MidAmerican's protest. On September 16, 2015, MidAmerican filed an answer to SPP's answer.

IV. MidAmerican Protest/Answer

6. MidAmerican states that it does not wish to defer the anticipated October 1, 2015 integration of certain Corn Belt and NIPCO transmission facilities into the SPP region (October 1 Integration) and notes its historic cooperative working relationship with new SPP transmission owners Corn Belt and NIPCO. Nonetheless, MidAmerican argues that the Commission should reject the Agreement. According to MidAmerican, it is a party to various grandfathered agreements (GFA) with Corn Belt and NIPCO by which MidAmerican will serve the portion of its bundled retail load in the SPP footprint and supports the anticipated October 1 Integration.⁹ However, MidAmerican urges the Commission to establish settlement judge procedures to address certain issues involving its GFAs.¹⁰ Specifically, MidAmerican expresses concern with the lack of information provided by SPP on basic issues, including whether MidAmerican could become an

⁷ *Id.* at 3 (citing SPP Tariff, Attachment AE, section 2.2(1); SPP Market Protocols, section 6.4 and Appendix E).

⁸ Although Corn Belt and NIPCO titled their filings as comments, they responded substantively to arguments raised in the MidAmerican Protest, and, therefore, we will also treat the filings as answers.

⁹ MidAmerican Protest at 3 (citing *Sw. Power Pool, Inc.*, Corn Belt Intervention, Docket No. ER15-2028, at 3-4 (Corn Belt Intervention); *Sw. Power Pool, Inc.*, NIPCO Intervention, Docket No. ER15-2115, at 3-4 (NIPCO Intervention)).

¹⁰ *Id.* (citing Corn Belt Intervention at 5; NIPCO Intervention at 5).

asset-owning market participant for its load consistent with the October 1 Integration timelines.¹¹

7. MidAmerican asserts that, on July 24, 2015, SPP informed MidAmerican that it could become an asset owning market participant. However, MidAmerican notes that the ability to secure transitional Auction Revenue Rights (ARRs) had passed and market trials had ended by that time. Therefore, MidAmerican notified SPP of its decision not to become an asset-owning market participant.

8. Despite SPP's delays in identifying MidAmerican's options for being an asset-owning market participant as of October 1, 2015, MidAmerican acknowledges that the SPP Tariff requires all load to be registered, and it allows SPP to submit an unexecuted market participant service agreement when load is not registered. MidAmerican argues that instead of the unexecuted Agreement, SPP should submit market participant service agreements naming Corn Belt and NIPCO as the asset-owning market participants, because the SPP Tariff anticipates that the transmission owner providing GFA service may be the market participant in lieu of the GFA transmission customer.

9. MidAmerican contends that it has worked diligently toward the October 1 Integration, however, SPP has only recently provided basic information on MidAmerican's ability to be an asset-owning market participant. According to MidAmerican, there are fundamental prerequisites to a successful integration, including the early identification of all customer loads in the region being integrated; proactive contact with these customers to ensure proper registration of their loads; and follow-up to be sure that customer questions are being addressed. MidAmerican claims that it has worked diligently, but unsuccessfully, to obtain basic information about its involvement in the SPP market.¹² MidAmerican argues that it is premature for SPP to file an unexecuted Agreement naming MidAmerican as the asset-owning market participant. In light of its inability to receive the transitional ARR's made available to other market participants or to participate in market trials, MidAmerican asserts that the Commission should not accept the unexecuted Agreement.

10. MidAmerican states that, although section 2.2(6) of Attachment AE does require all load to be registered, it does not require MidAmerican to register its load. MidAmerican argues that, instead, the Tariff permits the transmission owner providing GFA service to register the GFA load. MidAmerican asserts that section I.1.M of the Tariff defines a market participant to "expressly include[]: (a) [t]ransmission [o]wner(s) and any of their [a]ffiliates including [t]ransmission [o]wners providing transmission

¹¹ *Id.*

¹² *Id.* at 5-6.

service to: . . . (ii) load being served under [GFAs] for which such [t]ransmission [o]wners are taking neither Network Integration Transmission Service nor Firm Point-To-Point Transmission Service under this Tariff”¹³ Thus, MidAmerican contends that, while the Tariff permits MidAmerican to be a market participant, it likewise permits the transmission owner that has provided GFA service to fulfill that function. MidAmerican claims that the Tariff explicitly contemplates that a GFA transmission owner may be a market participant in lieu of the GFA transmission customer.¹⁴ Moreover, MidAmerican avers that the Tariff similarly makes the transmission owner (not the transmission customer) the default “responsible entity” for administering those GFAs that are eligible for “carve-out” treatment.¹⁵ Thus, MidAmerican concludes that, while the Tariff may require someone to be a market participant on behalf of MidAmerican’s load, the Tariff does not require that market participant to be MidAmerican itself, and explicitly recognizes the potential for the GFA transmission owner to assume that role.

11. MidAmerican contends that, under these circumstances, it is appropriate to name the GFA transmission owners as market participants. MidAmerican claims that, when SPP eliminated the potential to “carve out” the impacts of congestion and losses for GFAs identified after October 18, 2012, SPP argued that “parties choosing to join SPP . . . have the opportunity to weigh the costs and benefits of joining SPP’s Integrated Marketplace versus preserving their GFAs.”¹⁶ According to MidAmerican, SPP stated that such parties are “reasonably presumed to accept both the benefits and costs (i.e., congestion and marginal loss charges) of the Integrated Marketplace for its GFA.”¹⁷

12. MidAmerican states that it cannot receive ARRAs until the transmission owner registers the GFAs pursuant to Attachment AE, section 7.1.1(2)(a). MidAmerican further contends that the relevant transmission owners have not yet registered the GFAs. Thus, MidAmerican asserts that it is inappropriate for MidAmerican to be forced to be the

¹³ *Id.* at 7-8 (citing SPP Tariff, Attachment AE, section I.1.M).

¹⁴ *Id.* at 8 (citing SPP Tariff, Attachment AE, section 7.1.1(2)(a)).

¹⁵ *Id.* (citing SPP Tariff, Attachment AE, section 1.1.G).

¹⁶ *Id.* at 10 (citing *Sw. Power Pool, Inc.*, SPP Transmittal, Docket No. ER13-2078-000, at 8 (filed July 31, 2013) (July 31 Filing) and noting that the Commission conditionally accepted SPP’s proposal (including section 2.16) in *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,255 (2013) and a related settlement agreement on the same day in *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013)).

¹⁷ *Id.*

market participant until transmission owners have completed the registration that would make MidAmerican eligible for congestion hedges.

13. According to MidAmerican, SPP's action in the instant proceeding would force MidAmerican to be a market participant without having the "same access to protection from congestion costs" that other SPP customers have had.¹⁸ Therefore, MidAmerican argues that the GFA transmission owners should be the market participants instead of MidAmerican, since these transmission owners have made the ultimate decision about whether and when to integrate.

14. MidAmerican further argues that it is appropriate for the GFA transmission owner to be the market participant because MidAmerican has been denied the ability to participate in market trials. MidAmerican argues that SPP has previously cited the importance of participation in market trials and that SPP initially asked for a moratorium on accepting new market participants during the months leading up to implementation of its Integrated Marketplace. According to MidAmerican, SPP explained that a moratorium was necessary, among other things, to ensure that "market trials are completed prior to commencement of Integrated Marketplace operations," and noted that SPP personnel tasked with implementing the Integrated Marketplace would be "unavailable to train and test new [m]arket [p]articipants, thus threatening the readiness of [m]arket [p]articipants seeking to register during that time."¹⁹

15. According to MidAmerican, in contrast with SPP's prior concerns, SPP now seeks to integrate new market participants with no provision for participation in market trials since its process for achieving the October 1 Integration did not include sufficient time to "train and test new [m]arket [p]articipants." MidAmerican states that, because SPP established the timeline for the October 1 Integration in concert with its transmission owners, it is those GFA transmission owners who should be named market participants as of October 1.

16. MidAmerican also argues that SPP has not met the Commission's requirements for the grant of a waiver. MidAmerican acknowledges that SPP's statement that "MidAmerican is unable to meet the timeframes required by the SPP Market Protocols"²⁰ is true because those deadlines had already passed prior to SPP's determination that MidAmerican could become an asset-owning market participant by October 1. However,

¹⁸ *Id.*

¹⁹ *Id.* at 12 (citing *Sw. Power Pool, Inc.*, SPP Transmittal, Docket No. ER12-1179-000, at 65-66 (filed Feb. 12, 2012)).

²⁰ *Id.* at 13 (citing July 31 Filing, SPP Transmittal at 3).

MidAmerican argues that this mere statement of a fact does not justify a waiver from the SPP Tariff.

17. MidAmerican asserts that the Commission typically considers four standards: whether the waiver request (1) is in good faith; (2) is of limited scope; (3) will address a concrete problem; and (4) will not have undesirable consequences.²¹ MidAmerican argues that SPP offers no analysis of how its request comports with these four requirements, and the requested waiver should be rejected for that reason alone.

18. In its answer, MidAmerican reiterates its arguments regarding registration and its request for settlement and hearing procedures.

V. Corn Belt and NIPCO Comments/Answers

19. Corn Belt and NIPCO support SPP's filing and state that SPP has filed the Agreement in compliance with its Tariff, and the filing of the Agreement resolves prior ambiguities regarding how MidAmerican's load would be treated in the SPP footprint after Corn Belt and NIPCO transfer functional control of their respective transmission assets to SPP. Corn Belt and NIPCO note that SPP explains in SPP's filing that Attachment AE, section 2.2(6) of the SPP Tariff requires that "loads and all [r]esources, excluding [b]ehind-[t]he-[m]eter [g]eneration less than 10 [m]egawatts ('MWs'), must register," and section 2.1 of Attachment AE provides that SPP will file an unexecuted market participant service agreement with the Commission in the event that a market participant fails or refuses to execute the market participant service agreement.²² According to Corn Belt and NIPCO, the SPP Tariff contemplates the situation – similar to the MidAmerican situation – where a portion of a utility's load will be served within SPP, even if most of the utility's load is located outside of SPP. Corn Belt and NIPCO conclude that SPP filed the Agreement in compliance with the relevant Tariff provisions, and the Commission should accept the Agreement as filed.²³

20. Corn Belt and NIPCO note that they understand MidAmerican's concerns with regard to the clarity and timing of information provided by SPP to this point and the overall complexity of the integration process. Corn Belt and NIPCO observe that

²¹ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,101, at P 23 (2015); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033 (2014) (citations omitted); *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (citations omitted)).

²² NIPCO Comments at 3; Corn Belt Comments at 3 (citing SPP Transmittal at 2; SPP Tariff, Attachment AE, sections 2.1 (0.1.0) and 2.2(6) (2.1.0)).

²³ NIPCO Comments at 4; Corn Belt Comments at 3.

MidAmerican does not dispute that the SPP Tariff permits SPP to submit an unexecuted market participant service agreement for MidAmerican's unregistered load;²⁴ however, MidAmerican argues that SPP should name Corn Belt or NIPCO as the market participant instead of MidAmerican,²⁵ reject SPP's filing, and direct SPP to refile the unexecuted Agreement with Corn Belt or NIPCO as the market participant.

21. Corn Belt and NIPCO acknowledge that it is a challenge that the opportunity for MidAmerican to obtain congestion hedges has passed due to delays in communication with SPP. Nevertheless, Corn Belt and NIPCO agree that SPP properly identified MidAmerican as the appropriate market participant with respect to the MidAmerican load that will be located within SPP following Corn Belt's and NIPCO's integration.

22. Corn Belt and NIPCO reiterate their commitment to working with MidAmerican and SPP to ensure a smooth transition with regard to service to the MidAmerican loads covered by the GFAs. However, Corn Belt and NIPCO contend that SPP properly followed its Tariff procedures in filing the unexecuted Agreement. According to Corn Belt and NIPCO, the Commission's acceptance of the unexecuted Agreement would resolve the previous lack of clarity as to who will be the SPP market participant for MidAmerican's load on the SPP footprint, as well as facilitate productive communications regarding the logistics of the integration.

23. With regard to MidAmerican's request for settlement judge procedures, Corn Belt and NIPCO believe that initiating such procedures at this time is premature given the stage of negotiations with SPP and Corn Belt's and NIPCO's, and apparently SPP's, willingness to engage in informal discussions. Corn Belt and NIPCO share MidAmerican's commitment to ensuring that any costs imposed upon load served under GFAs be just and reasonable.

24. Finally, Corn Belt and NIPCO support SPP's request for waiver of relevant SPP Tariff provisions in order to facilitate the October 1, 2015 integration date. Corn Belt and NIPCO contend that it is prudent for the Agreement between SPP and MidAmerican to be in effect as of October 1, 2015, because it is the October 1, 2015 integration date, and it recognizes the need for the loads to be covered by the Agreement. Moreover, they assert that it would be prudent for MidAmerican and SPP to have a direct contractual relationship with respect to SPP's providing transmission service to the MidAmerican loads, consistent with the GFAs.

²⁴ NIPCO Comments at 4 (citing MidAmerican Protest at 8); Corn Belt Comments at 4 (citing MidAmerican Protest at 8).

²⁵ NIPCO Comments at 4 (citing MidAmerican Protest at 9-10); Corn Belt Comments at 4 (citing MidAmerican Protest at 9-10).

VI. SPP Answer

25. In its answer, SPP disagrees with MidAmerican's assertion that the Commission should reject the Agreement and that "SPP should instead submit [m]arket [p]articipant [s]ervice [a]greements naming Corn Belt and NIPCO as the asset-owning market participants, since the SPP Tariff anticipates that the transmission owner providing GFA service may be the market participant in lieu of the GFA transmission customer."²⁶

26. SPP acknowledges that MidAmerican is correct that the Tariff allows a GFA transmission owner to register the load of a transmission customer under its GFA; however, SPP argues that nothing in the Tariff authorizes SPP to require such a registration. SPP states that none of the Tariff provisions cited by MidAmerican suggest otherwise, and instead only indicate that the transmission owner that provides GFA service may be a market participant, not that it shall be or can be required to be the market participant that registers a GFA customer's load.²⁷

27. SPP asserts that, as MidAmerican acknowledges, section 2.2(6) of the Attachment AE provides that market participants must register all resources and load, including applicable load associated with GFA,²⁸ and section 2.1 of Attachment AE directs SPP to file a market participant service agreement when a market participant fails to execute the agreement as required.²⁹ SPP observes that, as of October 1, 2015, MidAmerican will be a market participant with load in the SPP footprint,³⁰ and this load must be registered in the SPP Integrated Marketplace as of that date. According to SPP, absent an executed agreement with Corn Belt or NIPCO, MidAmerican is the responsible party for registering its load. SPP assert that, since neither Corn Belt nor NIPCO have agreed to register the MidAmerican load,³¹ MidAmerican remains responsible for the registration. SPP concludes that, pursuant to section 2.1 of Attachment AE, it properly submitted the unexecuted Agreement with MidAmerican as market participant.

²⁶ SPP Answer at 3 (citing MidAmerican Protest at 4).

²⁷ *Id.* at 4 (citing MidAmerican Protest at 4, 7-8, 9).

²⁸ *Id.* (citing MidAmerican Protest at 7).

²⁹ *Id.* at 5 (citing SPP Tariff, Attachment AE, section 2.2(6); MidAmerican Protest at 4).

³⁰ *Id.* (citing MidAmerican Protest at 3).

³¹ *Id.* (citing Corn Belt Comments at 5; NIPCO Comments at 5).

28. SPP disputes MidAmerican's claim that it should not be the party to the Agreement because it is ineligible for either transitional or annual ARR's.³² SPP argues that this assertion provides no basis for rejection of the Agreement. According to SPP, MidAmerican is ineligible for ARR's because the GFAs under which its load currently is served have not been registered, as required by section 7.1.1(2) of Attachment AE.³³ Therefore, according to SPP, regardless of the fact that the deadline for acquiring transitional ARR's has passed, MidAmerican would not be eligible for transitional ARR's in any event, because the pertinent GFAs have not yet been registered.

29. With regard to its request for waiver of the deadlines associated with the registration of a new market participant in the Integrated Marketplace, SPP states that the need for the waiver is clear—to permit the necessary registration of the MidAmerican load. SPP argues that, contrary to MidAmerican's argument, the waiver meets the Commission's standards for granting a waiver.³⁴ According to SPP, its waiver request is made in good faith to facilitate the registration of MidAmerican's load as well as the Corn Belt and NIPCO integration, which MidAmerican has stated it "does not wish to defer."³⁵ SPP also asserts that this waiver request stands on its own and meets the limited scope standard for granting a waiver. Moreover, SPP contends that, while MidAmerican cites to several related waiver requests to suggest that SPP's waiver request is not "limited in scope,"³⁶ each of the waiver requests relates to the October 1, 2015 integration of various new transmission owning members into SPP. Therefore, SPP states that the waiver is of limited scope because it is related to the complex, multifaceted, but one-time integration of various new loads and facilities into SPP. Furthermore, according to SPP, the requested waiver solves a concrete problem, because MidAmerican's load needs to be registered in the SPP Integrated Marketplace as of October 1, 2015. Finally, SPP asserts that the requested waiver will not cause, but rather will prevent, undesirable consequences. According to SPP, denying the waiver would hinder a smooth implementation of the Corn Belt and NIPCO integration and may cause other market participants to have to cover MidAmerican's share of congestion and loss charges for which MidAmerican otherwise would be responsible. In contrast, SPP argues that the waiver would enable the registration of MidAmerican's load.

³² *Id.* at 6 (citing MidAmerican Protest at 9-10, 11).

³³ *Id.* (citing MidAmerican Protest at 11).

³⁴ *Id.* at 8 (citing MidAmerican Protest at 13-15).

³⁵ *Id.* at 9 (citing MidAmerican Protest at 4).

³⁶ *Id.* (citing MidAmerican Protest at 14).

VII. Discussion

A. Procedural Matters

30. 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 serve to make MidAmerican, Corn Belt, and NIPCO parties to this proceeding.

31. 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 answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

32. We find that the Agreement raises 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.

33. Our preliminary analysis indicates that the Agreement has 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 Agreement, suspend it for a nominal period, to become effective October 1, 2015, as requested, subject to refund, and set it for hearing and settlement judge procedures.

34. While we are setting the Agreement 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.³⁷ 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.³⁸ 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.

³⁷ 18 C.F.R. § 385.603 (2015).

³⁸ 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>).

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) The Agreement is hereby accepted for filing, suspended for a nominal period, to become effective October 1, 2015, as requested, as discussed in the body of this 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 the Agreement. 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.