

157 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Colonial Pipeline Company

Docket No. IS17-41-000

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

(Issued December 2, 2016)

1. On November 3, 2016, Colonial Pipeline Company (Colonial) filed FERC Tariff No. 98.28.0, cancelling FERC Tariff No. 98.27.0, and FERC Tariff No. 1.4.0, cancelling FERC Tariff No. 1.3.0, both with an effective date of December 4, 2016. FERC Tariff No. 98.28.0 proposes to remove Collins, Plantation, Mississippi as a location at which a segregated, fungible or joint batch may be terminated.¹ That provision also updates the reference in Colonial's Shipper Manual product specifications located in Item 10(b). As discussed below, FERC Tariff No. 1.4.0 cancelling FERC Tariff No. 1.3.0 is accepted effective December 4, 2016. Additionally, the Commission accepts and suspends FERC Tariff No. 98.28.0, and establishes hearing and settlement judge procedures.

Background

2. Colonial is an interstate common carrier pipeline that operates the largest, by volume, refined petroleum products pipeline system in the United States.² The Colonial system includes approximately 5,500 miles of pipe, and extends from Houston, Texas to Linden, New Jersey. Colonial operates a batched system, where different commodities are transported in separate batches on the pipeline instead of in a single commingled stream.³

¹ Transmittal Letter at 2.

² *Id.* at 1.

³ *Id.*

3. Colonial states that in order to optimize its system, the pipeline operates on a fungible basis. By commingling like product grades, argues Colonial, it is able to move more product through its tank farms, because each shipper batch does not have to be segregated from another shipper batch of the same product.⁴ With a segregated system, states Colonial, each shipper's batch would require its own tank, limiting the quantity and variety of products that can be staged at any one time.⁵ Additionally, claims Colonial, fungible batches can be delivered without stopping the line, because product can be taken off while the batch is going by, whereas segregated batches cannot be delivered without stopping the line.⁶

Tariff Filing

4. As relevant here, FERC Tariff No. 98.28.0 modifies a provision of Colonial's current tariff, which addresses the pipeline's Minimum Tender, Batch, and Delivery requirements. Colonial proposes to remove "Collins, Plantation, Mississippi" as a location at which a segregated, fungible or joint batch may be terminated.⁷ Colonial states that currently, no segregated, fungible or joint batches are being terminated at the Collins-Plantation point.⁸ According to Colonial, terminating segregated, fungible or joint batches at Collins-Plantation would cause significant operational difficulties because it would require the pipeline to reduce the flow rate on its Mainline, which would disrupt cycle timing, reduce the number of barrels delivered per cycle, and detract from the overall efficiency of its system.⁹ Colonial maintains that such disruption would negatively affect its shipper population as a whole and would be particularly detrimental given Colonial's system as to this line has been in apportionment since 2012.

5. Colonial states that it supports segregated batches, but does not want those movements to have a negative impact on the overall throughput to the detriment of the shipping community.¹⁰ Colonial claims that the tariff changes make clear that fungible batches shall have priority and the movement of segregated batches will be limited to

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3.

those situations where throughput on the line is not compromised as a result of the segregated movement.¹¹

6. Colonial states that it is not removing Collins-Plantation as a delivery point.¹² The proposed change, claims Colonial, only removes Collins-Plantation as a point in which an entire batch volume may terminate, not as a point at which an individual tender may terminate.¹³ Colonial states that a batch does not refer to an individual shipper's tender or nomination, unless the shipper is shipping a segregated batch or is the sole supplier of the fungible batch.¹⁴ Colonial states that its current minimum tender requirement is 25,000 barrels, while the minimum batch size is 75,000 barrels.¹⁵ Colonial claims that a shipper may continue to deliver volumes up to its entire nomination to Collins-Plantation, so long as some additional volumes (including any commingled volumes of other shippers) in that batch are nominated to downstream locations.¹⁶

Interventions and Protests

7. Motions to intervene were filed by TransMontaigne Partners L.P. (TransMontaigne), Vitol Inc. (Vitol), Costco Wholesale Corporation, Rolympus (US) Commodities Group LLC, and Sunoco LLC. In addition, TransMontaigne and Vitol (collectively Protestors) filed protests.

8. TransMontaigne argues that the Commission should reject FERC Tariff No. 98.28.0 because it would result in a tariff that fails to provide service upon reasonable request, is not sufficiently supported or justified, and would provide an undue preference to Colonial, certain shippers and other persons.¹⁷ TransMontaigne argues that Colonial's reasons for terminating certain batch service at Collins-Plantation

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* n.2.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ TransMontaigne Protest at 1.

is not sufficient to overcome the impact to shippers from the reduction in existing service to shippers.¹⁸

9. TransMontaigne states that Colonial failed to provide sufficient information in its filing to identify what problems exist at Collins-Plantation, nor the magnitude of any problems.¹⁹ TransMontaigne also argues that if segregated batch deliveries are not currently occurring at Collins-Plantation, FERC Tariff No. 98.28.0 will not remedy such problems.²⁰

10. Finally, TransMontaigne argues that the proposed tariff changes would grant an undue or unreasonable preference or advantage to Colonial in violation of section 3(1) of the Interstate Commerce Act (ICA).²¹ TransMontaigne states that Colonial is permitting a single customer to terminate segregated batches in Baton Rouge, Louisiana, at a terminal owned by an affiliate of Colonial, which results in the very line slowing that Colonial claims to be seeking to avoid at Collins-Plantation.²² Discontinuing termination service at Collins-Plantation while still allowing termination service to continue at Baton Rouge, argues TransMontaigne, would create an undue advantage to Colonial over shippers who could no longer terminate segregated batches at Collins-Plantation.²³

11. Vitol states that the Commission should reject Colonial's FERC Tariff No. 98.28.0 because the proposal has not been shown to be just and reasonable, and will be unduly discriminatory or preferential in effect.²⁴ Vitol argues that if FERC Tariff No. 98.28.0 is not rejected, it should be suspended for the full statutory period, and set for hearing or technical conference.²⁵

12. Vitol first notes that it has entered into a terminaling services agreement with TransMontaigne Operating Company L.P. (TMOC) for tank capacity under construction

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.* at 7-8.

²⁴ Vitol Protest at 7.

²⁵ *Id.*

and owned by TMOC just downstream of Colonial's Collins-Plantation delivery point.²⁶ Vitol states that this tank capacity is scheduled to come online no later than the second quarter of 2017.²⁷ Vitol argues that it is "essential to the commercial viability of Vitol's blending program using the TMOC tank capacity that Vitol be able to ship segregated batches of product to the Collins delivery point."²⁸ Vitol states that it alerted Colonial to its intentions regarding the TMOC agreement in October of 2016.²⁹

13. Vitol argues that Colonial, in violation of section 1(4) of the ICA,³⁰ failed to provide an adequate justification, factual support, or reasoned basis for its proposed changes set forth in FERC Tariff No. 98.28.0.³¹ Vitol criticizes Colonial's filing for failing to provide empirical proof supporting the need to terminate service at Collins-Plantation.³² Vitol further argues that Colonial failed to discuss any alternative proposals that may address Colonial's concerns without undermining existing or potential commercial arrangements.³³

14. Vitol also argues that Colonial's proposals will be unduly discriminatory in violation of section 3(1) of the ICA.³⁴ Vitol states that Colonial owns and operates terminal facilities at Baton Rouge, Louisiana that are similar to those owned by TMOC at the Collins-Plantation delivery point.³⁵ Vitol states that Colonial is a competitor to TMOC, and while the Commission cannot compel Colonial to expand or improve its facilities it can determine whether Colonial's decisions to do so, or in the case of Collins-

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ 49 U.S.C. App. § 1(4) (1988).

³¹ Vitol Protest at 7.

³² *Id.* at 8.

³³ *Id.*

³⁴ 49 U.S.C. App. § 3(1) (1988).

³⁵ Vitol Protest at 9.

Plantation not do so, rise to the level of undue discrimination.³⁶ Vitol also argues that if such infrastructure changes at Collins-Plantation that would allow for termination of segregated, fungible or joint batches are not too expensive and/or if Colonial is not being asked to assume all costs for such changes, the refusal to make such infrastructure changes may create a situation of undue discrimination.³⁷

15. Vitol states that if the Commission does not reject FERC Tariff No. 98.28.0, it should accept and suspend it for the full seven-month period authorized by section 15(7) of the ICA,³⁸ and set the matter for hearing.³⁹ Vitol states that the full seven-month suspension period is appropriate because it will suffer irreparable harm if Colonial implements its proposals.⁴⁰

Colonial's Response

16. On November 23, 2016, Colonial filed a Response to the Protests. Colonial argues that the request to terminate batches at Collins-Plantation is not a reasonable request for service under section 1(4) of the ICA because it would come at the expense of materially reducing the service that Colonial can provide to other shippers.⁴¹ This is due, maintains Colonial, because the delivery flow rate at Collins-Plantation is less than the flow rate for the Colonial mainline flowing upstream of Collins-Plantation.⁴² Colonial states that for a full batch to be delivered at Collins-Plantation, the upstream flow rate on the mainline would have to be slowed to allow sufficient time for the delivery to be made.⁴³ This, claims Colonial, will reduce volume that cannot be allocated to shippers on the Colonial system.⁴⁴

³⁶ *Id.* at 10.

³⁷ *Id.* at 11.

³⁸ 49 U.S.C. App. § 15(7) (1988).

³⁹ Vitol Protest at 11.

⁴⁰ *Id.*

⁴¹ Colonial Response at 7.

⁴² *Id.* at 8.

⁴³ *Id.* at 7-8.

⁴⁴ *Id.* at 9.

17. Colonial states that when only a portion of the barrels are stripped off the mainline at Collins-Plantation, upstream flow rates are not impacted, and such deliveries will continue to be available after FERC Tariff No. 98.28.0 is implemented.⁴⁵ Colonial states that partial deliveries of segregated batches can be made at Collins-Plantation dependent on the size of the batch and the delivery flow rate.⁴⁶

18. Colonial disputes the Protestors' argument that Colonial's proposal unduly discriminates against similarly situated shippers. Colonial argues that the Protestors, by "placing their narrow interest above that of all shippers and the system as a whole," are in fact the ones "seeking an undue and unreasonable advantage."⁴⁷ Colonial states that it developed its tariff modifications to balance the interests of all its shippers in a reasonable and non-discriminatory manner.⁴⁸ Colonial states in this regard that the "purpose of [FERC Tariff No. 98.28.0] is to address the fact that allowing segregated [b]atches to terminate at Collins-Plantation will create supply issues over the majority of the pipeline by reducing the volume of barrels that can be shipped in each cycle."⁴⁹ Colonial further states that the infrastructure changes raised by the Protestors that would be required in order to offer termination service at Collins-Plantation are "simply not a viable solution."⁵⁰

19. Colonial challenges the Protestors' assertion that FERC Tariff No. 98.28.0 should not be accepted because the upstream flow issue has not yet manifested itself. Colonial further states that the delivery flow rate design at Collins-Plantation only changed because Colonial "accommodated TransMontaigne's request to provide connectivity for deliveries to its existing facility, which required pipe manifold changes that resulted in the delivery flow rate being less than the mainline flow rate."⁵¹ Colonial also notes that Plantation Pipeline made additional manifold changes that limit Colonial's delivery flow

⁴⁵ *Id.* at 12.

⁴⁶ *Id.*

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 14-15.

⁴⁹ *Id.* at 14, 8-14 (detailing the results of various engineering data showing the operational impacts based on terminating segregated batches at Collins-Plantation).

⁵⁰ *Id.* at 18.

⁵¹ *Id.* at 24-25.

rate.⁵² Colonial also contends that it proposed FERC Tariff No. 98.28.0 due to the potential operational concerns raised by the TMOC arrangement.⁵³ Colonial states that it is appropriate for a “prudent liquid pipelines operator” to anticipate and act to remedy reasonably foreseeable problems before they manifest themselves.⁵⁴ Colonial further states that TransMontaigne was aware for more than a year that Colonial intended to make the changes set forth in FERC Tariff No. 98.28.0, that Colonial and TransMontaigne had numerous discussions in which Colonial explained that its system could not handle batch terminations at Collins-Plantation, and that TransMontaigne knew the risk of continuing with plans for batch termination deliveries at Collins-Plantation.⁵⁵

20. Colonial argues that it has not attempted to favor its operations at Baton Rouge. Colonial states that unlike the delivery flow rate to Collins-Plantation, the Baton Rouge terminal’s delivery flow rate is the same as the mainline flow rate, and therefore segregated deliveries at Baton Rouge do not create the operational concerns as do similar deliveries at Collins-Plantation.⁵⁶ Therefore, argues Colonial, batch deliveries to Baton Rouge are not similarly situated as batch deliveries to Collins-Plantation.⁵⁷ Colonial states that with limited exception, all of the allowed termination points on the Colonial system are capable of delivery at the mainline flow rates.⁵⁸ Therefore, argues Colonial, allowing batch delivery service at other points on its system, but not at Collins-Plantation, is not undue discrimination.⁵⁹

21. Finally, Colonial argues that if the Commission accepts and suspends FERC Tariff No. 98.28.0, it should not suspend for the full seven-month period.⁶⁰ Colonial states that

⁵² *Id.* at 25.

⁵³ *Id.* at 18.

⁵⁴ *Id.*

⁵⁵ *Id.* at 19-20.

⁵⁶ *Id.* at 22.

⁵⁷ *Id.*

⁵⁸ *Id.* at 24.

⁵⁹ *Id.*

⁶⁰ *Id.* at 25.

Vitol's argument that it will suffer "irreparable harm" is not the appropriate test.⁶¹ Colonial argues that the proper test for determining whether to implement a full seven-month suspension is whether severe anticompetitive effects or undue hardship have been shown.⁶² Colonial argues that the Protestors have not met this burden.⁶³

Answers

22. On November 29, TransMontaigne filed a Motion for Leave to Answer and Answer. On November 30, 2016, Vitol also filed a Motion for Leave to Answer and Answer. The Protestors' Answers dispute Colonial's claim that Collins-Plantation is not capable of terminating a segregated, fungible or joint batch at the full mainline flow rate.⁶⁴ TransMontaigne states that it is currently capable of terminating such a batch equal to the Line 1 mainline flow rate of 58,000 barrels per hour (BPH).⁶⁵ TransMontaigne further states that its own facilities are what cause a reduced flow rate on Line 2, and it is considering remedies that would eliminate the constraint at no cost to Colonial.⁶⁶ Vitol, based on the information on flow rate set forth in TransMontaigne's Answer, states that it is willing to agree to take segregated batches at Collins-Plantation "as fast as Colonial needs, up to the Line 1 mainline flow rate of 58,000 BPH."⁶⁷ On November 30, 2016, Colonial filed a Motion for Leave to Answer and Answer in response to the Protestors' Answers. In its Answer, Colonial challenges the Protestors' statements that deliveries could be made at Collins-Plantation at the mainline flow rate.

Discussion

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), all unopposed and timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted. Rule

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ TransMontaigne Answer at 2, Vitol Answer at 3-5.

⁶⁵ TransMontaigne Answer at 2.

⁶⁶ *Id.* at 3.

⁶⁷ Vitol Answer at 4.

213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits answers to answers unless otherwise ordered by the decisional authority. In the instant case, the Commission will accept the Protestors' Answers and Colonial's Answer because they have provided information that assisted us in our decision-making process.

24. As discussed, Colonial included two tariffs in its proposal. FERC Tariff No. 1.4.0 cancels FERC Tariff No. 1.3.0, by amending Colonial's Port Arthur Product station rules and regulations tariff. No protests were filed against this tariff proposal. Therefore, the Commission finds this tariff to be just and reasonable and accepts it, effective December 4, 2016.

25. As discussed below, the Commission finds that Colonial has not shown that FERC Tariff No. 98.28.0 is just and reasonable. The Commission will therefore establish an evidentiary hearing pursuant to section 15(7) of the ICA to determine the lawfulness of this tariff provision.⁶⁸

26. A pipeline is permitted to cancel service to certain delivery points provided that the cancellation is consistent with the statutory requirements of the ICA.⁶⁹ Colonial's proposal to cancel Collins-Plantation as a delivery point at which segregated, fungible or joint batches may be terminated has not been shown to be just and reasonable, and not unduly discriminatory. Colonial, as a common carrier pipeline, must provide service upon reasonable request,⁷⁰ and must provide service absent undue discrimination or preference.⁷¹

27. FERC Tariff No. 98.28.0 raises several issues concerning Colonial's provision of service under the ICA. The first is whether TransMontaigne or Vitol have made a reasonable request for the service Colonial proposes to eliminate. The Protestors do not

⁶⁸ 49 U.S.C. App. § 15(7) (1988).

⁶⁹ *Amoco Pipeline Co.*, 83 FERC ¶ 61,156, at 61,673 (1998); *see also Mid-America Pipeline Co., LLC*, 131 FERC ¶ 61,012, at P 26 (2010) (Finding that a cancellation not amounting to an abandonment can still be reviewed by the Commission for lawfulness under the ICA).

⁷⁰ 49 U.S.C. App. § 1(4) (1988).

⁷¹ 49 U.S.C. App. § 3(1) (1988).

contest that the service in question is not currently being utilized. However, the Protestors are arguing that they have made known their intention to utilize Colonial's system to terminate segregated, fungible or joint batches at Collins-Plantation in the future, and that it was this expressed intention that instigated Colonial's filing of FERC Tariff No. 98.28.0.⁷²

28. Even if the Protestors have made a request for delivery service at Collins-Plantation, it must be a "reasonable request" in order for Colonial to be required to provide the service.⁷³ The law exacts only what is reasonable from carriers,⁷⁴ and pipelines are only required to provide service when a request for such service is reasonable.⁷⁵ Colonial maintains that the Protestors have not made a reasonable request because their request will result in a material reduction of service to other shippers on its pipeline and cause significant operational impacts to Colonial's system, which has been in apportionment since 2012. The question of whether the Protestors have made a reasonable request in light of Colonial's allegations of significant operational impacts of such a request is a fact-specific analysis that must be sufficiently supported by a fully-developed evidentiary record.⁷⁶

29. If it is established that the Protestors have made a reasonable request for delivery service at Collins-Plantation for an entire segregated, fungible or joint batch to be terminated, Colonial must demonstrate that cancellation of the service is not unduly discriminatory against the Protestors.⁷⁷ The record is currently insufficient to determine whether FERC Tariff No. 98.28.0 results in undue discrimination against the Protestors by Colonial. Specifically, the hearing should examine whether Colonial's allegations of significant operational impacts negate any request for service by the Protestors.

30. The Commission's preliminary analysis of the filings by Colonial and the Protestors indicates that Protestors raise significant concerns about Colonial's FERC

⁷² Vitol Protest at 6-7.

⁷³ 49 U.S.C. App. § 1(4) (1988).

⁷⁴ *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 133 (1914).

⁷⁵ *CHS Inc. v. Enterprise TE Products Pipeline Co, LLC*, 155 FERC ¶ 61,178 at P 14 (2016).

⁷⁶ *B.J. Alan Co. Inc. v. I.C.C.*, 897 F.2d 561, 564 (D.C. Cir. 1990); *Trimbur v. Norfolk Southern Railway Company*, 2015 WL 4755205 (E.D. Ohio 2015).

⁷⁷ *Amoco Pipeline Co.*, 83 FERC at 61,673.

Tariff No. 98.28.0 that cannot be resolved absent the development of a full record at hearing. Therefore, the Commission will accept and suspend FERC Tariff No. 98.28.0, to be effective July 4, 2017, and set it for hearing and settlement judge procedures. Based upon a review of the filings, the Commission concludes that the immediate removal of Collins-Plantation as a location at which segregated, fungible or joint batches may be terminated could cause undue hardship or anticompetitive effects to the Protestors.⁷⁸ The Commission has regularly held that the refund obligation is an adequate safeguard to protect the interest of shippers,⁷⁹ and therefore a minimal suspension period is normally appropriate.⁸⁰ In establishing this policy, however, the Commission also has allowed for suspensions for a longer period when justified,⁸¹ and here there is a specified justification for the longer, statutory suspension period. In this particular case any potential harm from Colonial's permanent termination of service at Collins-Plantation could not be remedied by refunds. Therefore, in this case the Commission will require the full seven month suspension period authorized by section 15(7) of the ICA.

31. While the Commission is setting this matter for hearing, the Commission encourages parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the Commission 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.⁸² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. Otherwise, the Chief Administrative Law Judge (Chief ALJ) will select a judge for this purpose. The settlement judge shall report to the Chief ALJ 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 ALJ 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 Administrative Law Judge (Presiding ALJ).

⁷⁸ See, e.g., *Gaviota Terminal Co.*, 79 FERC ¶ 61,099, at 61,460 (1997).

⁷⁹ *Enterprise TE Products Pipeline Co. LLC*, 139 FERC ¶ 61,036, at P 33 (2012).

⁸⁰ *Lakehead Pipe Line Co.*, 69 FERC ¶ 62,174, 64,396 (1994).

⁸¹ *Id.*

⁸² 18 C.F.R. § 385.603 (2106)

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, Colonial's FERC Tariff No. 1.4.0 is accepted, effective December 4, 2016.

(B) Pursuant to the authority contained in the Interstate Commerce Act, Colonial's FERC Tariff No. 98.28.0 is accepted and suspended, effective December 4, 2016, subject to refund and conditions.

(C) Pursuant to the authority conferred on the Commission by the ICA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the ICA, a public hearing shall be held concerning Colonial's FERC Tariff No. 98.28.0. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the body of this order and ordering paragraphs below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2016), the Chief ALJ 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 ALJ designates the settlement judge. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief ALJ on the status of the settlement discussions. Based on this report, the Chief ALJ shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a Presiding ALJ 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 ALJ of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a Presiding ALJ, to be designated by the ALJ, 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 ALJ 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.