

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Trans-Elect NTD Path 15, LLC

Docket No. ER05-17-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 2, 2004)

1. In this order, we accept for filing Trans-Elect NTD Path 15, LLC's (NTD Path 15) transmission revenue requirement and proposed Transmission Owner Tariff (TO Tariff) (Revenue Requirement and TO Tariff Filing), suspend it for a nominal period, to become effective upon commencement of commercial operation of the Path 15 Upgrade, subject to refund and subject to the outcome of the proceeding established in Docket No. PL05-5-000, which is being initiated in a concurrently issued order. We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their factual disputes over NTD Path 15's Revenue Requirement and TO Tariff Filing.

Background

2. California's Path 15 is a uniquely critical path with transmission limitations that have had serious impacts on the ability to move power over the system.¹ In May 2001, the Secretary of Energy authorized the Western Area Power Administration (Western) to explore ways to relieve California's Path 15 capacity constraints and increase reliability through transmission expansion in the Path 15 corridor. Through a competitive selection process, Western chose Trans-Elect Inc. (Trans-Elect) and Pacific Gas & Electric Company (PG&E) to build an 83-mile, 500 kV transmission line within the existing Path

¹ *Western Area Power Admin.*, 99 FERC ¶ 61,306 at 62,227 (June 12 Order), *reh'g denied*, 100 FERC ¶ 61,331 at P 7 and n.4 (2002) (September 25 Order).

15 transmission corridor and make related modifications to PG&E's Los Banos and Gates substations (Path 15 Upgrade).²

3. On June 12, 2002, the Commission accepted a letter agreement (Letter Agreement) entered into by Western, Trans-Elect and PG&E (Path 15 Upgrade participants) which, among other things, set forth rate principles for the recovery of costs associated with the Path 15 Upgrade.³ On March 25, 2004, the Commission approved a settlement agreement between the California Public Utilities Commission (CPUC), Trans-Elect and NTD Path 15 addressing related issues (CPUC Settlement).⁴

4. In January 2003, Trans-Elect filed a letter of intent with the California Independent System Operator Corporation (CAISO) to become a Participating Transmission Owner (PTO) and turn over operational control of its rights in the Path 15 Upgrade to the CAISO. On October 14, 2003, pursuant to delegated authority, the Commission's Director of the Division of Tariffs and Market Development - West approved the CAISO's amendment to its Transmission Control Agreement (TCA) to include NTD Path 15 as a PTO.⁵

5. On June 30, 2004, the Commission accepted for filing the Coordinated Operations and Interconnection Agreement entered into by PG&E, NTD Path 15 and Western, to become effective July 1, 2004.⁶

6. On October 4, 2004, pursuant to section 205 of the Federal Power Act (FPA) and section 35.13 of the Commission's Rules and Regulations, 18 C.F.R. § 35.13 (2004), NTD Path 15 filed its Revenue Requirement and TO Tariff Filing.

² Once in service, the Path 15 Upgrade will increase transmission capacity from Southern to Northern California by 1,500 MW and from Northern to Southern California by 1,100 MW. Exhibit NTD-7 at 4:1-6.

³ June 12 Order, 99 FERC ¶ 61,306.

⁴ *Western Area Power Admin.*, 106 FERC ¶ 61,295 (2004).

⁵ *California Indep. Sys. Operator Corp.*, Letter Order, Docket No. ER03-1217-000 (Oct. 14, 2003).

⁶ *Pacific Gas & Elec. Co.*, 107 FERC ¶ 61,335 (2004).

Notice of Filing and Responsive Pleadings

7. Notice of NTD Path 15's Revenue Requirement and TO Tariff Filing was published in the *Federal Register*, 69 Fed. Reg. 61,368 (2004), with comments, protests and interventions due on or before October 25, 2004. The CAISO; the City of Redding, California, the City of Santa Clara, California, and the M-S-R Public Power Agency jointly; the Modesto Irrigation District; PG&E; the American Public Power Association (American Public Power); the American Transmission Company LLC (American Transmission Company); the California Municipal Utilities Association (CMUA); Southern California Edison Company (SoCal Edison); the Transmission Agency of Northern California (TANC); the Northern California Power Agency (NCPA); and San Diego Gas & Electric Company (SDG&E) filed timely motions to intervene. WPS Resources Corporation (WPS Resources), Wisconsin Electric Power Company (Wisconsin Electric) and Wisconsin Public Power Inc. (Wisconsin Public Power) filed untimely motions to intervene.

8. American Transmission Company; American Public Power; TANC; NCPA; Wisconsin Public Power; WPS Resources; SoCal Edison and SDG&E filed comments/protests regarding the impact of the D.C. Circuit's recent opinion in *BP West Coast Products, LLC v. FERC*⁷ on the inclusion of an income tax allowance in NTD Path 15's return on equity. American Public Power and NCPA request that, if the Commission decides to address the implications of *BP West* for independent transmission owners, the Commission issue a new notice which alerts all interested parties to the Commission's intention to address this policy question. TANC also argues that NTD Path 15 has not justified a 22 percent return on equity.

9. The CPUC filed a notice of intervention and comments regarding the interest rate on loans, the overall return figure given in Statement BK – Alternate (Period II), and the need to reduce the revenue requirements due to congestion or firm transmission right (FTR) revenues.

10. In their protests, SDG&E and SoCal Edison raise concerns regarding NTD Path 15's investments costs and transmission service right entitlement; Statement AK (Property Taxes); Statement AL (Working Cash Allowance); Statement AH (Annual Management Service Agreement Fee); waiver from providing Statements AA, AB and AC; and definitions used in the TO Tariff. SDG&E seeks discovery and a hearing to

⁷ 374 F.3d 1263 (*BP West*), *reh'g denied*, 2004 U.S. App. LEXIS 20796-98 (2004).

determine if the proposed TO Tariff definitions are just and reasonable or unduly discriminatory.

11. SoCal Edison protests the Operating and Maintenance expense estimates; Statement AO (Annual Allowance for Funds Used During Construction); and the possible over-recovery of costs. SoCal Edison also challenges the proposed effective date because NTD Path 15 has proposed that the TO Tariff become effective on the date that NTD Path 15 becomes a PTO. SoCal Edison requests that the Commission ensure that the transmission revenue requirement recovery does not begin before the commercial operation date of the Path 15 Upgrade.

12. SDG&E protests Statement AF (Accumulated Deferred Income Taxes) and the total investment in the Path 15 Upgrade; and it requests clarification on the mechanism to implement possible reductions in the revenue requirement. SDG&E requests that the Commission consolidate this proceeding with Docket Nos. ER04-133-000 and ER04-1198-000.

13. CMUA raises concerns about the cost of the project and requests that the Commission establish procedures to examine the policy implications of the Revenue Requirement and TO Tariff Filing.

14. On November 9, 2004, NTD Path 15 filed an answer to the comments and protests. In its answer, NTD Path 15 provides clarifications regarding (1) the interest rate of the debt financing, (2) the return rate reflected in Alternate Statement BK and (3) its treatment of congestion or FTR revenues. NTD Path 15 also clarifies that the “recovery of NTD Path 15’s revenue requirement will not begin prior to commercial operations of the Path 15 Upgrade.”⁸

Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant WPS Resources’, Wisconsin Electric’s and Wisconsin Public Power’s untimely interventions, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place undue burdens on the parties.

⁸ NTD Path 15 Answer at 18.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NTD Path 15's answer because it has provided information that assisted us in our decision-making process.

B. Motion to Consolidate

17. SDG&E requests that the Commission consolidate the instant proceeding with Docket Nos. EL04-133-000 and ER04-1198-000. It contends that consolidation is necessary to determine whether the CAISO's proposal to fully compensate Western through congestion and FTR auction revenues for 10 percent of the capacity of the Path 15 Upgrade in conjunction with NTD Path 15's proposal to include in its transmission revenue requirement nearly the entire cost of building Western's 10 percent share will result in a price squeeze. We will deny the request to consolidate this proceeding with the proceedings in Docket Nos. EL04-133-000 and ER04-1198-000. The Commission typically consolidates proceedings only for purposes of hearing and decision.⁹ As we have not set Docket No. EL04-133-000 or ER04-1198-000 for hearing, there is no need to consolidate the instant proceeding, which we are setting for hearing, with the proceedings in Docket Nos. EL04-133-000 and ER04-1198-000.

C. Income Tax Allowance

1. NTD Path 15's Proposal

18. NTD Path 15 states that the instant filing reflects alternative but basically identical revenue requirements in order to ensure that the economic underpinnings of the Path 15 Upgrade, as reflected in the rate principles approved in our June 12 Order, remain intact. NTD Path 15, a Delaware limited liability company (LLC), attempts to address the potential impact of the recent opinion of the D.C. Circuit in *BP West*, which found that the Commission erred by including an income tax allowance in a limited partnership's cost of service computation because no income taxes had been or would be paid on the partnership's income.¹⁰ NTD Path 15 also seeks to reconcile the potential impact of *BP*

⁹ See, e.g., *New York Indep. Sys. Operator, Inc.*, 105 FERC ¶ 61,108 at P 14 (2003).

¹⁰ *BP West*, 374 F.3d at 1285-93. Intervenors request that, if the Commission decides to address the implications of *BP West* for independent transmission owners, the Commission issue a new notice which alerts all interested parties to the Commission's intention to address this policy question.

West with the reasonable expectations of the Path 15 Upgrade developers and investors. NTD Path 15 states that these expectations were necessarily based on the regulatory policies in place at the time that the Path 15 Upgrade business structure and related financing decisions were made. Therefore, NTD Path 15 proposes a Base Case Revenue Requirement of approximately \$36,725,863 which includes an imputed tax allowance and retains the 13.5 percent return on common equity. It also proposes an Alternative Case Revenue Requirement which is essentially identical but eliminates the income tax allowance and increases the return on equity to approximately 22.78 percent to yield an equivalent revenue requirement, including an after-tax return on equity of 13.5 percent.

19. If the Commission declines to issue a generic policy decision or adopts a policy incompatible with its proposals, NTD Path 15 seeks confirmation that *BP West* will not undermine the economic integrity of the Path 15 Upgrade. First, it argues that an imputed tax allowance can be justified, on a case-specific basis, as an innovative rate treatment due to NTD Path 15's pursuit of a critical, Commission-endorsed project. As such, it contends that the Commission can rely on a non-cost based "imputed tax" or an adjusted, pre-tax equity return to approve the Base Case or Alternative Case Revenue Requirements. Second, NTD Path 15 believes that the Commission has discretion to decline from retroactively applying the policy change set forth in *BP West*.¹¹

2. Comments/Protests and Answer

20. Some intervenors urge the Commission not to summarily approve either of NTD Path 15's innovative rate treatments and instead order further proceedings on this issue of first impression. Intervenors question the authority for granting NTD Path 15 a pre-tax rate of return on equity in excess of 22 percent. TANC contends that there is no basis for NTD Path 15's assertion that the assumption on which a 13.5 percent rate of return on equity rested included "a tax allowance on its revenue requirement and, as such, the approved equity return was understood to be an after-tax rate" because that assumption was not communicated to the Commission when the Letter Agreement was filed with the Commission and is not supported by the record. TANC urges the Commission to find that the amounts in excess of actual costs, or phantom taxes, cannot be recovered by jurisdictional rates under the Federal Power Act. TANC requests that, if the Commission considers any changes to the rate treatment, the Commission reexamine the rate treatment approved in Docket No. ER02-1672 in its entirety. American Public Power does not

¹¹ NTD Path 15 also argues that the Commission's tax policy is still in effect because requests for rehearing of *BP West* placed an automatic stay on the mandate of the court. On October 4, 2004, the court denied the requests for rehearing of *BP West*; therefore, we find that this argument is moot.

support the summary approval of a transfer of substantial dollars from ratepayers to LLC investors simply because those investors counted on the continuation of a ratemaking treatment that *BP West* found unacceptable.

21. Other intervenors believe that *BP West* only applies to the specific facts of that case and should not invalidate all LLC or LLP tax allowances. American Transmission Co. argues that the broad ratemaking and tax issues it raises should not be raised here. It requests that the Commission not restrict the availability of *Lakehead*-type tax allowances¹² to LLCs that are independent or are created solely for newly-built transmission facilities. Intervenors believe that the Commission should adopt policies that encourage the creation of stand-alone transmission companies rather than adopt general policies that may affect the viability of existing LLC ownership structures or stand-alone transmission companies. SoCal Edison argues that this proceeding is not the appropriate forum in which to determine whether the LLC structure should receive preferential treatment in establishing transmission rates.

22. Intervenors also argue that phantom taxes are not at issue here. Wisconsin Public Power states that, since the LLC's cost of service is filed by the LLC, not the owners, the Commission has permitted American Transmission Company and others to include an "income expense component" in its cost of service that imputes the LLC owners' tax expense to the LLC and permits the owners' expense to be recovered from customers. WPS Resources asserts that the court in *BP West* incorrectly relied on the idea that denial of an LLC tax allowance would leave an LLC owner in the same position as any other taxpayer obligated to pay a return on its dividends. Intervenors claim that, if the LLC members cannot include tax expenses in the cost of service, they will opt for another corporate structure which will lead to the demise of the LLC ownership model. WPS Resources requests that the Commission approve an LLC tax allowance here or provide an alternative method of compensation.

23. In its answer, NTD Path 15 states that it seeks only to preserve the original deal, not obtain a better deal than what the Commission originally approved. NTD Path 15 adds that it has sponsored sworn testimony showing the project developers' reliance on regulatory policy which shaped the company's business construct decisions. NTD Path 15 claims that, given the specific facts and circumstances of the Path 15 Upgrade, the Commission could reasonably decline to impose any policy change here in order to avoid undermining the project's economic integrity.

¹² *Lakehead Pipe Line Co.*, 71 FERC ¶ 61,338 at 62,314-15 (1995) (*Lakehead*); *reh'g denied*, 75 FERC ¶ 61,181 (1996) (*Lakehead II*) (collectively, *Lakehead* policy).

3. Commission Determination

24. Path 15 has long been a bottleneck to the movement of hydro power from the Pacific Northwest to Southern California and the movement of energy from generators in Southern California to Northern California.¹³ In its June 12 Order, the Commission recounted the history of this bottleneck and accepted the Letter Agreement as the first step in the process that, it declared, “should lead to the addition of transmission capacity along California’s Path 15 by late 2004.”¹⁴

25. As the Commission explained, on May 17, 2001, the National Energy Policy Report recommended that President George W. Bush direct the Secretary of Energy to authorize Western to explore ways to relieve the Path 15 bottleneck through transmission expansion.¹⁵ Through a public process, Western solicited proposals from non-federal entities to participate in construction and ownership of the Path 15 Upgrade¹⁶ and selected Trans-Elect and PG&E.¹⁷ The Commission noted that the Path 15 Upgrade, principally a new 500 kV transmission line, would increase capability from 3900 MW to 5400 MW for north-bound deliveries and increase capability for south-bound deliveries.¹⁸

26. On April 30, 2002, the Path 15 participants filed the Letter Agreement with the Commission in Docket No. ER02-1672-000 which, among other things, set forth rate principles to be followed in the recovery of costs associated with the transmission upgrades. In the June 12 Order, the Commission approved, among other things, a 13.5

¹³ June 12 Order, 99 FERC at 62,277. The United States Department of Energy’s National Transmission Grid Study of May 2002 lists Path 15 as a major western transmission bottleneck. National Transmission Grid Study at 15. The study also states that constraints on Path 15 have resulted in congestion costs to California energy customers estimated at \$222 million over just the 16 months prior to December 2000. *Id.* at 17, 22. By contrast, the entire cost of the proposed Path 15 Upgrade that would relieve this congestion is estimated at \$306 million. *See* June 12 Order, 99 FERC at 62,278.

¹⁴ *Id.* at 62,227.

¹⁵ *Id.*

¹⁶ *Id.* at 62,277-78 (*citing* 66 Fed. Reg. 31,909 (2001)).

¹⁷ *Id.* at 62,278.

¹⁸ *Id.*

percent rate of return on equity for Trans-Elect's portion of the project and the use of a target 50/50 capital structure.¹⁹ The Commission accepted the Letter Agreement so as to give some certainty to the financial community and to enable the Path 15 participants to secure the necessary financing for the construction of this critically needed infrastructure.²⁰

27. It must be recognized that at the time the Commission accepted the Letter Agreement, the prevailing Commission precedent for financing by LLPs, as well as investor-owned utilities, permitted the inclusion of an income tax allowance associated with an authorized return on common equity.²¹ Under the Commission's cost of service ratemaking principles, the return on common equity is taxable and, thus, in the construct of a regulated industry, a public utility is permitted an associated income tax allowance in its revenue requirement. While the Commission did not explicitly indicate that it was providing an income tax allowance, Commission precedent at the time was clear that a public utility would always receive an income tax allowance associated with its rate of return. There was no need for the Commission to explicitly state that it was providing an associated tax allowance. Indeed, no party in the history of the Path 15 Upgrade ever raised an issue with respect to an appropriate tax allowance. Only now, after *BP West* and after the project has essentially been completed, has any party raised a concern.

28. The significance of undoing this deal at this late date is real. The financial community relied on the Commission's acceptance of these rate principles in making its decision to finance the Path 15 Upgrade and construction has essentially been completed.²² The dollars are not immaterial. The income tax allowance is approximately

¹⁹ *Id.* at 62,278, 62,281.

²⁰ *Id.* at 62,280 (“Our acceptance of the Letter Agreement, and the rate principles therein, is intended to allow the Path 15 [p]articipants to move forward with financing.”)

²¹ *Lakehead*, 71 FERC at 62,314-15; *Lakehead II*, 75 FERC ¶ 61,181. NTD Path 15 states that it developed the financing structure ultimately used for this project, based on the Commission's long-standing policy which provides that a Commission-regulated LLC may include in its revenue requirement (or cost of service) a tax allowance associated with the income attributable to the corporate owners of the LLC. Exhibit NTD-12 at 4:1-15; *see also* Exhibit NTD-1 at 6:9-16.

²² *See* NTD-12 at 5 (“The Commission's orders in Docket No. ER02-1672 significantly enhanced the image of the project within the investment community by including an explicit acknowledgement of the importance of the project and the need for rate incentives to facilitate its completion.”); *see also* NTD-12 at 3:14-16; 4:16-17.

(continued...)

\$ 7.7 million or approximately 20.9 percent of the requested transmission revenue requirement.²³ Viewed differently, the income tax allowance would require a pre-tax return of approximately 22.78 percent on common equity to maintain the integrity of the deal. The Commission does not have the opportunity to substitute a 22.78 percent return on common equity at this time because, as the CPUC states, the CPUC Settlement provides that NTD Path 15 will receive a return on equity of 13.5 percent for the first three years of the operation of the Path 15 Upgrade.²⁴

29. We recognize the circumstances of this proceeding, including that construction of the Path 15 Upgrade project has essentially been completed and that there was an agreed-upon rate structure that was relied upon to initially finance and construct the Path 15 Upgrade. Moreover, we recognize that it is critical for the financing of much needed electric infrastructure that the financial community have some certainty and assurance that initial ratemaking decisions made by the Commission, that enable financing packages to be completed, can be relied on by all parties with respect to initial cost recovery. However, *BP West* and its application may represent a generic issue that must be viewed in the context of all of the industries that we regulate. In an order being issued concurrently with this order, we are establishing a generic proceeding to obtain public comments on the policy the Commission should adopt in light of *BP West*. Accordingly, we will allow NTD Path 15 to include an income tax allowance associated with its 13.5

NTD Path 15 states that the Path 15 Upgrade is “on schedule, under budget, and expected to be completed and ready for commercial operation on or before December 10, 2004.” Exhibit NTD-7 at 4:1-2. It adds that “[c]onstruction is nearing completion on both the new 500 kV transmission line and the substations.” *Id.* at 4:2-3.

²³ See NTD Path 15’s Statement BK.

²⁴ When it filed the Letter Agreement in Docket No. ER02-1672-000, Trans-Elect requested that it be permitted to establish a fixed revenue requirement and be granted a rate moratorium for 36 months following the effective date of the rates. Trans-Elect stated that the critical nature of the project, the need for revenue certainty and the difficulty of financing justified permitting the moratorium to take effect and continue after December 31, 2004, when the project would go into service. The Commission found the rate moratorium reasonable. June 12 Order, 99 FERC at 62,280; September 25 Order, 100 FERC at 62,538-39. However, the Commission required that, at the end of the moratorium period, NTD Path 15 file with the Commission information reflecting its actual capital structure. June 12 Order, 99 FERC at 62,280; September 25 Order, 100 FERC at n.5.

percent return on common equity for the first three years of operation in which the rates are fixed pursuant to the approved- rate moratorium, but we will make that allowance subject to refund and subject to the outcome of the proceeding in Docket No. PL05-5-000.

D. Hearing Procedures

30. Notwithstanding our determination on the income tax allowance issue, NTD Path 15's Revenue Requirement and TO Tariff Filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

31. Our preliminary analysis indicates that the Revenue Requirement and TO Tariff Filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the Revenue Requirement and TO Tariff Filing for filing, suspend it for a nominal period, make it effective upon commencement of commercial operation of the Path 15 Upgrade, subject to refund and subject to the outcome of the proceeding in Docket No. PL05-5-000, and set it for hearing and settlement judge procedures.²⁵ However, we note that the income tax allowance issue is not to be addressed in the hearing procedures ordered below.

32. While we are setting these matters 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.²⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

²⁵ NTD Path 15 filed FERC Electric Tariff Original Volume No. 1, Original Sheet Nos. 1-17. We note that NTD Path 15 included an alternative tariff sheet, Alternate Original Sheet No. 16, to reflect the proposed Alternative Case Revenue Requirement. Based on our discussion above, Alternate Original Sheet No. 16 is hereby rejected.

²⁶ 18 C.F.R. § 385.603 (2004).

otherwise, the Chief Judge will select a judge for this purpose.²⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Revenue Requirement and TO Tariff Filing is hereby accepted for filing, suspended for a nominal period, to become effective upon commencement of commercial operation of the Path 15 Upgrade, subject to refund and subject to the outcome of the proceeding in Docket No. PL05-5-000, as discussed in the body of this order. Alternate Original Sheet No. 16 is hereby rejected, 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 Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the Revenue Requirement and TO Tariff Filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2004), 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

²⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, 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 administrative law judge, to be designated by the Chief Administrative Law 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 Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such 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)

Magalie R. Salas,
Secretary.