

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Pittsfield Generating Company, L.P.

Docket Nos. ER06-262-000
ER06-262-001

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING RELIABILITY
MUST RUN AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued April 17, 2006)

1. On November 30, 2005, Pittsfield Generating Company, L.P. (Pittsfield) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ an unexecuted Reliability Must Run Agreement (RMR Agreement) among itself, Sempra Energy Trading Corp. (Sempra), as agent for Pittsfield, and ISO New England Inc. (ISO-NE) for a 160 MW natural gas-fired, combined-cycle power generation facility leased and operated by Pittsfield in Pittsfield, Massachusetts (November 30 Filing). Pittsfield requests that the Commission accept its proposed RMR Agreement and grant waiver of the Commission's 60-day prior notice requirement to permit an effective date of December 1, 2005, subject to refund. In this order, we conditionally accept and suspend for a nominal period the proposed RMR Agreement, make it effective December 1, 2005, subject to refund, and establish hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2000).

Background

2. ISO-NE has authority, pursuant to Market Rule 1,² to negotiate power supply agreements for the purchase of electricity at cost-based rates from generation facilities that ISO-NE identifies as being necessary to ensure reliability but which are unable to recover operating costs.

Pittsfield's Filings

3. Pittsfield leases and operates a 160 MW natural gas-fired, combined-cycle power generation facility located in Pittsfield, Massachusetts (the Facility). Pittsfield is comprised of one general partner, PE-Pittsfield LLC (PE-Pittsfield), and two limited partners, General Electric Capital Corporation (GECC) (which holds a one percent limited partnership interest) and General Electric Credit Corporation of Tennessee (which holds a 99 percent limited partnership interest). PE-Pittsfield is responsible for facility operations, including all activities and facilities subject to the FPA. Pursuant to a 1990 sale and leaseback transaction, U.S. Bank National Association (Owner-Trustee)³ holds legal title to the Facility and leases its undivided interest therein to Pittsfield. SFG (Owner-Participant), an indirect subsidiary of GECC, holds the beneficial ownership interest in the Facility. As lessee, Pittsfield controls, maintains, and operates the Facility and makes sales of power from the Facility exclusively at wholesale subject to the direction and control of PE-Pittsfield.

4. The Facility began commercial operation on September 1, 1990. In 1988, the Facility was certified as a qualifying cogeneration facility (QF) under the Public Utility Regulatory Policies Act of 1978,⁴ but no longer maintains, nor relies upon, its former QF status. Pittsfield is an exempt wholesale generator (EWG) under section 32 of the Public

² ISO New England Inc., FERC Electric Tariff No. 3, Market Rule 1, section III, Appendix A, at III.A.6.2, First Revised Sheet No. 7434 and section III, Appendix A, Exhibit 2 at 3.3, Second Revised Sheet No. 7461.

³ U.S. Bank National Association is the successor in interest, as Owner Trustee and not on its own behalf, to the Connecticut National Bank, the original Owner Trustee.

⁴ *Altresco-Pittsfield, Inc.*, 42 FERC ¶ 62,021 (1988).

Utility Holding Company Act of 1935,⁵ and has been granted authority to sell power in the wholesale market at market-based rates pursuant to section 205 of the FPA.⁶

5. Until 2003, Pittsfield sold electric power from the Facility to Commonwealth Electric Company (Commonwealth Electric) and Cambridge Electric Light Company (Cambridge Electric) (collectively, the NSTAR Companies), and USGen New England, Inc. (USGenNE) pursuant to long-term power purchase agreements (PPAs). Pittsfield states that it sold 65.6 percent of the Facility's electric output to Massachusetts Electric Company (MECo) pursuant to a 20-year PPA executed on December 9, 1987 and later amended to continue through 2010. Pittsfield maintains that MECo subsequently assigned the PPA to New England Power Company (NEP), an affiliated company, and NEP later transferred its generation assets to USGenNE. Pittsfield asserts that the USGenNE PPA was terminated as a result of USGenNE's bankruptcy proceeding. Pittsfield states that, in a settlement, Pittsfield received a one-time payment, as approved by the United States Bankruptcy Court, in an amount of \$157.5 million plus statutory interest for compensation for the early termination of the PPA.⁷

6. Pittsfield states that it sold the remaining 34.4 percent of the Facility's net electric output power to NSTAR pursuant to two PPAs entered into on February 20, 1992. Pittsfield affirms that the NSTAR Companies' PPAs required Commonwealth Electric and Cambridge Electric each to pay for delivered energy and capacity for 17.2 percent of the output of the plant, through December 31, 2011.⁸

7. Pittsfield explains that the NSTAR Companies' PPAs were terminated pursuant to the 1997 Massachusetts Restructuring Act. The Massachusetts Department of Telecommunications and Energy (MA DTE) approved the NSTAR Companies' Restructuring Plan, requiring the NSTAR Companies to mitigate their transition costs, including the buyout of above-market PPAs. In July 2003, the NSTAR Companies conducted an auction to sell or transfer the PPAs. Pittsfield asserts that it submitted a bid to terminate its PPAs with the NSTAR Companies, which the NSTAR Companies accepted. The Commission accepted Pittsfield's notice of cancellation of the two PPAs,

⁵ *Altresco Pittsfield, L.P.*, 69 FERC ¶ 61,293 (1994).

⁶ *Pittsfield Generating Co., L.P.*, 85 FERC ¶ 61,147 (1998).

⁷ November 30 Filing, Attachment F, Exhibit No. DWS-1 at 7-8.

⁸ *Id.* at 8.

effective October 1, 2004.⁹ Pittsfield states that, as compensation for the early termination of the PPAs, the NSTAR Companies agreed to pay Pittsfield \$85 million, without interest, in monthly installments of \$1.67 million, ending in December 2008.¹⁰

8. Additionally, Pittsfield entered into gas purchase agreements on August 23, 1995 with Talisman Energy Inc. (Talisman) and Home Oil Limited (Home Oil). Pittsfield states that it sold the Talisman gas contract on April 14, 2004 for approximately \$37 million. Pittsfield claims that the supplier under the Home Oil agreement ceased performance in October 2004.¹¹ The total amount of compensation payments that Pittsfield will receive from these four contracts is almost \$280 million.¹²

9. Pittsfield asserts that the Facility was designed to operate under an older market scheme where plants were built to serve the needs of retail electric utility companies under long-term PPAs. Pittsfield states that the Facility is an older plant with a relatively high heat rate and is not located in an ISO-NE congested area. Therefore, Pittsfield argues that wholesale market-based rates for electricity in New England do not compensate Pittsfield for the variable and fixed costs needed to sustain continued Facility operation, and absent the RMR Agreement, continued operation of the Facility cannot be ensured.

10. Pittsfield asserts that its need for the RMR Agreement is due to market conditions, not Pittsfield's costs or operations. Pittsfield argues that it cannot recover its fixed costs or its facility costs¹³ through market-based mechanisms. Pittsfield states that it was able to recover its cost of service for years 2001 through 2004 because of its PPAs. Pittsfield

⁹ *Pittsfield Generating Co., L.P.*, Docket No. ER04-1014-000 (Aug. 18, 2004) (unpublished letter order).

¹⁰ November 30 Filing, Attachment F, Exhibit No. DWS-1 at 9.

¹¹ *Id.* at 11.

¹² Collectively, the compensation payments Pittsfield received for the termination of the PPAs and gas supply agreement are referred to herein as the Termination Payments.

¹³ Facility costs are defined as costs ordinarily necessary to keep a facility available. *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 at P 35 (*Bridgeport I*), order on reh'g, 113 FERC ¶ 61,311 (2005) (*Bridgeport II*), order rejecting reh'g, 114 FERC ¶ 61,265 (2006) (*Bridgeport III*).

argues that, absent those agreements, the Facility would have substantially under-recovered its cost of service during those years, with a total loss of \$136 million.¹⁴ Further, Pittsfield asserts that the investors in the Facility have no plans to invest additional capital that might be needed to sustain its operations, and therefore, absent acceptance of the RMR Agreement, the Facility could be shut down.

11. Pittsfield seeks approval of its proposed RMR Agreement to ensure that the Facility remains available to support system reliability. Pittsfield points to the report of ISO-NE, “ISO New England – System Planning Department, Evaluation of Need for Pittsfield Generating Facility (‘Altresco’), Date: August 22, 2005” (ISO-NE Report) where ISO-NE determined, in consultation with its Independent Market Advisor, that the Facility is needed to support system reliability. According to the ISO-NE Report, without the Facility, under certain system contingencies, there would be unacceptably low voltages in the area. The ISO-NE Report states that a long-term outage of the Berkshire 345/115 kV autotransformer would make operation of this area of the system very difficult under these conditions for an extended period, even with the installation of four proposed capacitor banks that are expected to be installed in the area and in-service by the summer of 2006.¹⁵

12. Pittsfield proposes to collect a cost of service rate in exchange for operating the Facility to provide the services specified in the RMR Agreement. Under the proposed RMR Agreement, Pittsfield will be paid a Monthly Fixed Cost Charge that will be determined in accordance with the formulae set forth in Schedule 4 of the RMR Agreement and the Annual Fixed Revenue Requirement for the Facility as determined by the Commission. Pittsfield maintains that the proposed RMR Agreement is substantially similar to the *pro forma* cost of service agreement contained in ISO-NE’s Market Rule 1 (*pro forma* Agreement), with limited exceptions that reflect the specific circumstances of the Facility and that also reflect changes to the *pro forma* Agreement that have been accepted in prior Commission orders. Under the proposed RMR Agreement, Pittsfield, through Sempra acting as its agent, will submit bids for energy and ancillary services generated by the Facility at the Stipulated Bid Costs of the Facility, which are based on

¹⁴ November 30 Filing at 9.

¹⁵ *Id.* at 2.

its characteristics and operating parameters identified in Schedule 3 of the RMR Agreement.¹⁶

13. Pittsfield proposes a proxy capital structure of 50 percent debt and 50 percent equity and a return on common equity (ROE) of 10.88 percent. Pittsfield proposes an annual revenue requirement of \$36,529,015.¹⁷ However, Pittsfield notes that the calculation of the annual revenue requirement excludes the “extraordinary” revenues and expenses associated with the Termination Payments, consistent with General Instruction No. 7 of the Commission’s Uniform System of Accounts.¹⁸

14. Pittsfield states that the proposed RMR Agreement will expire on the effective date of a Locational Installed Capacity (LICAP) mechanism applicable to the Facility. Further, it affirms that, at any time during the term of the RMR Agreement, if ISO-NE determines that the Facility is no longer needed for reliability, ISO-NE may terminate the agreement upon 120 days’ written notice to Pittsfield.

15. On January 23, 2006, the Director, Division of Tariffs and Market Development – East, acting pursuant to delegated authority, issued a deficiency letter (Deficiency Letter) seeking additional information relating to the proposed RMR Agreement including, *inter alia*, information about the termination of certain PPAs. In response to the Deficiency Letter, Pittsfield made a supplemental filing responding to nine of twelve questions on February 16, 2006 (February 16 Supplemental Filing). Responses to the remaining questions were made by a supplemental filing of ISO-NE on February 22, 2006 (February 22 Supplemental Filing).¹⁹

¹⁶ The Stipulated Bid Costs are self-adjusting formulary rates that reflect agreed-upon formulae and marginal costs for fuel, variable operation and maintenance (O&M), and environmental allowances, as defined in the RMR Agreement and as reported to ISO-NE.

¹⁷ November 30 Filing, Attachment G, Exhibit No. MRK-2, Schedule 1 at 1.

¹⁸ November 30 Filing at 12.

¹⁹ The February 16 Supplemental Filing and February 22 Supplemental Filing are herein referred to collectively as the Supplemental Filings.

Notices of Filings and Responsive Pleadings

16. Notice of Pittsfield's November 30 Filing was published in the *Federal Register*, 70 Fed. Reg. 73,999 (2005), with interventions and protests due on or before December 21, 2005.

17. A timely notice of intervention was filed by the MA DTE. A timely motion to intervene was filed by the Northeast Utilities Companies,²⁰ by their agent Northeast Utilities Service Company, and Select Energy, Inc. A timely motion to intervene and comments was filed by the New England Power Pool Participants Committee (NEPOOL). Timely motions to intervene and protests were filed by: the Attorney General of the Commonwealth of Massachusetts (MA Attorney General); Massachusetts Municipal Wholesale Electric Company, South Hadley Electric Light Department, and Chicopee Municipal Lighting Plant (collectively, the MA Public Systems); and NSTAR Electric & Gas Corporation, on behalf of its affiliated public utility operating companies, Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company (collectively, NSTAR). Untimely motions to intervene were filed by: ISO-NE; and NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC (collectively, NRG Companies).

18. On January 5, 2006, Pittsfield and ISO-NE each filed an answer to select protests. On January 20, 2006, the MA Public Systems and NSTAR filed responses to the answers.

19. On February 10, 2006, ISO-NE filed a Motion to Lodge an answer in Docket Nos. ER05-611-002, *et al.*, in the instant proceeding. On February 27, 2006, the MA Public Systems filed an opposition to ISO-NE's Motion to Lodge.

20. Notices of the Supplemental Filings were published in the *Federal Register*, 71 Fed. Reg. 10,964 (2006) and 71 Fed. Reg. 11,193 (2006), with interventions and protests due on or before March 9, 2006. The MA Public Systems and NSTAR each filed a protest in response to the Supplemental Filings. WMECO filed late comments in opposition to the Supplemental Filings.

²⁰ The Northeast Utilities Companies include: The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO), and Public Service Company of New Hampshire.

Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motions for late intervention of ISO-NE and the NRG Companies, given the early stage of this proceeding, and the absence of any undue delay, prejudice, or burden to the parties. We will also grant the motion to accept the late-filed comments of WMECO, given the absence of any undue delay, prejudice, or burden to the parties.

22. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept the answers of ISO-NE and Pittsfield and the responses to answers of MA Public Systems and NSTAR because they have provided information that assisted us in our decision-making process.

23. We will deny ISO-NE's February 10 Motion to Lodge.²¹ The February 10 Motion to Lodge serves as an untimely supplement to ISO-NE's answer to protests in this proceeding, and offers no new evidence that the Commission should consider in review of ISO-NE's initial application. In any event, the Commission addressed the merits of the February 10 Motion to Lodge in *Bridgeport III*, as discussed below.²² Accordingly, we will also reject the MA Public Systems' answer to the February 10 Motion to Lodge.

B. The Need for an RMR Agreement

1. Reliability Determination

a. Protests and Supplemental Protests

24. Protestors argue that Pittsfield has failed to show that the Facility is needed for reliability. The MA Public Systems assert that the ISO-NE Report does not demonstrate that continued operation of all four Pittsfield generators is the only way, or the cheapest or least disruptive way, to meet the area's reliability needs. The MA Public Systems

²¹ ISO-NE included this filing as an attachment to the February 22 Supplemental Filing.

²² *Bridgeport III*, 114 FERC ¶ 61,265 at P 11-13.

submit that ISO-NE's interpretation of Market Rule 1 to permit negotiation of RMR agreements without considering the possibility of meeting reliability needs through other (potentially less expensive and far less market-disruptive) mechanisms is neither just nor reasonable.²³ The MA Public Systems argue the ISO-NE Report shows that, while the Facility may be needed for voltage support, ISO-NE's analysis is too vague to permit a precise understanding of the scope of the problem or less expensive alternatives that could address it. Similarly, NSTAR argues that Pittsfield is not entitled to RMR cost of service rates based only upon ISO-NE's designation of the Facility as needed for reliability.

b. Answers

25. In its answer, Pittsfield maintains that the record demonstrates that it is eligible for an RMR Agreement. Pittsfield points to the conclusions of the ISO-NE Report and maintains that, contrary to the arguments of protestors, the reliability determination of ISO-NE is sufficient for compliance with Market Rule 1.

26. Similarly, in its answer, ISO-NE maintains that Pittsfield has met its burden of demonstrating the reliability need for the Facility. ISO-NE states that, under the process for reliability determinations in its tariff, its reliability determination is not filed under section 205. ISO-NE states that the MA Public Systems' protest challenging ISO-NE's reliability determination is, in effect, a section 206 complaint challenging Market Rule 1, masquerading as a protest. ISO-NE argues that its reliability determination is a technical finding and that it is not required to determine the least-cost alternative or examine short-term engineering alternatives.

27. The MA Public Systems respond that the ISO-NE reliability determination merely constitutes evidence bearing on the question of whether a unit seeking an RMR agreement is needed for reliability, and the Commission must determine whether such a need exists. Similarly, NSTAR argues that precedent supports the position that ISO-NE's reliability determination is within the scope of the Commission's section 205 review.

c. Commission Determination

28. Under Market Rule 1, ISO-NE has the authority to determine whether a generator is needed for reliability purposes, which is a prerequisite for negotiating an RMR Agreement.²⁴ But, as we stated in *Bridgport III*, the Commission rejects ISO-NE's

²³ MA Public Systems December 21 Protest at 8.

²⁴ *Supra* note 2.

argument that its reliability determination is not required to be reviewed under section 205. The Commission must review Pittsfield's proposed RMR Agreement and its supporting documents, filed pursuant to section 205, as it reviews any other proposed rate schedule and its accompanying cost support. Just as the Commission has the obligation to review the cost support accompanying a proposed rate schedule, it has the same obligation to review the evidence, including ISO-NE's reliability determination, accompanying a proposed RMR agreement.²⁵

29. The ISO-NE Report indicates that ISO-NE designates the Facility as needed for voltage support in an extremely weak part of the system.²⁶ ISO-NE states that a loadflow analysis was performed to evaluate voltage performance in the Pittsfield area. With the Facility shut down, coupled with the contingent loss of the Berkshire 345/115 kV autotransformer, low voltages occur that violate ISO-NE's Operating Procedure-19 and Planning Procedure-3. ISO-NE states that, under the same loadflow analysis but with the Pittsfield Facility available, no voltage violations occur for the load levels evaluated.

30. ISO-NE states in its February 22 Supplemental Filing that North American Electric Reliability Council, Northeast Power Coordinating Council, and ISO-NE criteria do not evaluate contingencies probabilistically, but rather, contingencies are evaluated deterministically. Further, ISO-NE asserts that the bulk power system must be and has been planned and operated under the assumption that each and every contingency, as specified in the relevant criteria, can occur without causing unacceptable voltages, or unacceptable facility loadings or instability.

31. Based on the information provided by Pittsfield and ISO-NE, we find the methodology applied in ISO-NE's reliability determination to be consistent with prior RMR applications, and therefore we accept ISO-NE's reliability determination.

2. Facility Costs Test

32. The Commission has a responsibility under section 205(a) of the FPA to ensure that all rates and charges demanded by any public utility for the sale of electric energy subject to the Commission's jurisdiction shall be just and reasonable. In its review, the Commission "consider[s] the *need* for these contracts, and the justness and

²⁵ *Bridgeport III*, 114 FERC ¶ 61,265 at P 12.

²⁶ November 30 Filing, Attachment D, at 3.

reasonableness of the rates proposed therein, as they are filed.”²⁷ Under the Facility Costs Test, the Commission must determine if the Facility has earned sufficient revenues to recover costs ordinarily necessary to keep a facility available, such as fixed O&M, administrative and general (A&G), and taxes.²⁸ The Facility Costs Test is used only to assess the need for RMR contracts, contracts that the Commission will only approve when no other option exists.

a. Applicability

33. Pittsfield claims that the Facility Costs Test does not apply because it has only been applied to determine RMR eligibility for new, efficient baseload generating units with high capacity factors and relatively low variable costs.²⁹ Pittsfield asserts that “[t]he application makes clear, however, that the ‘unique circumstances’ that led the Commission to apply the facility costs test in *Milford* and *Bridgeport*, are not present in the instant proceeding.”³⁰ In addition, Pittsfield argues that approval of the proposed RMR Agreement is necessary for Pittsfield to remain a “viable” generator.³¹

i. Protests and Supplemental Protests

34. Protestors assert that Pittsfield fails to meet the standards of the Facility Costs Test, and thus is not eligible for RMR treatment. The MA Attorney General maintains that Pittsfield fails to provide evidence to support the assertion that Pittsfield is experiencing financial distress. The MA Public Systems argue that “Pittsfield has not experienced and will not experience real losses, and to the contrary, its filing shows an accounting loss only by ignoring hundreds of millions of dollars of contract buyout revenues.”³² They argue that Pittsfield fails to provide substantial evidence that, absent

²⁷ *Devon Power LLC*, 107 FERC ¶ 61,240 at P 72, *order on reh’g*, 109 FERC ¶ 61,154 (2004), *order on reh’g*, 110 FERC ¶ 61,315 (2005) (emphasis added).

²⁸ *Mystic Development, LLC*, 114 FERC ¶ 61,200 at P 24 n.33 (2006) (*Mystic*) (citing *Bridgeport I*, 112 FERC ¶ 61,077 at P 35).

²⁹ Pittsfield January 5 Answer at 7.

³⁰ *Id.*

³¹ November 30 Filing at 8.

³² MA Public Systems December 21 Protest at 18 (emphasis removed).

an RMR Agreement, the Facility will be shut down. The MA Public Systems note “the prospect of the substantial infusion of funds that Pittsfield will begin to receive come December 1, 2006,” as a result of the proposed LICAP settlement,³³ “belies the premise of this entire proceeding.”³⁴

35. The MA Public Systems also challenge the implication in the February 16 Supplemental Filing that “RMR cost-of-service agreements are entitlements that the Commission has made available as a remedy for alleged market flaws and that are warranted whenever the ISO identifies a unit as needed for reliability.”³⁵

36. In their protests and supplemental protests, the MA Attorney General, MA Public Systems, NSTAR, and WMECO all ask that, if the Commission declines to reject the RMR Agreement, the Commission suspend the agreement, subject to refund, and initiate hearing procedures with respect to the need for, and rates proposed under, the RMR Agreement.

ii. Answers

37. In its answer, Pittsfield maintains that it would have suffered overwhelming losses if it had operated without the benefit of the now-terminated PPAs. Pittsfield also argues that it is not required to present evidence of an imminent shutdown of the Facility absent the RMR Agreement.

38. The MA Public Systems argue that Pittsfield ignores Commission precedent by arguing that the Facility Costs Test is inapplicable, and note that the November 30 Filing itself references the Facility Costs Test. The MA Public Systems state that Pittsfield proposes to maintain the benefits of operating with market-based rate authority without facing any of its risks associated with such activity.³⁶

³³ On March 6, 2006, certain parties to the LICAP proceeding in Docket No. ER03-563, filed a settlement proposing an alternative mechanism based on a Forward Capacity Market design. See *Settlement Agreement Resolving All Issues, Devon Power LLC et al.*, Docket No. ER03-563-055 (Mar. 6, 2006) (LICAP Settlement). The settlement is currently under review by the Commission.

³⁴ MA Public Systems March 9 Protest at 3-4.

³⁵ *Id.* at 4.

³⁶ MA Public Systems January 20 Answer.

iii. Commission Determination

39. We find that the Facility Costs Test properly applies to Pittsfield. While the Commission formalized the Facility Costs Test due to the “unique circumstances” in *Milford* and *Bridgeport*, we did not state that the Facility Costs Test was *only* applicable to the *Milford* and *Bridgeport* RMR proceedings, or to new, efficient baseload generators. Rather, as we stated in *Bridgeport II*, the RMR agreements that the Commission had accepted prior to *Milford* and *Bridgeport* were for older peaking units that were seldom run and frequently subject to mitigation.³⁷ We held in *Bridgeport II* that, based on the support provided in those prior filings (including formal requests to deactivate), it was clear that those older peaking units were not able to earn sufficient revenues to remain in the market.³⁸ We found that *Bridgeport* and *Milford*, as baseload units, were relatively more likely to recover their costs in the energy market. Subsequently, the Commission formally and consistently applied the Facility Costs Test to all generators seeking RMR agreements post-*Milford*, including *Consolidated Edison*,³⁹ which was not a new, efficient baseload generator. The Facility Costs Test is properly applied here in determining whether the proposed RMR Agreement is necessary to keep the Pittsfield Facility available for reliability purposes. Thus, the Commission will compare Pittsfield’s facility costs like fixed O&M, A&G, and taxes to revenues earned in the energy and capacity markets. Under the Facility Costs Test, it appears that Pittsfield has recovered its facility costs through 2004 – a fact that Pittsfield does not dispute in its filing.⁴⁰ However, with the respect to 2005, without considering Termination Payments, it is unclear whether Pittsfield was able to recover its facility costs or will be able to recover its facility costs in the future.⁴¹

³⁷ *Bridgeport II*, 113 FERC ¶ 61,311 at P 12.

³⁸ *Id.*

³⁹ *Consolidated Edison Energy Massachusetts, Inc.* 112 FERC ¶ 61,263 (2005) (*Consolidated Edison*).

⁴⁰ November 30 Filing at 9.

⁴¹ The data supplied for 2005 was only provided through September.

b. Applicability of Termination Payments to the Facility Costs Test

40. As noted, Pittsfield has received or will receive a total of approximately \$280 million as compensation for the early termination of three PPAs and the sale of a gas transportation contract. Pittsfield argues that its Termination Payments are not relevant to determining RMR eligibility for the Facility.

i. Protests and Supplemental Protests

41. Protestors argue that the Termination Payments should be included in determining whether the Facility is recovering and will recover its facility costs. Further, the MA Public Systems, the MA Attorney General and NSTAR maintain that the Termination Payments demonstrate that Pittsfield does not require an RMR Agreement to continue operating the Facility. The MA Public Systems argue that Pittsfield has not explained why it is appropriate to treat the Termination Payments in a revenue analysis as though they did not exist at all. The MA Public Systems further state that consideration of Termination Payments in the Facility Costs Test is necessary for the same reasons that such revenues would be required to be credited against a generator's cost of service if the RMR Agreement were executed.

42. WMECO also maintains that the failure to include the Termination Payments would result in a windfall to Pittsfield, at the direct expense of end-use customers. The MA Public Systems argue that the failure to credit Termination Payments would create an incentive for potential RMR applicants to cash out above-market contracts and then turn to ratepayers for cost of service support. The MA Public Systems allege that the Supplemental Filings makes clear that Pittsfield's voluntary decision to sell its PPAs resulted in Pittsfield's financial situation.

ii. Answers

43. Pittsfield asserts that the Termination Payments are not relevant to determining RMR eligibility for the Facility because Pittsfield is under no obligation to apply such revenue to the continued operation of the Facility.⁴²

44. MA Public Systems and NSTAR argue that the Termination Payments are in fact related to the resource because, if the contracts had not been terminated, revenues would have undisputedly been related to the resource.

⁴² Pittsfield December 5 Answer at 10.

iii. Commission Determination

45. The Commission must determine if an RMR Agreement is the only option available to keep a generator operating for reliability purposes to fulfill the Commission's standard for RMR approval. The concern is that without the proposed RMR Agreement, the Facility will be unavailable to provide reliability service. The Commission recognizes that there are two issues regarding Termination Payments. One issue is whether the Termination Payments should be included as a revenue item under the Facility Costs Test. The other issue is whether the Termination Payments may be considered as "extraordinary items" in the Commission's Uniform System of Accounts, and thus excluded from the cost of service for the RMR Agreement. That issue is discussed in the cost of service section below.

46. Pittsfield argues that the Termination Payments are not relevant to determine Pittsfield's RMR eligibility because Pittsfield is under no obligation to apply such revenue to the continued operation of the Facility. Protestors disagree, arguing that the main basis for an RMR Agreement is that, absent such relief, the Facility cannot continue to operate for reliability purposes and that all sources of revenue should be considered as part of the Commission's determination of need for an RMR agreement.

47. Here, we will set for hearing and settlement judge procedures the issue of whether the Termination Payments should be included as a revenue item under the Facility Costs Test.

c. Applicability of Sale and Leaseback to Facility Costs Test

48. Pittsfield notes in its transmittal letter that on September 14, 1990, it entered into a sale and leaseback transaction in which it sold its undivided interest in the Facility to the Owner-Trustee,⁴³ which holds the interest in the Facility for the benefit of the Owner Participant, SFG, an indirect subsidiary of GECC. Pittsfield notes that the Owner-Trustee holds legal title to the Facility and leases its undivided interest therein to Pittsfield.⁴⁴

⁴³ Pittsfield identifies U.S. Bank National Association as the successor in interest, as Owner-Trustee and not on its own behalf, to the Connecticut National Bank, the original Owner-Trustee.

⁴⁴ November 30 Filing at 7.

i. Commission Determination

49. Pittsfield provides no detail concerning the payment(s) received from the Owner-Trustee for this undivided interest. Of note, the largest component of Pittsfield's proposed fixed O&M expenses of \$29.2 million (out of a total Annual Fixed Revenue Requirement of \$36.5 million) is a \$22.4 million lease expense for the Facility, a value over \$4.5 million greater than Pittsfield's 2005 rate base. As Pittsfield already received payment for its interest in the Facility, it appears that including these significant leasing fees in the Annual Fixed Revenue Requirement leaves the potential for Pittsfield to overstate its facility costs. The Commission sets for hearing and settlement judge procedures the sale and leaseback transaction as applicable to the Facility Costs Test. As discussed below, if the hearing ultimately determines that the RMR Agreement is necessary, we will also set for hearing the cost of service (except for those items summarily decided), including the sale and leaseback issue.

3. Cost of Service

50. As stated previously, the issue of whether the proposed RMR Agreement is necessary for Pittsfield to recover its facility costs is set for hearing and settlement judge procedures as directed below. If the hearing ultimately determines that the RMR Agreement is necessary, then a just and reasonable cost of service rate will need to be established in this proceeding. While the hearing and settlement judge procedures established in this order should consider the entire cost of service, the Commission will rule summarily on certain other aspects of the RMR Agreement, and provide additional guidance for the ordered hearing, as discussed below.

51. Pittsfield argues that the Termination Payments are properly excluded from the revenue requirement as "extraordinary items," pursuant to General Instruction No. 7 of the Commission's Uniform System of Accounts.⁴⁵

a. Comments and Protests

52. Protestors dispute Pittsfield's treatment of the Termination Payments in its cost of service analysis. The MA Public Systems argue that Pittsfield has historically recovered its annual cost of service and, with proper treatment of its Termination Payments, will continue to do so. They assert that the Termination Payments should not be excluded as "extraordinary" revenues. NSTAR argues that Pittsfield's claim that Termination Payments should be excluded from consideration in its cost of service is inconsistent with

⁴⁵ 18 C.F.R. Part 101 at General Instruction 7 (Extraordinary Items) (2005).

prior Commission precedent.⁴⁶ WMECO argues that “the Termination Payments represent a present value calculation of the value of those long term power purchase contracts as compared against current market prices and thus are a proxy for the electricity sales it would have made for the remainder of the contract period,” and therefore, “[t]he Termination Payments are directly related to the projected future sales of electricity from its facility and should therefore be included in a forward looking cost of service analysis.”⁴⁷ The MA Public Systems assert that Pittsfield’s argument that its Termination Payments are irrelevant is flawed, maintaining that one-time Termination Payments must be included in a utility’s cost of service.

53. In addition to their concerns regarding treatment of the Termination Payments, protestors raise additional concerns about Pittsfield’s cost of service calculations. The MA Attorney General argues that Pittsfield fails to provide support for the reasonableness of including general partner fees and the proposed cost of capital in the revenue requirement and for its cash working capital amount included in rate base.

54. Additionally, the MA Public Systems and NSTAR argue that, should the Commission find that an RMR-type arrangement is appropriate for Pittsfield, Pittsfield should be limited to a “going forward cost” alternative. Under this alternative, Pittsfield could recover its actual and reasonable out-of-pocket costs incurred during the term of the agreement. The basis for this argument is that Pittsfield operates in a competitive market, in which no generator is owed or guaranteed recovery of its full cost of service.⁴⁸

55. Moreover, the MA Public Systems argue that, if the Commission decides not to limit the RMR Agreement recovery to going forward costs, the following issues demonstrate that Pittsfield has failed to show that the rates for its RMR Agreement are just and reasonable. It argues that: Pittsfield’s working capital allowance is overstated; Pittsfield has not provided evidence in support of the proposed 50 percent debt/50 percent equity proxy capital structure; Pittsfield should be required to consider the contract

⁴⁶ NSTAR December 22 Protest at 11 (citing *Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.*, 74 FERC ¶ 61,186 at 61,642-43 (1996), *Indicated Shippers v. Sea Robin Pipeline Co.*, 79 FERC ¶ 61,072 at 61,355-56 (1997), and *Trailblazer Pipeline Co.*, 80 FERC ¶ 61,141 at 61,518, *order on reh’g*, 81 FERC ¶ 61,032 at 61,172 (1997)).

⁴⁷ WMECO March 13 Comments at 3.

⁴⁸ NSTAR would define “going forward costs” as fixed O&M and Property Tax expense.

Termination Payments in setting its cost of service; Pittsfield fails to provide information regarding its “Energy Management Agreements” and “short-term tolling” agreements for energy management service; and Pittsfield has failed to provide explanation for the increasing costs of its “Plant In Service” data.

56. NSTAR also maintains that Pittsfield’s cost of service evidence is defective, arguing that Pittsfield has failed to provide any back-up data to support its filed cost of service or revenue forecast calculations. NSTAR’s protest further focuses on the inadequacy of support for Pittsfield’s fixed O&M expenses, plant balances for net plant, lease and management agreements, and QF steam sales. NSTAR also maintains that Pittsfield has failed to support its proposed pre-tax 12.57 percent overall rate of return, and argues that Pittsfield should be required to use an actual rather than proxy capital structure. NSTAR also states that Pittsfield’s proposed cost of long-term debt of 6.65 percent is unrealistically high, and the 10.88 percent ROE is unjustified and unsupported.

57. The MA Public Systems and NSTAR also note that the buy-out payment by Pittsfield to Coral Energy Resources, L.P. and Coral Energy Canada, Inc. (collectively, Coral) in connection with Pittsfield’s release to Coral of firm transportation capacity that Pittsfield had pursuant to contracts with TransCanada PipeLines Limited and Tennessee Gas Pipeline Company is reflected in Pittsfield’s fixed O&M expenses, and the protestors argue that this position is inconsistent with Pittsfield’s analysis of its cost of service presented in the November 30 Filing.

58. NEPOOL states that the proposed RMR Agreement was not reviewed within the NEPOOL participant processes and requests careful scrutiny of the proposed changes, rates, and charges.

b. Answer

59. In its answer, Pittsfield reiterates that the Termination Payments should not be considered a factor in determining Pittsfield’s cost of service rates because revenues from the terminated agreements were not part of Pittsfield’s cost of service. Pittsfield states that the inclusion of the Termination Payments in Pittsfield’s cost of service could result in a windfall to the MA Public Systems and NSTAR and their respective customers, because the ratepayers would receive a double counting of benefits. Pittsfield also challenges the MA Public Systems’ argument that the *pro forma* Agreement requires that the Termination Payments be credited toward Pittsfield’s Monthly Fixed-Cost Charges.

60. Pittsfield maintains that Commission precedent weighs against protestors’ arguments that Pittsfield’s cost recovery should be limited to going forward costs. Pittsfield argues that the application of revenues earned during prior periods to the

calculation of a generator's cost of service rates would discourage generators from entering into RMR agreements.

61. Pittsfield challenges protestors' specific concerns regarding its cost of service calculations. Pittsfield maintains that the Commission has previously accepted the ROE and capital structure used by Pittsfield. Pittsfield also maintains that it has properly calculated its cost of service as to payments to Coral, fixed O&M expenses, and Plant Balances for Net Plant. Finally, Pittsfield responds to protestors' concerns that Pittsfield did not fail to provide actual revenue data and *pro forma* balance sheets.

c. Commission Determination

62. Pittsfield argues that the Termination Payments may be considered as "extraordinary items" in the Commission's Uniform System of Accounts, and thus excluded from the cost of service for the RMR Agreement. However, even assuming Pittsfield is correct as to the accounting treatment, accounting treatment does not necessarily compel a similar result for ratemaking purposes.⁴⁹ Moreover, even if properly accounted for as "extraordinary payments" under the Uniform System of Accounts, the Termination Payments still exist as funds (approximately \$280 million) that could be used to maintain operation of the Facility for reliability purposes rather than implementing a "last resort" RMR Agreement. This is particularly true given the magnitude of these Termination Payments relative to the Annual Fixed Revenue Requirement sought by Pittsfield. As noted by protestors, even if these payments were amortized over a given time period, by themselves these payments would satisfy Pittsfield's Annual Fixed Revenue Requirement for several years.

63. Assuming that the Commission ultimately determines that an RMR Agreement is needed for Pittsfield to recover its facility costs, we set for hearing and settlement judge procedures whether the Termination Payments qualify under the Uniform System of Accounts as "extraordinary payments"; and whether, even if they do qualify as "extraordinary payments," they are properly excluded from the cost of service for ratemaking treatment, under the circumstances presented here, given (among other things) their magnitude, their relationship to the revenues under the terminated contracts, and possible effects on ratepayers.

⁴⁹ *E.g.*, *Shell Pipeline Company LP*, 109 FERC ¶ 61,362 at P 12 (2004) ("It is a long-standing practice that the accounting treatment of an item does not determine the disposition of an item for ratemaking purposes.") (citing *Ozark Gas Transmission LLC*, 101 FERC ¶ 61,205 (2002)); *The Detroit Edison Company*, 96 FERC ¶ 61,284 (2001).

64. Additionally, should the Commission ultimately decide that Pittsfield requires an RMR Agreement to remain available to provide reliability service, Pittsfield is required to support the inclusion of the leasing fee in its proposed cost of service and provide details of this arrangement, including all payments received by the Owner-Trustee for Pittsfield's interest in the Facility.

65. Pittsfield proposes a proxy capital structure of 50 percent debt/50 percent equity and an ROE of 10.88 percent. While we have found that a 10.88 percent ROE is a conservative proxy for merchant generating facilities,⁵⁰ we have also stated that we would prefer to use an actual debt/equity ratio rather than a hypothetical one.⁵¹ Therefore, if it is found in hearing and settlement proceedings that the proposed RMR Agreement is necessary for the Facility to remain available, we will include in the hearing and settlement proceedings a determination of the appropriate debt/equity ratio to be used in calculating Pittsfield's Annual Revenue Requirement.⁵²

66. Consistent with our determinations in other RMR proceedings,⁵³ the Commission will reject the intervenors' request to limit cost recovery to going forward costs. This issue has been discussed in prior proceedings and we will not revisit it here. As we have previously found, full cost of service recovery is consistent with the cost of service provisions of Market Rule 1⁵⁴ and thus appropriate for RMR Agreements. Providing

⁵⁰ *Milford Power Co., LLC*, 110 FERC ¶ 61,299 at 72 (*Milford I*), order on reh'g, 112 FERC ¶ 61,154 (2005) (*Milford II*); *Bridgeport I*, 112 FERC ¶ 61,077 at P 48; *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020 at P 45 (*PSEG I*), order on reh'g, 110 FERC ¶ 61,441, order on reh'g, 113 FERC ¶ 61,210 (2005); *Devon Power Company*, 104 FERC ¶ 61,123 at P 48-49 (2003).

⁵¹ *Milford I*, 110 FERC ¶ 61,299 at P 73; *Mystic*, 114 FERC ¶ 61,200 at P 50.

⁵² In arriving at the 10.88 percent ROE as a suitable proxy ROE for RMR units, the Commission relied on a proxy group of five large, integrated, publicly-traded utilities, rather than on a group of proxy merchant generators. *Milford I*, 110 FERC ¶ 61,299 at P 72.

⁵³ *Consolidated Edison*, 112 FERC ¶ 61,263 at P 40; *PSEG I*, 110 FERC ¶ 61,020 at P 30; *Milford I*, 110 FERC ¶ 61,299 at P 70; *Bridgeport I*, 112 FERC ¶ 61,077 at P 46.

⁵⁴ ISO New England Inc., FERC Electric Tariff No. 3, Market Rule 1, section III, Appendix A, Exhibit 2 at 3.3.1, Second Revised Sheet Nos. 7467-68.

only minimum, marginal, and variable cost recovery may not allow an RMR unit to maintain the facility so that it can continue to operate reliably.

C. **Waiver Requests, Effective Date, Suspension Period, and Term of RMR Agreement**

67. As stated elsewhere in this order, the issue of whether the proposed RMR Agreement is necessary for the Facility is set for hearing and settlement judge procedures. If the hearing determines that the RMR Agreement is necessary, then the ensuing discussion of waivers, effective date, term of RMR Agreement and suspension period will be pertinent.

68. Pittsfield requests waiver of any of the Commission's cost of service data requirements and any of the Commission's other regulations under part 35 as necessary for the proposed RMR Agreement to become effective as requested. Additionally, Pittsfield requests that the Commission grant waiver for the 60-day prior notice requirement⁵⁵ to allow the RMR Agreement to become effective on December 1, 2005, subject to refund.

1. **Protests**

69. Protestors state that, if the Commission does not reject the proposed RMR Agreement, the Commission should suspend the proposed RMR Agreement for the maximum period allowed by law and make it effective subject to refund, and the outcome of an evidentiary hearing with full discovery rights to determine whether the rates that Pittsfield proposes are just and reasonable.

70. NSTAR argues that the Commission should revoke its waiver to Pittsfield of the accounting and other requirement of parts 41, 101 and 141 of the Commission's regulations, on the basis that once Pittsfield is selling power at cost-regulated rates, it should be subject to the same reporting requirements as traditional utilities.

71. NSTAR further maintains that, if the Commission does find that Pittsfield is eligible for RMR relief, the RMR cost of service rates must include conditions that provide for the termination of the RMR rates upon implementation of the transition payments provided for in the recently filed LICAP Settlement on the basis that there is no

⁵⁵ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2005).

reason to continue allowing Pittsfield RMR rates if it is receiving transition period payments under the terms of the LICAP Settlement.⁵⁶

72. The MA Attorney General, NSTAR and WMECO assert that Pittsfield proposes an RMR term that is inconsistent with Market Rule 1. The MA Attorney General argues that the Commission should limit the term of the agreement to extend no later than one year from the effective date of the RMR Agreement. NSTAR and WMECO assert that any RMR relief granted should be limited to a single term ending on the earlier of: (1) the implementation of the LICAP Settlement; (2) implementation of an alternative approved capacity arrangement; or (3) an ISO-NE determination that the resource is no longer needed for reliability, but in no event more than one year from the RMR effective date.

2. Answer

73. Pittsfield argues that the requested part 35 waivers are routinely sought in RMR applications, and are appropriate for such filings. Pittsfield states that it could not file the proposed RMR Agreement until it had concluded negotiations with ISO-NE, and filed as soon as it received the prerequisite confirmation from ISO-NE. Pittsfield proposes that the RMR Agreement expire the day before a LICAP mechanism applicable to the Facility becomes effective. Pittsfield maintains that the termination date of the RMR Agreement is consistent with the *pro forma* Agreement and Commission precedent on this issue. Additionally, Pittsfield states that on at least eight occasions the Commission has confirmed that the appropriate term of RMR agreements coincides with the implementation of a LICAP mechanism and there is no basis to depart from such precedent.

3. Commission Determination

74. Consistent with our precedent,⁵⁷ we will deny the request to revoke waivers of parts 35, 41, 101, and 141 of the Commission's regulations. Although Pittsfield may operate under the RMR Agreement, the Facility will continue to operate generally under market-based rate authority. Under the proposed RMR Agreement, Pittsfield would offset any market revenues against the Monthly Fixed-Cost Charge in the RMR Agreement.

⁵⁶ NSTAR March 9 Protest at 3, 8 (citing LICAP Settlement).

⁵⁷ *Milford II*, 112 FERC ¶ 61,154 at P 39-41; *Consolidated Edison*, 112 FERC ¶ 61,263 at P 48.

75. We will reject the protests on the term of the RMR Agreement as a collateral attack on prior Commission orders. The proposed termination provisions of this agreement are consistent with prior Commission orders, including recently approved RMR Agreements in *Milford*,⁵⁸ *Bridgeport*,⁵⁹ and *Mystic*.⁶⁰ Accordingly, based on this precedent, we will consider RMR agreements that are limited to a single term, expiring when a capacity mechanism is implemented.

76. The Commission has granted waiver of the prior notice requirement where: (a) agreements are intended to permit operation by a generator that is needed to assure system reliability; (b) the applicant may only learn upon very short notice which units will be RMR units; and (c) the applicant might not be able to file 60 days before the commencement of service due to the short notice.⁶¹ Pittsfield and ISO-NE did not complete their negotiations regarding the proposed RMR Agreement until November 30, 2005.⁶² We note that under Market Rule 1, Pittsfield could not file the RMR Agreement until it had received the approval of ISO-NE and completed negotiations of the RMR Agreement. Pittsfield filed the proposed RMR Agreement on the same day negotiations were completed. Consistent with prior RMR proceedings, we will grant waiver of the prior notice requirement, and make the RMR Agreement effective on December 1, 2005, as requested.⁶³

D. Hearing and Settlement Judge Procedures

77. The Commission's preliminary analysis of Pittsfield's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly

⁵⁸ *Milford I*, 110 FERC ¶ 61,299 at P 81; *Milford II*, 112 FERC ¶ 61,154 at P 32.

⁵⁹ *Bridgeport II*, 113 FERC ¶ 61,311 at P 39.

⁶⁰ *Mystic*, 114 FERC ¶ 61,200 at P 64.

⁶¹ *Mirant Americas Energy Marketing, L.P.*, 105 FERC ¶ 61,359 at P 14-16 (2003); *Milford I*, 110 FERC ¶ 61,299 at P 25; *Berkshire Power Company, LLC*, 112 FERC ¶ 61,253 at P 27 (2005) (*Berkshire I*), *order on reh'g*, 114 FERC ¶ 61,099 (2006).

⁶² November 30 Filing, Attachment C, at 1.

⁶³ *Milford I*, 110 FERC ¶ 61,299 at P 25; *Berkshire I*, 112 FERC ¶ 61,253 at P 27; *Mystic*, 114 FERC ¶ 61,200 at P 72.

discriminatory or preferential or otherwise unlawful. Accordingly, we will conditionally accept Pittsfield's proposed RMR Agreement for filing, suspend it for a nominal period, to become effective on December 1, 2005, subject to refund, and set it for hearing and settlement judge procedures, as ordered below. As we have indicated elsewhere in this order, there are several fundamental issues that the hearing and settlement procedures should address including whether the proposed RMR Agreement is necessary for Pittsfield to recover its facility costs, and whether the Termination Payments should be included as a revenue item in the Facility Costs Test. If it is determined that the proposed RMR Agreement is necessary for Pittsfield to remain available for reliability purposes, then the hearing and settlement judge procedures established in this order should consider the entire cost of service exclusive of the issues on which we have ruled summarily. In the consideration of the proposed cost of service, the hearing shall include the accounting treatment of Pittsfield's Termination Payments and whether the Termination Payments should be excluded from the cost of service for ratemaking purposes. Additionally, Pittsfield shall support the inclusion of its leasing fee and establish details of this arrangement, including all payments received by the Owner Trustee for Pittsfield's interest in the Facility. Finally, in the consideration of the proposed cost of service, the hearing and settlement proceedings should determine the appropriate debt/equity ratio.

78. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.⁶⁴ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁶⁵ 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 the commencement of a hearing by assigning the case to a presiding judge.

⁶⁴ 18 C.F.R. § 385.603 (2005).

⁶⁵ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) Pittsfield's proposed RMR Agreement is hereby conditionally accepted for filing, suspended for a nominal period, to be effective December 1, 2005, subject to refund, 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 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 Pittsfield's proposed RMR Agreement, as discussed in the body of this order. However, the hearing will 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 (2005), 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 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 Chief Judge and with the Commission 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 Chief Judge and the Commission 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 judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, within fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Commission, 888 First Street, N.E. Washington, D.C. 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.