119 FERC ¶ 61, 273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tenaska Alabama II Partners, L.P. Docket No. ER07-746-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 12, 2007)

1. In this order we accept for filing Tenaska Alabama II Partners, L.P.'s (Tenaska) proposed rate schedule for providing Reactive Supply and Voltage Control from Generation Sources Service (reactive power), suspend it for a nominal period, and make it effective May 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On April 13, 2007, pursuant to section 205 of the Federal Power Act (FPA),[1] Tenaska[2] filed a proposed rate schedule specifying its revenue requirement for providing reactive power from a generating facility located in Autauga County, Alabama (Tenaska Facility). The Tenaska Facility is a 900 MW, natural gas-fired, combined cycle electric generation facility that is interconnected with the Alabama Power Company's (Alabama Power) transmission system. Tenaska states that the interconnection arrangement

[1] 16 U.S.C. § 824d (2000).

[2] Tenaska is an exempt wholesale generator and is authorized to make wholesale power sales at market-based rates. *Tenaska Alabama II Partners, L.P.*, Docket No. ER01-137-000 (Dec. 8, 2000) (unpublished letter order).

between Tenaska and Alabama Power is governed by an Interconnection Agreement between the parties.[3]

3. Tenaska states that it is submitting a proposed rate schedule for reactive power pursuant to the Interconnection Agreement and Order No. 2003-A.[4] According to Tenaska, the Interconnection Agreement obligates Tenaska to provide reactive power to Alabama Power and provides that Tenaska will receive compensation for such service.[5] Tenaska adds that Order No. 2003-A concluded that if the "Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the [i]nterconnection [c]ustomer."[6] Therefore, because Southern compensates its affiliated generators for reactive power, Tenaska claims that it should also be paid for such service. It states that its proposed revenue requirement is consistent with the *AEP* methodology approved by the Commission.[7]

4. Tenaska seeks to recover an annual revenue requirement of $1,175,954.95 ($97,996.24/month). According to Tenaska, the proposed rate schedule consists of an

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[3] *Southern Co. Servs., Inc.*, Docket No. ER01-464-000 (Dec. 15, 2000) (unpublished letter order accepting Interconnection Agreement for filing); *Southern Co. Servs., Inc.*, Docket No. ER01-1805-000 (May 14, 2001) (unpublished letter order accepting amendment to Interconnection Agreement). Southern Company Services, Inc. (Southern) acts as the agent for its operating companies, including Alabama Power.

[4] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

[5] Tenaska's Transmittal Letter at 3 (*citing* Interconnection Agreement, Appendix A, section A.4.a ("[g]enerator's facility shall have the capability of dynamically supplying at least 0.33 Mvars at the 500 kV Interconnection Point for each MW supplied when the Facility is tested at 102% of nominal voltage")). The Transmittal Letter further states that section A.1 of Appendix A requires Tenaska to maintain voltage schedules provided by Alabama Power.

[6] Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416.

[7] *American Electric Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*).

annual revenue requirement with three components: (1) fixed costs attributable to reactive power production capability (fixed capability component); (2) increased generator and step-up transformer heating losses that result from production of reactive power (heating losses component); and (3) lost opportunity costs in the event the Tenaska Facility is directed to modify its energy output to produce additional reactive power (lost opportunity cost component). Tenaska states that it is a non-utility generator that is not subject to traditional rate regulation. It has sought to avoid any potential issues regarding rate of return in this filing by incorporating into its annual carrying cost a conservative rate and capital structure based on a proxy for Alabama Power's rate of return.

5. Tenaska requests waiver of the FPA's 60-day prior notice requirement so that the proposed rate schedule may become effective May 1, 2007. Tenaska argues that the Commission has regularly granted waivers establishing effective dates less than 60 days after filing for reactive power rate schedules.[8]

II. Notice, Interventions, and Protests

6. Notice of Tenaska's filings was published in the *Federal Register*, 72 Fed. Reg. 20,525 (2007), with protests and interventions due on or before May 4, 2007. Southern, acting as agent for Alabama Power, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies) filed a timely motion to intervene and protest. Tenaska filed an answer to Southern Companies' protest. Southern Companies filed an answer in response to Tenaska's answer.

7. Southern Companies argue that the Commission should reject Tenaska's rate schedule because Tenaska is attempting to recover a reactive capacity charge when Southern Companies do not owe Tenaska any charge for electric power. Additionally, Southern Companies assert that they do not need Tenaska's service. Therefore, they contend that any payment to Tenaska will be a windfall that is inconsistent with the terms of the Interconnection Agreement and does not constitute a just and reasonable rate. Alternatively, Southern Companies request the Commission to suspend Tenaska's proposed rate and set it for hearing. Further, they argue that the Commission should not grant Tenaska's request for waiver of the prior notice requirement. Southern Companies assert that Tenaska failed to provide a valid reason for not complying with the prior notice requirement and that Tenaska will not be harmed by the denial of its requested waiver.

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[8] Tenaska's Transmittal Letter at 6 (*citing, e.g., Tenaska Virginia Partners*, 107 FERC ¶ 61,207 (2004)).

8. In its answer, Tenaska argues that the proposed rate schedule is just and reasonable because: (1) the Commission's reactive power comparability precedent requires a transmission provider to compensate generators for reactive power if the transmission provider compensates its own or affiliated generators for reactive power; (2) the Commission's reactive power precedent does not require a demonstration of "need;" (3) the Commission's reactive power precedent requires generators to use the *AEP* methodology to develop their rates and Tenaska has followed that methodology; and (4) Southern Companies have failed to mount any legitimate challenge to Tenaska's proposed costs or calculations.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept Tenaska's answer to Southern Companies' protest because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Southern Companies' answer to Tenaska's answer and will, therefore, reject it.

11. For good cause shown, we will grant waiver of the prior notice requirement and accept the filing, subject to refund and to the outcome of the hearing and settlement judge procedures, effective May 1, 2007, as proposed.[9]

B. Analysis

12. We find that Tenaska's proposed rate schedule 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. However, we also find that Southern Companies have raised some issues regarding Commission precedent on reactive power that require us to reiterate our policy in this order.

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[9] *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,349 (1992).

1. Rate Methodology

a. Protest

13. Southern Companies challenge Tenaska's rate methodology. They assert that Tenaska's rate schedule should not be based on the *AEP* methodology. They add that Order No. 2003 did not hold that the *AEP* methodology should apply to revenue requirements for reactive power.

14. Further, Southern Companies argue that Tenaska's use of Southern Companies' cost of capital and capital structure in its rates is inconsistent with Commission precedent.[10] They state that the basis for all cost-based rates is the utility's costs, not the costs of another entity. Therefore, they request the Commission to direct Tenaska to use its actual costs of capital and capital structure in developing reactive power charges.

b. Answer

15. Tenaska asserts that Southern Companies' position on Tenaska's rate methodology is a collateral attack on the Commission's policy that reactive power revenue requirements be based on the *AEP* methodology. Tenaska also contends that the Commission established that all generators with actual cost data should use the *AEP* methodology.

16. Additionally, Tenaska asserts that the Commission found the use of the transmission provider's capital structure and cost of capital to be just and reasonable.[11] It states that the *AEP* methodology has evolved to include the use of capital structure and capital costs of the transmission provider with which the generator is interconnected and that the *AEP* methodology applies to independent power producers.

c. Commission Determination

17. We find Southern Companies' argument regarding the *AEP* methodology to be incorrect. In Opinion No. 440,[12] the Commission approved a method presented by AEP

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[10] Southern Companies' Protest at 20 (*citing AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026, at P 153 (2004)).

[11] Tenaska's Answer at 15 (*citing Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,215, at P 86 (2007) (*Bluegrass*)).

[12] *AEP*, 88 FERC ¶ 61,141.

to compensate generators for providing reactive power. AEP identified three components of a generation plant related to the production of reactive power: (1) the generator and its exciter, (2) accessory electric equipment that supports the operation of the generator-exciter, and (3) the remaining total production investment required to provide real power and operate the exciter. Because these plant items produce both real and reactive power, AEP developed an allocation factor to sort the annual revenue requirements of these components between real and reactive power production.[13] Subsequently, the Commission determined that all generators should use AEP's method when seeking to recover reactive power costs.[14] Accordingly, Tenaska's use of the *AEP* methodology in its reactive power rate schedule is consistent with the Commission's directive.[15]

18. In addition, the Commission has explicitly found that merchant generators may use the interconnected utility's authorized rate of return as a proxy.[16] The Commission explained that this approach is just and reasonable because an interconnected utility's return is a conservative estimate of a merchant generator's return.[17] Therefore, we will accept Tenaska's use of the interconnected utility's authorized rate of return as just and reasonable.

2. Needs Test and Capacity

a. Protest

19. Southern Companies argue that Tenaska is seeking to impose a charge on Southern Companies without regard to whether the Tenaska Facility is operational. It states that Tenaska wants to charge Southern Companies for the reactive power production necessary to support the operations of the Tenaska Facility, but also for reactive power that is never produced by the Tenaska Facility or delivered to the transmission system. They argue that no reactive power capacity from the Tenaska

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[13] The factor for allocating reactive power developed by AEP is $MVAR^2 / MVA^2$, where MVAR is megavolt amperes reactive capability and MVA is megavolt amperes capability at a power factor of 1.

[14] *WPS Westwood Generation, LLC*, 101 FERC ¶ 61,290, at 62,167 (2002).

[15] In the hearing ordered below, the parties may argue whether Tenaska has appropriately applied the *AEP* methodology.

[16] *Bluegrass*, 118 FERC ¶ 61,215 at P 86.

[17] *Calpine Fox, LLC*, 113 FERC ¶ 61,047, at P 17 (2005).

Facility is available to them so as to meet the system's peak reactive capacity needs. They also state that, as the transmission provider and control area operator, they do not control Tenaska Facility's availability, *i.e.*, they cannot require Tenaska to commence operations to supply reactive power to meet the system's peak needs. Instead, under the Interconnection Agreement, Tenaska is only required to follow a voltage schedule when the Tenaska Facility is operating.[18] They argue that in order to receive payments, the generator must actually be supplying capacity that the purchaser can utilize.[19] Further, Southern Companies assert that Tenaska's reactive power is not needed to meet the peak reactive needs of Southern Companies' transmission system. As such, whatever reactive power capacity that the Tenaska Facility has is not "used and useful" to Southern Companies. For these reasons, they contend that any payment to Tenaska will be a windfall that is inconsistent with the terms of the Interconnection Agreement and that it does not constitute a just and reasonable rate.

b. <u>Answer</u>

20. Tenaska contends that Southern Companies' argument on the "needs" test is another collateral attack on the Commission's precedent. It argues that Commission precedent rules out the application of a "needs" test when eligibility for compensation is based on the comparability requirement and that a generator is "used and useful" if it is capable of providing reactive power. Therefore, Tenaska asserts that it would be unduly discriminatory to apply a "needs" test to an independent power producer when the test is not applied to affiliate generators.

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[18] The Interconnection Agreement indicates that:

> The following requirements apply to Generator's facility when operated in parallel with the Alabama Power Electric System . . . .When Generator is connected or delivering power to the Alabama Power Electric System, Generator shall operate its generation to meet the voltage schedule . . . .

Interconnection Agreement, Appendix A, section A.1.

[19] Southern Companies add that, unlike Reliability Must-Run generators, Southern Companies have no legal right to require the Tenaska Facility to stand ready and deliver reactive power, but can only require Tenaska to comply with a voltage schedule when the Tenaska Facility happens to be generating. Southern Companies' Protest at 11.

21. Tenaska also challenges Southern Companies' argument based on their lack of control over the Tenaska Facility. It asserts that the Commission has stated that the availability of a generator is not so significant as to eliminate compensation for reactive power. Instead, the Commission has stated that the requirement to pay exists if the reactive power is available from time to time when the generating facility is in operation.

c. Commission Determination

22. Contrary to Southern Companies' assertions, the Commission has ruled out the application of a "needs" test in prior orders.[20] Commission precedent holds that a generator is "used and useful" if the generator is capable of providing reactive power.[21] Additionally, the Commission-approved *AEP* methodology does not include a "needs" test. Rather, it measures a generator's maximum capability to produce reactive power. Thus, if the Tenaska Facility is capable of providing reactive power, consistent with Commission precedent regarding the *AEP* methodology, it is "used and useful." The fact that the reactive power that a generator is capable of producing is not used at some particular time does not render the generator's filed rates based on reactive power capability unjust or unreasonable.[22]

3. Order No. 2003 and Interconnection Agreement

a. Protest

23. Southern Companies assert that Tenaska's proposed rate schedule is not just and reasonable because it violates the filed rate doctrine under the FPA.[23] According to Southern Companies, there is nothing on file with the Commission that obligates them to

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[20] *See, e.g.*, *Calpine Oneta Power L.P.*, 116 FERC ¶ 61,282, at P 26 (2006), *order on reh'g*, 119 FERC ¶ 61,177, at P 29 (2007) (*Calpine Oneta*) (footnotes omitted).

[21] *Calpine Oneta*, 119 FERC ¶ 61,177 at P 22.

[22] *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,192, at P 19 (2006). We note that, according to Order No. 2003-C, a transmission provider "may require the Interconnection Customer to provide reactive power from time to time when its Generating facility is in operation. The requirement to pay exists only as long as the Generating Facility follows the Transmission Provider's reactive power instructions." *Standardization of Generator Interconnection and Procedures*, Order No. 2003-C, 70 Fed. Reg. 37,661 (Jun. 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

[23] 16 U.S.C. § 824d(a) (2000).

compensate Tenaska for reactive power. Moreover, the Interconnection Agreement on file with the Commission specifies that Southern Companies owe Tenaska no charge for the "electric power" produced by the Tenaska Facility,[24] and that the purpose of Tenaska's reactive power operating criteria at the point of interconnection is to ensure that the transmission system and other users of the system are held harmless from the interconnected operations of the Tenaska Facility. Therefore, they argue that there is no contractual basis or a filed rate that dictates Tenaska's reactive power charge upon Southern Companies.

24. Additionally, Southern Companies claim that requirements under Order No. 2003 do not apply to them because the Interconnection Agreement predates Order No. 2003. They argue that Order No. 2003 did not abrogate existing arrangements, and that Order No. 2003-C did not require amendments to existing interconnection requirements.

b. <u>Answer</u>

25. Tenaska argues that Southern Companies misrepresent the reactive power obligations under the Interconnection Agreement. It states that section A of the Interconnection Agreement does not address the impacts of the Tenaska Facility on other customers of Alabama Power, as Southern Companies claim. Rather, section A.1 requires Tenaska to meet voltage schedules established by Alabama Power, with no indication that such schedules are not designed to support the operating conditions of the transmission system. Additionally, Tenaska claims that section 2.1 of the Interconnection Agreement does not bar compensation for reactive power, as Southern Companies argue. Rather, it asserts that section 2.1 is not applicable to reactive power because the section does not specifically refer to "reactive power." Tenaska asserts that "electric power," which is measured in watts, was not intended to include reactive power, which is measured in VARs. Moreover, Tenaska states that it did not file the rate schedule under a provision in the Interconnection Agreement that provides for compensation for reactive

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[24] Southern Companies point to specific Interconnection Agreement language to support their arguments:

> Alabama Power shall have no obligation under this Agreement to pay Generator any wheeling or other charges for electric power and/or energy transferred through Generator's equipment at the Facility to the Interconnection Point. . . .

Interconnection Agreement, Appendix A, section 2.1.

power. Rather, its rate schedule is based on the Commission's reactive power comparability requirement.

26. Tenaska also contends that Southern Companies' argument regarding Order No. 2003 is a collateral attack on the Commission's comparability requirement. It contends that the Commission does not require individual interconnection agreements to be amended to reflect the comparability requirement. According to Tenaska, the Commission, requires that the comparability requirement be followed regardless of the terms and conditions of an individual interconnection agreement.[25] Tenaska argues that the Commission had repeatedly directed transmission providers, including regional transmission organizations and independent system operators, to provide for reactive power compensation of independent power producers where the transmission provider's own or affiliated generation is paid for reactive power.

c. Commission Determination

27. In Order 2003-A, the Commission clarified that if a transmission provider pays its own or affiliated generators for reactive power within the established range, it must also compensate unaffiliated generators in a comparable manner.[26] Tenaska's proposed filing for reactive power compensation is based on this comparability requirement. However, in Order 2003-C, we also clarified that compliance with Order 2003 does not require the abrogation of existing arrangements.[27] Southern Companies interpret section 2.1 of the Interconnection Agreement to preclude compensation to Tenaska for any electric power produced from the facility. Tenaska counters that nothing in the Interconnection Agreement bars compensation for reactive power. We find that the differing interpretations cannot be resolved summarily. Therefore, we conclude that the Interconnection Agreement 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.

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[25] Tenaska's Answer at 6 (*citing Tenaska Virginia Partners*, 107 FERC ¶ 61,207, at P 22 (2004)).

[26] Order No. 2003-A, FERC Stats. & Regs. ¶ 31,146 at P 416.

[27] Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 45.

4. Rate Calculation

a. Protest

28. Southern Companies also assert that even if Tenaska is entitled to recover reactive power capacity charges, such recovery should be limited to recovery under wholesale rates. They state that, while Southern Companies' Open Access Transmission Tariff Schedule 2 provides a reactive power rate charge of $0.11/kW-month, Tenaska's charge is comprised of a reactive power annual requirement of $1,108,058.19. Southern Companies state that a rate calculation, based on a total revenue requirement, assumes that the total amount will ultimately be borne by all users of the transmission system, including by bundled retail. They argue that such a result would be unlawful because Tenaska does not provide reactive power capacity service to bundled retail and the Commission does not regulate bundled retail transmission service.

29. Further, Southern Companies claim that Tenaska's methodology for rate calculation is flawed. They assert that Tenaska failed to include cost data for generator/exciter investment that is consistent with the Uniform System of Accounts (USOA). They also question whether Tenaska has adequate support for its proposed expenses, and believe that Tenaska may have miscalculated the power factor used to calculate revenue requirements. Southern Companies state that it is inappropriate for Tenaska to use the total cost of the portion of the generator/exciter and generator step-up unit (GSU) needed to produce reactive power in the calculation of the reactive service charges rate because a generator unit that supplies megawatts at unity power factor to the point interconnection must have sufficient reactive capability (Mvar) to supply the station service reactive load and the reactive losses in the GSU. Therefore, Southern Companies claim that the reactive portion of the costs for the generator/exciter and GSU components should be reduced by an amount to recognize the use of Mvar by the station service reactive load and the GSU. They also argue that to the extent there is a reactive charge, any fixed capability component of that reactive charge should be based on what was required, not on the capability that Tenaska purchased. Therefore, Southern Companies state that the cost of reactive equipment with capability beyond what is required should not be included in a fixed capability component. Additionally, Southern Companies assert that Tenaska's use of a reactive allocation factor overstates the portion of the facilities that are needed to provide reactive support to the transmission system.

b. Answer

30. Tenaska argues that Southern Companies fail to make any legitimate challenges with respect to cost data for the generator/exciter that is comparable to the USOA or with respect to support for proposed expenses. It asserts that Southern Companies have not alleged that there is a flaw in the costs identified for such equipment or that the expenses

are inconsistent with their experience as owners and operators of generating facilities. Tenaska states that it has developed its reactive power revenue requirements based upon the *AEP* methodology. Tenaska argues that Southern Companies' questions as to how they will recover Tenaska's reactive power revenue requirement is outside the scope of this proceeding. It claims that such issues should be addressed by Southern Companies in their section 205 Schedule 2 amendment filing.

c. Commission Determination

31. We find that Tenaska's rate calculation raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Among other issues, the hearing and settlement judge procedures should explore whether Tenaska should have an opportunity to recover its opportunity costs, as it proposes to do in the filing. The Commission particularly seeks information as to whether the opportunity costs are already being recovered in other rates (for example, real power production costs).[28]

5. Hearing and Settlement Judge Procedures

32. Our preliminary analysis indicates that, except as discussed above, Tenaska's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept Tenaska's proposed rate schedule for filing, suspend it for a nominal period, make it effective May 1, 2007, as requested, subject to refund, and set it for hearing and settlement judge procedures.

33. 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.[29] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[30] The settlement judge

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[28] *See Reliant Energy Wholesale Generation, LLC*, 119 FERC ¶ 61,186 (2007).

[29] 18 C.F.R. § 385.603 (2006).

[30] 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 the date of this order. The Commission's website contains a list of Commission judges and a

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

The Commission orders:

(A) Tenaska's proposed rate schedule for reactive power is hereby accepted for filing and suspended for a nominal period, to become effective on May 1, 2007, 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 Tenaska's proposed rate schedule. 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 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty

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summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(60) days thereafter, informing the Commission and Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding 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)

Kimberly D. Bose,
Secretary.