

136 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PacifiCorp

Docket Nos. ER11-3643-000
ER11-3643-001

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 8, 2011)

1. On May 26, 2011, PacifiCorp filed revisions to its Open Access Transmission Tariff (OATT) under section 205 of the Federal Power Act¹ to: (1) replace its existing stated rates with formula rates for Network Integration Transmission Service, Point-to-Point (PTP) Transmission Service and Schedule 1 (Scheduling, System Control, and Dispatch Service); (2) update PacifiCorp's stated rates for ancillary services schedules 2, 3, 5, and 6; (3) include a new Schedule 3A to provide for Generation Regulation and Frequency Response Service; and (4) update PacifiCorp's transmission real power loss factors under Schedule 10.² Because PacifiCorp's filing raises material issues of fact, we will accept the filing, suspend it for a five-month period, subject to refund, and establish hearing and settlement procedures.

I. Background

2. PacifiCorp states that it owns and operates approximately 16,785 miles of transmission lines in ten states and provides delivery of electric power and energy to approximately 1.7 million retail electric customers in six western states.³

¹ 16 U.S.C. § 824d (2006).

² On June 9, 2011, PacifiCorp filed a "Limited Clarification" of its May 26, 2011 filing in Docket No. ER11-3643-001. The Limited Clarification addresses PacifiCorp's proposed Schedules 3, 3A, 5, and 6. We will address both filings together in this order.

³ PacifiCorp Filing Letter at 4.

3. PacifiCorp is an indirect, wholly-owned subsidiary of MidAmerican Energy Holdings Company. PacifiCorp explains that the company consists of three core business units: (1) PacifiCorp Energy, which manages the electric generation, commercial, trading, and coal mining operations of the company; (2) Pacific Power, which delivers electricity to retail customers in Oregon, Washington, and California; and (3) Rocky Mountain Power, which delivers electricity to retail customers in Utah, Wyoming, and Idaho.⁴

4. PacifiCorp notes that as of December 31, 2010, PacifiCorp's current total transmission plant-in-service is approximately \$4.3 billion. PacifiCorp is interconnected with approximately 80 generation plants and 13 adjacent balancing authorities at approximately 152 points of interconnection.⁵

5. Under its OATT, PacifiCorp provides long-term firm PTP service to ten transmission customers, short-term firm and non-firm PTP service to approximately 140 transmission customers under umbrella agreements, and network service to eight transmission customers, including PacifiCorp Energy. PacifiCorp also provides transmission service to certain "legacy" transmission customers under grandfathered agreements pre-dating PacifiCorp's OATT.⁶ PacifiCorp's current transmission rates were established in 1996, after a "black box" settlement.⁷ The Commission approved a request to modify PacifiCorp's annual transmission revenue requirement in 2002.⁸

II. PacifiCorp's Filing

A. Summary

6. In its filing, PacifiCorp seeks to increase its annual transmission revenue requirement from \$242.3 to \$367.1 million—an increase of approximately 52 percent—and its PTP rate from \$24.30/kW-year to \$24.77/kW-year.⁹ PacifiCorp does not currently charge for Scheduling, System Control and Dispatch Service under Schedule 1

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Docket No. ER96-8-000.

⁸ *PacifiCorp*, 99 FERC ¶ 61,259 (2002).

⁹ PacifiCorp Filing at 9.

of its OATT and proposes to do so at a stated rate of \$0.052/kW-month.¹⁰ PacifiCorp does not currently charge for Reactive Power Supply and Voltage Support Service under Schedule 2, and proposes to do so at a stated rate of \$0.095/kW-month.¹¹ PacifiCorp's customers currently pay for Schedule 3 (Regulation and Frequency Response Service) at the rate of \$0.16/MWh, multiplied by the sum of the total amount of energy delivered plus applicable real losses. PacifiCorp seeks a new rate for Schedule 3 services of \$0.335/kW-month with a proposed percentage obligation of 4.24 percent.¹² Under Schedules 5 and 6, PacifiCorp currently charges for both Spinning and Supplemental Reserves at the rate of \$0.266/MWh multiplied by the amount of hydro-electric energy delivered to PacifiCorp, and \$0.373/MWh multiplied by non-hydro-electric energy delivered to PacifiCorp. PacifiCorp proposes to eliminate the two-tiered rates and proposes rates of \$0.154/kW-month for Spinning Reserves and \$0.131/kW-month for Supplemental Reserves, with a 1.75 percent obligation for both.¹³ PacifiCorp seeks certain waivers of the Commission's regulations.¹⁴ PacifiCorp's proposed OATT revisions and rate proposals are described more fully below.

B. Formula Rate for Network and PTP Service

7. PacifiCorp proposes to replace its currently-effective stated transmission rates with a formula rate. Under the proposed formula rate, network and PTP rates will be adjusted annually, using the company's annual transmission revenue requirement for each year, based on actual cost inputs from PacifiCorp's FERC Form No. 1 data and attached formula worksheets, as well as projected transmission plant additions. The rates will be updated based on formula rate implementation protocols.

C. Return on Equity

8. PacifiCorp proposes a 10.9 percent base return on equity (ROE). PacifiCorp explains that a 10.9 percent return on equity falls between the midpoint and median produced using the Commission's discounted cash flow approach. PacifiCorp also claims that the proposed ROE is supported by reference to alternative ROE benchmarks

¹⁰ *Id.* at 10.

¹¹ *Id.*

¹² *Id.* at 10-11.

¹³ *Id.* at 11.

¹⁴ PacifiCorp Filing at 17-18.

(including, among others, the Capital Asset Pricing Model). PacifiCorp combines its proposed base ROE of 10.9 percent with the 200 basis point adder that the Commission approved for PacifiCorp's Energy Gateway Project to achieve a proposed incentive ROE of 12.9 percent.¹⁵ Consistent with Commission policy, PacifiCorp states that this falls well within the upper end of the discounted cash flow zone for the electric utility proxy group.¹⁶

D. Schedule 2 - Reactive Power and Voltage Support Service

9. PacifiCorp proposes a stated rate for Schedule 2 service of \$0.095 kW-month. PacifiCorp asserts that its proposed Schedule 2 rate was developed assuming the inclusion of all equipment associated with PacifiCorp's reactive power production and the equipment's installed cost. PacifiCorp divides the equipment into four categories: generators and exciters, step-up transformers, accessory electrical equipment, and the balance of plant. The identified cost of the equipment associated with reactive power production is then allocated to reactive power service. PacifiCorp then applies a fixed carrying charge to the cost of the equipment associated with reactive power to calculate the reactive revenue requirement. Finally, PacifiCorp develops unit rates for reactive power by dividing the revenue requirement by a 12-month system coincident peak.¹⁷

E. Schedule 3 - Regulation and Frequency Response Service; and Schedule 3A - Generator Regulation and Frequency Response Service

10. PacifiCorp explains that its transmission customers currently pay a Regulation and Frequency Response Service charge under PacifiCorp's Schedule 3 of \$0.16 MWh multiplied by the sum of the total amount of energy delivered to the points of delivery by PacifiCorp plus applicable real power losses, plus any of the network service customer's network load served from generation internal to the Network service customer's system.¹⁸

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 10.

¹⁸ *Id.*

11. Proposed Schedule 3 provides for stated rates for yearly, monthly, weekly, daily, and hourly service and is generally based on the weighted fixed costs of the units that provide regulation service.¹⁹

12. PacifiCorp also proposes to add a new Schedule 3A to its OATT, Generator Regulation and Frequency Response Service. Schedule 3A is designed to recover the transmission provider's costs of providing generation capacity to manage variability in generator output and will apply to energy scheduled out of PacifiCorp's balancing area authority to other balancing areas. PacifiCorp states that transmission customers are only subject to Schedule 3A if they use transmission service to deliver energy from generators in PacifiCorp's balancing area authority and are not already covered by Schedule 3.²⁰

F. Schedules 5 and 6-Spinning and Supplemental Reserves

13. PacifiCorp's transmission customers currently pay an Operating Reserve – Spinning Reserve charge under PacifiCorp's Schedule 5 of \$0.266 MWh multiplied by the amount of hydroelectric energy delivered to PacifiCorp at the point of generation interconnection and an amount equal to \$0.373 MWh multiplied by the amount of non-hydroelectric energy delivered to PacifiCorp at the point of generation interconnection. In addition, PacifiCorp's transmission customers currently pay an Operating Reserve – Supplemental Reserve charge under PacifiCorp's Schedule 6 of \$0.266 MWh multiplied by the amount of hydroelectric energy delivered to PacifiCorp at the point of generation interconnection and an amount of \$0.373 MWh multiplied by the amount of non-hydroelectric energy delivered to PacifiCorp at the point of generation interconnection.²¹

14. PacifiCorp proposes to eliminate the two-tiered Spinning and Supplemental Reserves charges and instead use stated rates for yearly, monthly, weekly, daily, and hourly service. PacifiCorp's proposed rates for Schedules 5 and 6 are based on the weighted fixed cost of the units providing Spinning and Supplemental Reserves. PacifiCorp's cost study shows a rate of \$0.154/kW-month for Spinning Reserves and a rate of \$0.131/kW-month for Supplemental Reserves. PacifiCorp proposes a 1.75 percent percentage charge for both Spinning Reserves and Supplemental Reserves.²²

¹⁹ *Id.* at 11.

²⁰ *Id.* at 11-12.

²¹ *Id.* at 11.

²² *Id.*

G. Revised Real Power Loss Factor

15. PacifiCorp proposes to update its existing transmission loss factor of 4.48 percent for single system energy losses, which was set forth in Schedule 10 of PacifiCorp's OATT, to 5.0 percent. In addition, PacifiCorp states that the existing loss factor in Schedule 10 of PacifiCorp's OATT, which provides loss factors for use of PacifiCorp's distribution system at a voltage of 34.5 kV (or less) at 3.56 percent will remain unchanged. Use of a combination of the transmission system and distribution system will be charged at 8.56 percent.²³

III. Notice of Filing and Responsive Pleadings

16. Notice of PacifiCorp's May 26, 2011, filing was published in the *Federal Register*, 76 Fed. Reg. 32,182 (2011), with interventions and protests due on or before June 3, 2011. Notice of PacifiCorp's June 9, 2011, filing was published in the *Federal Register*, 76 Fed. Reg. 35,877 (2011), with interventions and protests due on or before June 20, 2011.

17. Tri-State Generation and Transmission Association, Inc., the Idaho Public Utilities Commission, NextEra Energy Resources, Inc., Idaho Power Company, the Utah Division of Public Utilities, Modesto Irrigation District, Western Area Power Administration, Transmission Agency of Northern California, the cities of Santa Clara and Redding, California, the Navajo Tribal Authority, the City of Seattle, Seattle City Light Department, Pacific Gas and Electric Company, and Utah Industrial Energy Consumers (UIEC), filed timely motions to intervene. Bonneville Power Administration (BPA), Iberdrola Renewables, Inc., Industrial Customers of Northwest Utilities (ICNU), Utah Associated Municipal Power Systems (UAMPS), Utah Municipal Power Agency (UMPA), Powerex Corp. (Powerex), Deseret Generation & Transmission Co-operative (Deseret), Inc., American Wind Energy Association (AWEA), and Noble Americas Energy Solutions, LLC (NAES), filed motions to intervene, comments, and protests, and request for suspension, mediation, and deferred evidentiary hearing and settlement judge procedures. PacifiCorp filed two answers, on July 1, 2011, and July 15, 2011.

IV. Interventions**A. Formula Rate for Network and PTP Service**

18. Deseret and UMPA argue that PacifiCorp's formula rate template draws upon data that is unverifiable and unsupported by testimony or supplemental workpapers. They

²³ *Id.* at 12-13.

also assert that there are various instances where PacifiCorp has not supported key aspects of how the annual transmission revenue requirement is developed.²⁴

19. Deseret and UMPA also urge PacifiCorp to adopt sufficient protocols and procedures to ensure that the annual customer review process of PacifiCorp's proposed formula rates prior to implementation is transparent, and that customers are provided a mechanism to test whether certain inputs are just and reasonable. According to BPA, under the timing of PacifiCorp's proposal, updated rates will take effect on June 1 each year, before the proposed customer review process. BPA claims customer involvement would not occur until the following year, which would allow possible miscalculations to persist in rates for a full year before being addressed. Thus, Deseret, UAMPS, and BPA state that they are concerned that some aspects of the protocols may not provide transmission customers with an adequate process or remedies to account for mistakes in the calculation of the formula rate update.²⁵

20. Moreover, PacifiCorp has proposed an annual true-up of its proposed formula rates with interest. However, BPA asserts it is unclear as to whether the proposed interest adjustment would be a refund, one-time surcharge or rolled into next year's rates. BPA claims if PacifiCorp's intention is to roll the adjustment into next year's rates, PacifiCorp's protocols do not explain whether the interest would continue to accrue until the full amount of the interest is realized.

21. BPA contends that PacifiCorp fails to provide sufficient information about the formula rate divisor to determine whether the formula rate will be applied accurately. BPA states that PacifiCorp does not adequately explain how the proposed rate divisor is calculated or include supporting workpapers and therefore, the proposed rate may be unjust and unreasonable. BPA argues that although a value is provided, PacifiCorp's filing does not explain how the 12 Coincident Peak Monthly Peak (MW) value is calculated or provide supporting documentation. In addition, BPA asserts that it is unclear how real power losses were included in the 12 Coincident Peak Monthly Peak divisor. In addition, BPA is uncertain whether (and, if so, how) PacifiCorp included the demand of the existing legacy transmission contracts in the formula rate denominator. BPA argues that the classification of the legacy contracts could have a significant impact on PacifiCorp's transmission rates.²⁶

²⁴ Deseret Intervention at 8; UMPA Intervention at 11.

²⁵ BPA Intervention at 6; UMPA Intervention at 7; and UAMPS Intervention at 30-32.

²⁶ BPA Intervention at 8-9.

B. Return on Equity

22. Deseret and ICNU describe PacifiCorp's proposed 10.9 percent ROE as excessive and not calculated pursuant to established Commission precedent.²⁷ Deseret states that the Commission has found that the best measure of central tendency of ROE results for a proxy group where ROE is being set for a single electric utility of average risk is the median and that the median value should be used as the allowable ROE. Deseret states that the median ROE for PacifiCorp's proxy group is 9.9 percent. Deseret claims that this miscalculation alone results in a \$22 million overstatement of the net zonal revenue requirement in the first year of the new rate period.²⁸

23. BPA argues that the 10.9 percent ROE is excessively high and unreasonable given the current state of the economy.²⁹ In addition, BPA states that when it applied for incentive rate treatment, PacifiCorp acknowledged that it was continuing to explore the proper size and exact location of some segments of the Energy Gateway Project. BPA states that it recognizes that the exact facilities and costs for the Energy Gateway Project are unknown at this time, but BPA is concerned that PacifiCorp does not adequately explain how the incentive rate will be implemented.³⁰ For example, PacifiCorp does not explain the process to determine which facilities and costs are eligible for the incentive rate, when those costs will be included in the rate base, and whether Allowance for Funds Used During Construction will be included in expenses. BPA and ICNU argue that without a process and discovery, it is not possible to determine if the incentive ROE for the Energy Gateway Project is reflected appropriately in PacifiCorp's proposed rates. BPA and ICNU conclude that if the incentive ROE is being applied to more facilities than is appropriate, PacifiCorp's rates may be unjust and unreasonable.³¹

C. Schedule 2 - Reactive Power and Voltage Support Service

24. UMPA states that PacifiCorp's cost support for its proposed reactive power revenue requirement lacks important details.³² In addition, UMPA contends that

²⁷ Deseret Intervention at 4; ICNU Intervention at 4.

²⁸ Deseret Intervention at 4-6.

²⁹ BPA Intervention at 4-5.

³⁰ BPA Intervention at 6; ICNU Intervention at 6-7.

³¹ *Id.*

³² UMPA Intervention at 13.

PacifiCorp's proposed power factors and support for such proposed power factors are not adequately supported. UMPA argues that baseload units typically have power factors in the 0.90 - 0.95 range, yet PacifiCorp proposes to use power factors of 0.85 or lower for many of its units, some of which are very large.³³ UMPA claims that PacifiCorp's proposal appears to have significantly inflated its Schedule 2 rate and further information is needed to permit a detailed review of the basis for the proposed charges.

D. Schedules 3 and 3A-Regulation and Frequency Response Service

25. Powerex disagrees that PacifiCorp should be allowed to charge the same rates for Schedules 3 and 3A, asserting that this would be inconsistent with general cost causation principles.³⁴ According to Powerex, cost causation principles require that the rate for providing service should be based on and reflect the cost the transmission provider incurs for providing that service. Powerex argues that, in the case of Frequency Response Service and Generator Regulation Frequency Response Service, the rates should be calculated based on the amount of regulating reserve capacity that the transmission provider has to hold on behalf of the affected customer.³⁵

26. Powerex also states that PacifiCorp's Schedule 3 and its proposed Schedule 3A do not reflect the fact that the output of some generators is more variable than others. Powerex would impose a much greater burden on PacifiCorp to provide Regulation and Frequency Response Service and Frequency Response Service to those generators.³⁶ Powerex argues that transmission customers that only use Regulation and Frequency Response Service to serve loads should not be expected to absorb the costs associated with providing Regulation and Frequency Response Service to wind generators when there is no benefit to the load-serving transmission customers.³⁷

27. AWEA and Iberdrola contend that PacifiCorp's proposed Schedule 3A charge should be rejected because PacifiCorp has not implemented grid operating procedures, in

³³ *Id.*

³⁴ Powerex Intervention at 8.

³⁵ *Id.* at 7.

³⁶ *Id.*

³⁷ *Id.*

particular, offering sub-hourly transmission scheduling at intervals of less than 15 minutes to reduce the charge.³⁸

E. Schedules 5 and 6-Spinning and Supplemental Reserves

28. Powerex argues that the rates for providing spinning and supplemental reserves services should be based on the cost that the transmission provider incurs to provide these services.³⁹ However, in PacifiCorp's proposed Schedules 5 and 6, customers will be required to purchase an amount of reserves equal to the percentage of the transmission customer's reserved capacity for PTP transmission service. Powerex argues that because the generator's output may be less than the amount of reserved transmission capacity, the proposal may not be consistent with cost causation principles.⁴⁰ The maximum amount of generation that can be scheduled is determined by the customer's on-line generation nameplate capacity. Therefore, Powerex claims that it would be more appropriate for PacifiCorp to charge intermittent generators a rate for providing spinning and supplemental reserves based on the amount of their on-line generation nameplate capacity, rather than the amount of their reserved transmission capacity.⁴¹

F. Revised Real Power Loss Factor

29. AWEA and Iberdrola state that PacifiCorp's transmission losses are excessive and that PacifiCorp has not supported its proposed single-system loss factor increase.⁴² They point out that PacifiCorp's proposed increase to its existing real power loss from 4.48 percent to 5.00 percent amounts to an increase of more than 10 percent. Deseret states that PacifiCorp's proposal to modify its Schedule 10 transmission loss factor of 4.48 percent to 5.00 percent is based on and applied to output quantities or metered sales quantities, while no modification to the distribution system loss factor of 3.56 percent is proposed. As a result, PacifiCorp's proposal is a combined loss factor of 8.56 percent.⁴³

³⁸ AWEA Intervention at 5; Iberdrola Intervention at 1.

³⁹ Powerex Intervention at 15.

⁴⁰ *Id.*

⁴¹ *Id.* at 16.

⁴² AWEA Intervention at 8-9; Iberdrola Intervention at 1.

⁴³ *Id.*

30. UMPA states that PacifiCorp proposes to apply a system-wide energy loss factor of 5.00 percent, which it challenges as being high, particularly given the extensive, and increasing, high voltage transmission lines comprising the PacifiCorp system. UMPA states that PacifiCorp used power flow studies to support the energy loss factor, but did not provide the actual power flow studies as part of its filing.⁴⁴ UMPA contends that this failure alone warrants setting the matter for hearing to permit parties to obtain and review the studies that are said to produce the results that PacifiCorp alleges.⁴⁵

G. PacifiCorp's Answers

31. On July 1, 2011, PacifiCorp filed an answer to the BPA Protest and NAES Protest. PacifiCorp states that BPA and NAES's protests are unsupported and do not warrant hearing and suspension.⁴⁶ PacifiCorp contends that it provided adequate support for its filing, that its proposed protocols and ROE are just and reasonable, and that it has sufficiently described its rate treatment of the Energy Gateway Project.⁴⁷ On July 15, 2011, PacifiCorp filed a second answer to other protests filed and stated its willingness to set the instant case for hearing pending settlement discussions. PacifiCorp repeats its request for a nominal suspension period.⁴⁸

V. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PacifiCorp's answers because they have provided information that assisted us in our decision-making process.

⁴⁴ UMPA Intervention at 19.

⁴⁵ *Id.* at 20.

⁴⁶ PacifiCorp July 1 Answer at 1.

⁴⁷ *Id.*, *passim*.

⁴⁸ PacifiCorp July 15 Answer at 1-2.

B. Suspension, Hearing, and Settlement Judge Procedures

33. PacifiCorp's proposal 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.

34. Our preliminary analysis indicates that PacifiCorp's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas*,⁴⁹ the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, we find that the proposed rates may be substantially excessive. Therefore, we will accept PacifiCorp's proposed rates for filing, suspend them for five months, make them effective December 25, 2011, subject to refund, and set them for hearing and settlement judge procedures.

35. 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.⁵⁰ 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.⁵¹

36. The settlement judge shall report to the Chief Judge and the Commission within 30 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:

⁴⁹ *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁵⁰ 18 C.F.R. § 385.603 (2011).

⁵¹ 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).

(A) PacifiCorp's filing is hereby accepted for filing and suspended for five months, to be effective December 25, 2011, subject to refund, as discussed in the body of this order.

(B) PacifiCorp's requested waiver of section 35.13 of the Commission's regulations is hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) – (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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 the 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.

(E) Within 30 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.

(F) 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 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, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.