

141 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

PJM Interconnection, L.L.C.
American Transmission Systems, Inc.

Docket No. ER12-2399-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 2, 2012)

1. On August 3, 2012, FirstEnergy Service Company (FirstEnergy) filed, on behalf of its affiliated Electric Distribution Companies (EDCs), revisions to Attachments M-1 and M-2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT).¹ FirstEnergy seeks an effective date of June 1, 2012. As discussed below, the Commission accepts and nominally suspends the filing, to become effective August 3, 2012, subject to refund, and establishes hearing and settlement judge procedures.

I. Background and Filing

2. Attachment M-1 governs the hourly energy obligations for both wholesale² and retail³ load serving entities (LSEs) operating in FirstEnergy territories.⁴ The hourly

¹ FirstEnergy explains that pursuant to Order No. 714, PJM submits this filing on behalf of FirstEnergy as part of an XML filing package that conforms with the Commission's regulations. Transmittal Letter at 1, n.1

² FirstEnergy describes "wholesale LSEs" as, for example, municipal utilities or rural electric cooperatives. Transmittal Letter at 2.

³ FirstEnergy describes "retail LSEs" as, for example, "retail generation service providers serving retail customers or retail suppliers providing provider of last resort services where a state retail supplier tariff or other document governing State/PJM interaction is in effect." Transmittal Letter at 2.

⁴ The "FirstEnergy territories" are the territories of the ten FirstEnergy Electric Distribution Companies in PJM, which are: Ohio Edison Co.; Toledo Edison Co.; Cleveland Electric Illuminating Co.; Pennsylvania Power Co.; Metropolitan Edison Co.;

energy obligation is the amount of energy that an LSE is responsible for supplying in each hour of each day in a billing period. FirstEnergy calculates the hourly energy obligations on behalf of all LSEs in the FirstEnergy territories on a day-after-the-fact basis and uploads this data via PJM's eSchedule eSuite application. To determine an LSE's hourly energy obligation, FirstEnergy uses a formula that takes into account, among other things, the "loss factor" and the quantity of energy consumed by the LSE at its point of interconnection as shown on the relevant meter. PJM then uses this information to calculate a monthly market energy interchange bill.

3. FirstEnergy's Attachment M-2 governs the determination of Peak Load Contribution and Network Service Peak Load for each LSE in its respective transmission pricing zone for the PJM planning year. Under this attachment, certain FirstEnergy regulated affiliates⁵ provide PJM with the information necessary to determine the Peak Load Contribution and Network Service Peak Load each planning year for each wholesale LSE operating in the affiliates' respective zones. To calculate the Peak Load Contributions, PJM first uses customer load data to calculate the five highest daily peaks for the summer period and then allocates an appropriate share to each EDC zone. Each EDC in PJM must then allocate a share of its PJM-assigned peak load to each customer on its system and aggregate these peak loads to the LSE level. PJM in turn uses the reported Peak Load Contributions to determine an LSE's capacity obligation. To calculate Network Service Peak Loads in the FirstEnergy zone, PJM first determines the FirstEnergy zone's highest transmission peak value. An LSE's Network Service Peak Load is equal to its total hourly load during the FirstEnergy zone's highest peak value.

4. In the instant filing, FirstEnergy proposes changes that result in what it describes as an "updated, reorganized, and streamlined" Attachment M-1.⁶ According to FirstEnergy, these changes: account for additional FirstEnergy EDCs that have been added since FirstEnergy's mergers with GPU, Inc. and Allegheny Energy; include a "new formula" to determine wholesale LSEs' hourly energy obligation; and eliminate language addressing topics such as telemetered and non-telemetered data, usage factors, monthly adjustments and third-tier reconciliation.⁷ FirstEnergy further states that, similar to Attachment M-1, it proposes to update, reorganize and streamline Attachment M-2 to reflect the recent mergers.

Pennsylvania Electric Co.; Jersey Central Power and Light Co.; Monongahela Power Co.; West Penn Power Co.; and Potomac Edison Co.

⁵ These affiliates are: American Transmission Systems, Inc.; Jersey Central Power and Light Co.; Metropolitan Edison Co.; Monongahela Power Co.; Pennsylvania Electric Co.; West Penn Power Co.; and Potomac Edison Co.

⁶ Transmittal Letter at 2.

⁷ Transmittal Letter at 2.

II. Notice of Filing and Responsive Pleadings

5. Notice of FirstEnergy's filing was published in the *Federal Register*, 77 Fed. Reg. 48,511 (2012), with interventions and protests due on or before August 24, 2012. Allegheny Electric Cooperative, Inc. (AEC) filed a timely motion to intervene and comments in support of the requested June 1, 2012 effective date. Timely-filed motions to intervene and protests were filed by Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, Industrial Groups); American Municipal Power, Inc. (AMP); and Old Dominion Electric Cooperative (ODEC). On September 10, 2012, FirstEnergy filed an answer to the protests of Industrial Groups, AMP, and ODEC. On September 21, 2012, AEC and ODEC filed motions for leave to answer and answers to FirstEnergy's answer. PJM filed a motion to intervene out-of-time on September 12, 2012. We note that since PJM made the instant filing, it is, by definition, a party to the proceeding, and therefore, it was not necessary for PJM to file a motion to intervene. Industrial Groups filed an answer on September 25, 2012, and FirstEnergy filed another answer on September 28, 2012. Buckeye Power, Inc. filed a motion to intervene out of time and comments on September 26, 2012.

A. Comments and Protests

6. Industrial Groups state that FirstEnergy needs to include the methodology for determining retail LSE's Peak Load Contributions and Network Service Peak Loads in Attachment M-2 of the PJM OATT and not in manuals as proposed by FirstEnergy. They argue that this methodology and the ultimate calculations resulting from it will be the primary driver in the capacity and transmission costs assessed to LSEs by PJM and ultimately charged to retail customers. Therefore, because this methodology will affect rates, terms and conditions of service for retail LSEs and their customers, Industrial Groups ask the Commission to direct FirstEnergy to include the methodology in Attachment M-2.

7. Industrial Groups argue that no legitimate basis exists for FirstEnergy to differentiate between retail and wholesale LSEs as FirstEnergy proposes to do. While FirstEnergy appears to distinguish them by referring to retail LSEs as "retail generation service providers serving retail load," while referring to wholesale LSEs as "municipalities" or "rural electric cooperatives," Industrial Groups contend that all LSEs are purchasers of energy, capacity, and transmission at wholesale for resale to the retail customers they have undertaken an obligation to serve. Industrial Groups note that FirstEnergy proposes to treat these two groups of entities differently by including rules for wholesale LSEs in a Commission-approved OATT while including rules for retail LSEs in FirstEnergy manuals posted on FirstEnergy's website. This different treatment amounts to undue discrimination according to Industrial Groups.

8. Industrial Groups also protest FirstEnergy's proposed methodology for determining PLCs for wholesale LSEs because, according to Industrial Groups, this

methodology differs from that used by PJM with respect to the application of “add-backs” that arise as a result of demand response events. They explain that the add-back is a component of the Peak Load Contribution calculation “that ensures that the PJM forecast reflects the load that would have been present on the system” absent certain PJM-directed load management activities.⁸ According to Industrial Groups, PJM’s Manual 19 explains that add-backs occur only under certain defined circumstances. For example, for demand resources registered as Emergency Full, Emergency Capacity Only, and Emergency Energy Only Resources, Manual 19 states that there is an “add-back” of the curtailed load for only the PJM-initiated emergency events and CSP-initiated tests that occur between June 1 and September 30. The FirstEnergy proposal, by contrast, proposes add-backs for “PJM Demand Resource Events” without defining this term any further to make it consistent with Manual 19, according to Industrial Groups. They argue that this inconsistency could lead to the obligations assigned to LSEs in the FirstEnergy EDC zones being different than the total obligations calculated by PJM. Industrial Groups therefore state that FirstEnergy should ensure that its proposal for “add-backs” is consistent with the methodology established in Manual 19.

9. Finally, Industrial Groups assert that FirstEnergy fails to include any explanation or description of the new formula proposed for determining wholesale LSEs’ hourly energy obligation. By failing to make even a prima facie case that the change is just and reasonable, Industrial Customers argue that FirstEnergy has not met its section 205 burden under the Federal Power Act.⁹ Accordingly, they ask the Commission to require FirstEnergy to, at a minimum, provide an explanation of the reasons for the requested change in the formula and its effect on LSEs doing business in the market.

10. AMP states that, in the event that an AMP member begins to allow retail competition, FirstEnergy would not have the ability to perform the hourly energy obligation calculations for that member, despite the proposed Attachment M-1 language that requires FirstEnergy to perform this calculation with “no exceptions.” AMP explains that meter data required for the hourly energy obligation calculation would not be available if an AMP member municipal permits retail competition. Moreover, AMP argues that such a member municipal should decide how to calculate the hourly energy obligation and that, as a Relevant Electric Retail Regulatory Authority, the municipal should not be subject to the provisions of Attachment M-1 for the purposes of allocation of hourly energy charges for the municipal’s retail customers. AMP therefore requests clarification that FirstEnergy will perform this calculation only on behalf of all FirstEnergy retail LSEs.

11. AMP further takes issue with the proposed equation for calculating hourly energy obligations proposed in Attachment M-1. One part of the proposed equation, the

⁸ Industrial Groups Protest at 8.

⁹ 16 U.S.C. § 824d.

Wholesale LSE's Interconnection Hourly Meter Reading (WIMR), represents the quantity of energy consumed by the wholesale LSE at an individual wholesale LSE's interconnection as shown on the meter in a given hour. FirstEnergy proposes that the WIMR will: "reflect the netting out of the wholesale LSE's generation, or demand response capability operating during that hour, if any, plus any third party-owned generation located on the wholesale LSE's side of the Interconnection and wheeled across the wholesale LSE's system to the FirstEnergy EDC's system." AMP questions whether this explanation means that FirstEnergy will net out the third party-owned generation or whether it will add this generation to the quantity consumed by the LSE at the interconnection as shown on the meter. AMP states that the latter interpretation is the accurate one but that it cannot be sure that FirstEnergy intended that meaning. AMP therefore seeks clarification on this matter.

12. If FirstEnergy intended to net out wholesale generation that is wheeled to a FirstEnergy EDC's system, AMP protests this part of the proposal. While AMP agrees that demand response and behind-the-meter generation should be netted out, it argues that wholesale generation wheeled across an LSE's system to the FirstEnergy EDC's system participates in the PJM market and should be added to the quantity consumed by an LSE as shown on the meter. Failing to add this generation, AMP argues, would result in that cost being spread to a smaller amount of load than was actually present during the hour.

13. Finally, AMP requests clarification that revisions in Section III of both Attachments M-1 and M-2 apply only to FirstEnergy retail LSEs, and not to LSEs that are municipal electric utilities. To the extent that these provisions—which state that certain calculations for retail LSEs are determined in accordance with FirstEnergy manuals—would apply to the retail customers of any AMP members, AMP opposes these provisions. AMP argues that some or all of AMP's members may in the future allow retail competition and that, if they do, AMP's members would be the appropriate entities to determine any retail energy allocation for their customers.

14. ODEC states that the proposed revisions do not provide sufficient information for ODEC to determine how the Attachments will be applied to ODEC. ODEC first questions how FirstEnergy will distinguish between retail and wholesale LSEs, noting that it is a wholesale LSE in certain zones but that its member cooperatives Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative provide retail service. ODEC next questions a provision in the proposed definition of Unaccounted for Energy, in which the provision includes a reference to contractually determined losses in any given hour. ODEC asserts that the language in FirstEnergy's proposal does not allow ODEC to determine whether it has contractually determined losses in any given hour. ODEC argues that the calculation and allocation of Unaccounted for Energy needs to identify the relevant contractual agreements. ODEC notes a similar ambiguity with respect to Attachment M-1, which states that wholesale LSE's hourly energy obligation is determined in accordance with "current and approved contractual obligations."

15. ODEC next contends that FirstEnergy does not provide any information with respect to the question of which meters will be used for calculating the WIMR. Furthermore, because FirstEnergy proposes to use an estimated WIMR where FirstEnergy does not obtain the actual WIMR, ODEC asks FirstEnergy to clarify whether the chart of possible reasons and outcomes for the use of an estimated WIMR is exclusive. Finally, ODEC states that the Applicable Loss Factor definition leaves further ambiguity. The proposal defines Applicable Loss Factor as “the contractually or otherwise mutually determined loss factor in effect to account for losses across the applicable FirstEnergy EDC’s system to the LSE’s system.” ODEC notes that its interconnection agreements do not set forth an Applicable Loss Factor, so ODEC does not know, based on the proposal, how its hourly energy obligation will be calculated if there is no Applicable Loss Factor available for the calculation. ODEC notes that proposed Attachment M-2 contains similarly ambiguous provisions.

16. ODEC requests that the Commission accept FirstEnergy’s filing conditioned upon FirstEnergy making a further filing to clarify Attachments M-1 and M-2 as they will be applied to ODEC. ODEC asks the Commission not to set the filing for settlement/hearing procedures.

B. FirstEnergy Answer

17. On September 10, 2012, FirstEnergy filed an answer in response to Industrial Groups, AMP, and ODEC (Answer). In response to Industrial Groups, FirstEnergy states that the methodology for determining retail LSE’s Peak Load Contributions and Network Service Peak Loads is a retail matter subject to state jurisdiction. Therefore, FirstEnergy argues that any inclusion of these retail matters in the PJM OATT (other than a reference to where retail provisions can be found) would be inappropriate. On the issue of add-backs, FirstEnergy contends that the Industrial Groups’ focus on consistency with Manual 19 is misplaced and inaccurate because Manual 19 does not address how the calculation of individual customer Peak Load Contributions. FirstEnergy states that, rather, Section 7 of PJM Manual 18 describes the process for determining aggregate Peak Load Contribution values and how to use those values to calculate Reliability Pricing model Charges due from the supplier. Finally, FirstEnergy disagrees with Industrial Groups’ assertion that FirstEnergy failed to adequately support its new formula for determining a wholesale LSE’s hourly energy obligation. FirstEnergy claims that this formula has not changed and that it has “made no changes to the current methodologies used for making calculations.”¹⁰

18. FirstEnergy agrees with AMP that FirstEnergy should not be required to perform hourly energy obligation calculations for retail LSEs operating in the service territory of

¹⁰ Answer at 17.

AMP members.¹¹ Nevertheless, FirstEnergy asserts that its “hands are currently tied” because, according to FirstEnergy, the manner in which PJM models wholesale LSEs requires FirstEnergy to perform these calculations on behalf of wholesale LSEs.¹² FirstEnergy explains that wholesale LSEs, like retail LSEs, are separately identified or “carved out” of the entire transmission zonal load. Because PJM requires that the transmission zonal load be completely accounted for, FirstEnergy asserts that only FirstEnergy is in a position to ensure that the transmission zonal load is calculated accurately. FirstEnergy submits that, to resolve this issue, wholesale LSEs would ideally report the load within their jurisdictional boundaries and report loads by “carve outs” within their respective boundaries without interaction with FirstEnergy. FirstEnergy clarifies, in response to an AMP request to do so, that Section III to Attachment M-1 and Section III to Attachment M-2 (which describe, respectively, the hourly energy obligation processes for retail LSEs and the determination of Peak Load Contributions, and Network Service Peak Load s for retail LSEs) do not apply to the retail customers of any AMP members. On the issue of behind-the-meter generation, FirstEnergy states that, after consulting with wholesale LSEs, it believes that the best practice is to add back the generation to the most appropriate delivery point.

19. In response to ODEC, FirstEnergy explains that, as a result of ODEC’s acquisition of the Virginia distribution assets of Potomac Edison, two of its cooperatives, Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative, have “stepped into the shoes” of Potomac Edison with respect to the retail load they now serve and with respect to the calculation of the hourly energy obligation, Peak Load Contribution and Network Service Peak Load.¹³ FirstEnergy explains that the proposed provisions concerning wholesale LSEs will apply to Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative to the extent agreements relating to the asset transfer and interconnection do not. FirstEnergy further clarifies that ODEC members will not be subject to an allocation of Unaccounted for Energy. It notes, however, that for purposes of defining Unaccounted for Energy, Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative will be treated as a separate load zone having its own jurisdictional boundary that must be “carved” to zero within the Allegheny transmission zone. On the issue of WIMR, FirstEnergy clarifies that the metering points listed in the ODEC interconnection agreements will not be used as meters for purposes of calculating WIMR under Attachment M-1. It further clarifies that the “chart of possible reasons and outcomes for the use of an estimated WIMR” is not exclusive.¹⁴ Finally, FirstEnergy explains that it does not need to calculate an Applicable

¹¹ No AMP member in any FirstEnergy zone currently permits retail competition within its retail service area. AMP Protest at 5.

¹² Answer at 5.

¹³ *Id.* at 8.

¹⁴ *Id.* at 11-12.

Loss Factor for ODEC service territories because it can meter the jurisdictional boundaries of the ODEC service territories in Virginia using existing meters, which will allow FirstEnergy to measure the total ODEC load, including losses.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding, and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of FirstEnergy, ODEC, Industrial Groups, and AEC because they have provided information that assisted us in our decision-making process.

B. Request for Waiver

22. FirstEnergy requests waiver of the Commission's 60-day prior notice requirement to allow a retroactive effective date of June 1, 2012. FirstEnergy states that good cause exists to grant the waiver. First, according to FirstEnergy the filing does not result in any change in rates. Second, the proposed June 1, 2012 effective date will coincide with the rate year (June 1 to May 31) used for FirstEnergy's transmission formula rate in PJM. FirstEnergy also states that it has negotiated and reached agreement with affected customers as to the effective date. AEC states in its intervention that it fully supports FirstEnergy's request for the June 1, 2012 effective date. No intervenors have expressed opposition to the proposed effective date.

23. We will grant waiver of the 60-day notice requirement and suspend FirstEnergy's filing to become effective as of August 3, 2012, subject to refund. We deny FirstEnergy's request to make its filing effective June 1, 2012. The requested waiver of the 60-day notice requirement does not permit an effective date that date predates the date of the filing.¹⁷

¹⁵ 18 C.F.R. § 385.214 (2012).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2012).

¹⁷ *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 795 (D.C. Cir. 1990).

C. Hearing and Settlement Judge Procedures

24. FirstEnergy states in its filing that it proposes only to update, reorganize, and streamline Attachments M-1 and M-2.¹⁸ It further notes in its answer that it is proposing “no changes to the current methodologies used for making calculations.”¹⁹ Nevertheless, our preliminary analysis suggests that FirstEnergy does propose in the instant filing to make substantive changes to the manner in which it calculates the figures contained in Attachments M-1 and M-2. For example, FirstEnergy proposes a revision in Attachment M-1 governing loss factors. In the existing OATT, FirstEnergy appears to use stated loss factors for the various EDCs, while the proposed OATT language defines the Applicable Loss Factor as a “contractually or otherwise mutually determined loss factor.”²⁰ No explanation or acknowledgment of this change appears in FirstEnergy’s filing. FirstEnergy furthermore states that the formula for determining hourly energy obligations “has not changed,”²¹ despite stating in its filing that its revisions include “a *new formula*, which FirstEnergy uses to determine wholesale LSEs’ hourly energy obligation.”²²

25. In addition to these discrepancies, among others, protestors have raised several questions of material fact that cannot be resolved based on the record before us. On the issue of the proposed formula for calculating the hourly energy obligation, one party questions FirstEnergy’s definition of WIMR, which is one of the inputs in the formula. In particular, AMP questions how the WIMR will account for certain third-party owned generation located on a wholesale LSE’s side of the interconnection and wheeled across the system to the FirstEnergy EDC’s system. How FirstEnergy currently treats such resources, and whether FirstEnergy is proposing a change to that treatment, is not clear to us. ODEC also raises several customer-specific questions about how the Attachments will apply to it given the interconnection agreements into which ODEC has entered. We find that these questions, and the remaining questions raised by protestors, are appropriately addressed in the hearing and settlement judge procedures ordered below.

26. Our preliminary analysis therefore indicates that the proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed revisions for filing, nominally suspend them, and make them effective August 3, 2012, subject to refund, and establish hearing and settlement judge procedures. ODEC requested that the Commission accept FirstEnergy’s filing effective June 1, 2012,

¹⁸ Filing at 2.

¹⁹ Answer at 17.

²⁰ Proposed Attachment M-1, Section II.

²¹ Answer at 17.

²² Filing at 2 (emphasis added).

but order FirstEnergy to make a compliance filing to clarify how the revisions to the Attachments will apply to ODEC. Similarly, Industrial Groups requested that FirstEnergy explain its changes to the formula for LSEs' hourly energy obligations in a compliance filing. Since we are setting this matter for hearing and settlement judge procedures, the substance of these requests can be discussed in those proceedings and a further compliance filing is not necessary. Therefore, we deny the requests of ODEC and Industrial Groups.

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²³ 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.²⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief 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) FirstEnergy's proposed revisions to Attachments M-1 and M-2 of the PJM OATT, as incorporated in the filed revised tariff provisions, are hereby accepted for filing and nominally suspended, effective August 3, 2012, subject to refund and to the outcome of the hearing and settlement judge procedures ordered below, as discussed in the body of this order.

(B) FirstEnergy's request for waiver of section 35.13 of the Commission's filing regulations is granted in part and denied in part, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the

²³ 18 C.F.R. § 385.603 (2012).

²⁴ 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 available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning FirstEnergy's proposed tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), 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.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief 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 fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.