

142 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of New Mexico

Docket Nos. ER13-685-000
ER13-685-001
ER13-687-000
ER13-690-000

ORDER REJECTING IN PART, CONDITIONALLY ACCEPTING
IN PART AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 1, 2013)

1. On December 31, 2012 and January 2, 2013¹ Public Service Company of New Mexico (PNM) submitted for filing, under section 205 of the Federal Power Act (FPA),² revisions to its Open Access Transmission Tariff (OATT), its Electric Coordination Tariff (Coordination Tariff), and two pre-OATT bilateral contracts (Bilateral Contracts).³ PNM submitted these revisions to implement a cost-based formula rate. In this order, we reject in part and conditionally accept in part PNM's proposed revisions to its tariffs and Bilateral Contracts and suspend them for five months, to become effective on August 2, 2013, subject to refund. We also establish hearing and settlement judge procedures and

¹ On January 14, 2013, PNM filed an amendment in Docket No. ER13-685-001 to make eTariff-related corrections. This amendment made no substantive changes to the filing. On January 30, 2013, PNM submitted a clarification to the transmittal letter of the January 14 filing.

² 16 U.S.C. § 824d (2006).

³ PNM provides transmission service pursuant to the Bilateral Contracts to El Paso Electric Company (El Paso) and Western Area Power Administration (Western), under FERC Rate Schedule No. 9 and FERC Rate Schedule No. 86, respectively.

consolidate the instant proceedings for purposes of hearing and settlement procedures, as discussed below.

I. Background

2. PNM is a vertically-integrated electric utility involved in the generation, transmission, and sale of electricity in various wholesale markets in the western United States. PNM is also engaged in the generation, transmission, distribution, and sale of electricity at retail in the state of New Mexico. PNM owns or leases electric transmission lines within New Mexico and Arizona that are interconnected with lines owned by utilities that serve Arizona, Colorado, New Mexico, Utah, and Texas. PNM provides network integration and point-to-point transmission services pursuant to its OATT on file with the Commission.

3. PNM's Coordination Tariff provides for the sale of electric capacity and energy at "up to" cost-based rates. A customer taking service under the Coordination Tariff may request that PNM acquire, on the customer's behalf, any necessary transmission and ancillary services under PNM's OATT.⁴ Attachments A-1 and Attachment B-1 of the Coordination Tariff restate, for reference purposes, the rates for transmission and ancillary services set forth in PNM's OATT.

4. The Commission accepted PNM's uncontested cost-based rate settlement on January 2, 2013 in Docket No. ER11-1915-000, *et al.* The Settlement increased the stated rates in PNM's OATT, Coordination Tariff and the Bilateral Contracts,⁵ establishing an Annual Transmission Revenue Requirement (ATRR) of \$79.5 million, a point-to-point rate of \$2.01/kW-month for firm and non-firm transmission service, and a real energy losses rate of 3.20 percent.

II. PNM's Filings

5. PNM proposes to switch from stated to formula rates for transmission services so as to better reflect changes in PNM's transmission revenue requirement, and provide numerous benefits including allowing for timely recovery of PNM's transmission investment, reducing rate shock to customers associated with periodic stated rate cases,

⁴ PNM notes that there are currently no customers under the Coordination Tariff. PNM December 31, 2012 Filing (PNM Filing), Exhibit No. PNM-6, Michael L. Edwards Testimony at 25.

⁵ *Public Service Co. of New Mexico*, 142 FERC ¶ 61,004 (2013).

and reducing the costs of litigation for both PNM and its customers.⁶ PNM states that it plans to invest in numerous transmission projects over the next five years, and that the proposed formula rate will eliminate the need for multiple FPA section 205 filings to recover those costs. PNM also contends that its proposal is consistent with other formula rates accepted by the Commission.⁷

6. PNM requests that its proposed revisions be made effective on March 2, 2013, without suspension or hearing, contending that it based its formula rate on others accepted by the Commission. PNM states that the Commission has ordered nominal suspension periods in cases where transmission providers switched from stated transmission rates to formula rates.⁸ PNM also requests waiver of the Commission's cost support regulations under section 35.13, including waiver of the full Period I and Period II data requirements, consistent with other formula rate filings based on Form No. 1 data.

A. Formula Rate

7. PNM explains that its proposed formula rate is comprised of three main components contained in Attachments H-1, H-2, and H-3, to be added to its OATT. The Current Year Formula Rate template in Attachment H-1 calculates the ATRR and provides the basis for the transmission rates. The Implementation Protocols in Attachment H-2 describe the annual update process, the true-up calculation and the process through which Interested Parties can request further information about certain aspects of the inputs in the Current Year Formula Rate. Attachment H-3 sets forth PNM's proposed criteria for determining whether to include the costs of radial lines in its ATRR. PNM includes a comparison of its current ATRR and transmission rates with the ATRR and transmission rates produced by the formula rate using 2011 FERC Form No. 1 data, which are proposed to become effective on March 2, 2013.⁹ PNM's calculations

⁶ PNM Filing, Transmittal Letter at 5-6.

⁷ *Id.* at 6.

⁸ PNM Filing, Transmittal Letter at 20 (citing *Idaho Power Co.*, 115 FERC ¶ 61,281, at P 30 (2006); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 51 (2005), *reh'g denied*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 75 (2007); *Trans Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 94 (2007), *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 69 (2007); *Mich. Elec. Transmission Co.*, 113 FERC ¶ 61,343, at P 30 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006)).

⁹ PNM Filing, Exhibit No. PNM-6, Michael L. Edwards Testimony at 82.

show that the formula will produce an ATRR of about \$82.1 million compared to the Settlement Agreement ATRR of \$79.5 million.¹⁰ PNM proposes that the rate for long-term firm and non-firm point-to-point transmission services will change from \$2.01/kW-month to \$2.34/kW-month, and the rate for hourly interruptible service will increase from \$4.83/MWh to \$5.63/MWh.

8. PNM explains that the formula includes traditional cost of service components such as rate base, operating expenses, revenue credits, and a return, and will be updated annually based on the prior year's FERC Form No. 1 data and transmission projects that are scheduled to go into service in the current calendar year.¹¹ PNM states that, in order to accommodate the timing of its proposal, it will populate the Current Year Formula Rate with its 2011 FERC Form No. 1 data to calculate the rates to become effective on March 2, 2013, without including any projections for transmission projects. PNM explains that, beginning June 1, 2013, and for each year thereafter, the formula will use FERC Form No. 1 data as well as projected new transmission plant additions that have gone, or are expected to go, into service in the current year.¹² PNM states that the formula also includes credits for additional transmission revenue that PNM credits back to customers based on actual revenues included in FERC Form No. 1.

9. PNM states that the Implementation Protocols provide for the annual update process, the true-up calculation and the process through which interested parties can request further information about certain aspects of the inputs in the Current Year Formula Rate. PNM states that its Implementation Protocols are modeled after the protocols in a formula rate filed by Arizona Public Service Company and accepted by the Commission.¹³ PNM explains that it will make the cost estimates and supporting data available to interested parties by May 1 of each year and will hold a meeting to discuss the cost estimates no later than May 25 of each year, with the new rates to become effective June 1.

10. PNM states that the Implementation Protocols provide the timelines for submitting requests for information and for any challenges to PNM's calculations, and for PNM's

¹⁰ PNM also includes in its comparison the rates originally filed in Docket No. ER11-1915-000, *et al.* since the Commission had not yet approved the Settlement Agreement as of the date of this filing.

¹¹ *Id.* at 7.

¹² *Id.* at 7-8.

¹³ *Id.* at 13 (citing *Arizona Public Service Co.*, 124 FERC ¶ 61,088 (2008)).

responses. PNM explains that any difference between the revenue requirement collected under the formula rates and PNM's actual revenue requirement will be incorporated into the next formula rate calculation, with interest. PNM states that it proposes to determine the true-up amount after its FERC Form No. 1 reports become available and to post the true-up and related calculations on its website by no later than May 1 of each year.

B. Acquisition Adjustment

11. PNM proposes to include an acquisition adjustment in its formula in connection with PNM's purchase of ownership interest in the Eastern Interconnection Project transmission facilities in order to terminate a lease on the facilities. PNM states that the acquisition provided clear benefits to its customers, because terminating the lease and acquiring the ownership interest enabled PNM to: (1) engage in transactions that would not have been possible; and (2) avoid litigation expenses regarding the offering of post-lease transmission services over the facilities. PNM proposes to include approximately \$8.5 million and the annual amortization.

C. Return on Equity

12. PNM proposes to use a return on common equity (ROE) of 10.81 percent, which PNM states can only be changed in a filing under FPA section 205. PNM explains that its proposed ROE is based on the midpoint of the range of reasonableness produced by applying the Commission's Discounted Cash Flow (DCF) analysis to a proxy group of electric utilities with comparable risk and credit metrics.¹⁴ PNM contends that the midpoint is a more reasonable reflection of the business and financial risks faced by PNM than an ROE based on the median of the proxy group and argues that this method better reflects required returns for similarly situated utilities. PNM argues that relying on the median ROE would put substantial downward pressure on key measures of PNM's creditworthiness and financial integrity.¹⁵

III. Notice and Responsive Pleadings

13. Notices of PNM's December 31, 2012 filings in Docket Nos. ER13 ER13-685-000 and ER13-687-000 and PNM's January 2, 2013 filing in Docket No. ER13-690-000 were published in the *Federal Register*, 78 Fed. Reg. 2390 and 78 Fed. Reg. 2382 (2013), respectively, with interventions and comments due on or before January 22 and January 23, 2013. On January 3 and January 8, 2013, respectively, Navopache Electric

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 17.

Cooperative, Inc. (Navopache) and Western filed timely motions to intervene and requests for extension of time to file comments. Subsequently, the Commission extended the comment date to February 1, 2013.¹⁶ Notice of PNM's January 14, 2013 amendment was published in the *Federal Register*, 78 Fed. Reg. 5175 (2013), with interventions and comments due on or before February 1, 2013.

14. Timely motions to intervene were filed by Iberdrola Renewables, LLC, Navajo Authority, NextEra Energy Resources, LLC, Powerex Corp., and Xcel Energy Services, Inc. Timely motions to intervene and protest were filed by El Paso Electric Company (El Paso), County of Los Alamos, New Mexico (Los Alamos), Navopache, Tri-State Generation and Transmission Association, Inc. (Tri-State), and Western. Late-filed motions to intervene were filed by Tucson Electric Power Company (Tucson Electric) and by Arizona Public Service Company (Arizona PSC). On February 19, 2013, Tri-State and PNM each filed motions for leave to file an answer and answers.

15. El Paso, Los Alamos, Navopache and Western argue that the proposed filings should be set for hearing and should be suspended for the maximum five month period.¹⁷ Western argues that, although on its face PNM's increase calls for a seemingly reasonable increase of \$2.9 million or a 3.64 percent increase in ATRR, this number is misleading.¹⁸ Western notes that PNM's current ATRR of \$79.5 million was approved on January 2, 2013, just a few short weeks before the filing of Western's protest, and was the result of settlement in PNM's last rate case. Western argues that none of the issues presented in that case constitute precedent, and that many of those same issues are present in this case and will require new evaluation in light of PNM's request to move to a formula rate. Western further argues that what may have been acceptable as part of a settlement in a stated rate case may not be acceptable in a formula rate that is unlikely to be evaluated in upcoming years. Western states that its preliminary evaluation of PNM's proposed ATRR concludes that this ATRR is overstated by approximately \$23.5 million.¹⁹ Los Alamos states that it endorses Western's arguments.²⁰

¹⁶ See *Notice of Extension of Time*, Docket No. ER13-685-000, *et al.* issued January 9, 2013.

¹⁷ El Paso Protest at 3, Los Alamos Protest at 1, 6-7, Navopache Protest at 1, and Western Protest at 2-3, 26-27.

¹⁸ Western Protest at 2.

¹⁹ *Id.*

²⁰ Los Alamos Protest at 4.

16. The protests raise diverse and extensive objections to PNM's proposed formula and protocols, and in many instances note that these objections are incomplete, because PNM has not provided sufficient detail to allow full review of its formula components.²¹ The protestors argue for full discovery to explore these issues. In addition to identifying a large number of questions that should be explored at hearing, several of the protests also argue that the Commission should make preliminary determinations on several issues, before hearing, based on the pleadings.²² For example, they contend that the Commission should summarily find that PNM should use the median ROE instead of the midpoint, and exclude acquisition adjustments, including the acquisition adjustment for the Eastern Interconnection Project. Navopache also argues that the Commission should summarily: 1) reject PNM's proposal to convert third-party transmission service costs; 2) remove from its formula rate protocols any deadline that would either preclude transmission customers from identifying errors; 3) reject PNM's proposal to impute revenue requirements associated with PNM's provision of transmission service to the Western Area Power Administration; 4) reject PNM's proposed loss factor of 3.58 percent and direct PNM to use the settlement rate of 3.20 percent; and 5) reject PNM's proposed short-term formula rate that is to be effective for only three months.

17. Tri-State contends that because the formula rate may result in decrease in the current revenue requirement, the Commission should suspend the rates for a nominal period. Also, Tri-State contends that because the formula rate is likely to produce rates that are lower than the currently-effective rates, the Commission should institute an FPA section 206 proceeding and establish a refund effective date of March 2, 2013.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commissions Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also will allow the late-filed interventions by Tucson Electric and Arizona PSC given their direct interests in the proceeding, the short delay before they sought intervention, and the apparent lack of prejudice to other parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the

²¹ Western Protest at 3, Los Alamos Protest at 4, 6, El Paso Protest at 3-6, Navopache Protest at 30-31, Tri-State Protest at 22-24.

²² Navopache Protest at 2-25, Tri-State Protest at 2-22, El Paso Protest at 6.

answers filed by Tri-State and by PNM on February 19, 2013 and will, therefore, reject them.

19. The Commission's practice is to consolidate proceedings where the issues are closely intertwined with each other.²³ PNM notes that it filed its proposed changes to its OATT, Coordination Tariff, and Bilateral Contracts in three separate dockets due to the technical requirements of the Commission's eTariff system. In addition, the rates under the Coordination Tariff and the Bilateral Contracts are based on PNM's OATT rates. The Commission finds that the issues that may be raised concerning the proposed revisions to the OATT, Coordination Tariff, and Bilateral Contracts are likely to be related, and this warrants consideration of all three proceedings jointly for purposes of settlement, hearing and decision. Consequently, the Commission will consolidate these proceedings for purposes of settlement, hearing and decision.

B. Formula Rate and Protocols

20. PNM's formula rate proposal and protocols raise 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. Our preliminary analysis indicates that PNM's proposed revisions to its OATT, its Coordination Tariff, and Bilateral Contracts 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 PNM's proposed revisions to its OATT, its Coordination Tariff, and Bilateral Contracts, suspend them for the maximum five-month period, to be effective August 2, 2013, subject to refund, and set them for hearing and settlement judge procedures.

21. In *West Texas Utilities Company*,²⁴ we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. Accordingly, we will suspend PNM's proposed rates for five months, to become effective August 2, 2013, subject to refund.

22. We reject Tri-State's request that the Commission institute an FPA section 206 proceeding to establish a refund effective date. Under PNM's proposed formula rate, the true-up mechanism ensures that PNM's charges reflect actual cost. Therefore, no

²³ *Missouri River Energy Servs.*, 124 FERC ¶ 61,309, at P 39 (2008).

²⁴ 18 FERC ¶ 61,189 (1982) (*West Texas*).

section 206 proceeding is necessary. To the extent that Tri-State's concern is with PNM's current rate, it lies beyond the scope of PNM's instant filing.

23. While we are setting these matters for a trial-type evidentiary hearing, we encourage 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.²⁵ 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.²⁶ The settlement judge shall report to the Chief Judge and the Commission within sixty (60) days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide commencement of a hearing by assigning the case to a presiding judge.

C. Acquisition Adjustment

24. PNM contends that its acquisition of the interest in the Eastern Interconnection Project facilities and termination of the lease provided a number of benefits to its customers, including a quantifiable decrease in rates and improved economies of operation. Protesters argue that PNM has failed to make the detailed showing of quantifiable ratepayer benefits required to authorize recovery of an acquisition adjustment in rate base. Navopache argues that PNM's evidence of benefits is based on speculative estimates and forecasts, and does not satisfy the Commission's high burden.

25. The Commission has only allowed acquisition adjustments in cost-based rates in extremely narrow circumstances where an applicant can demonstrate that the acquisition provides specific, measurable, and substantial benefits to ratepayers.²⁷ In *Montana-*

²⁵ 18 C.F.R § 385.603 (2012).

²⁶ 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>).

²⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 258 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007). *See also Longhorn Partners Pipeline*, 82 FERC ¶ 61,146 (1998); *Minnesota Power & Light Co.*, 43 FERC

(continued...)

Dakota,²⁸ the Commission provided guidance on what showing needs to be made to warrant an acquisition adjustment. While that proceeding involved a natural gas pipeline, its principles apply equally here. In *Montana-Dakota*, the Commission stated:

The Commission has recognized that a purchaser may include the acquisition adjustment in its rate base upon a showing that the excess paid over the depreciated original cost results in specific dollar benefits to the pipeline's customers. These benefits may include "decreases in rates, improved services or economies in operation which are clearly related and solely the result of the acquisitions." Further, the benefits must be tangible and nonspeculative.²⁹

26. In *Minnesota Power*,³⁰ the Commission stated that "recovery of the acquisition costs will turn on an analysis of the benefits conferred on ratepayers and the overall prudence of its investment decision[.]"³¹ In *Duke Energy Moss Landing LLC*,³² the Commission emphasized that "recovery of an acquisition adjustment is by no means guaranteed" and, therefore, the applicants "cannot assert that they detrimentally relied on

¶ 61,104, at 61,342, *reh'g denied*, 43 FERC ¶ 61,502 (1988) (*Minnesota Power*); *Duquesne Light Holdings Inc.*, 117 FERC ¶ 61,326, at n.47 (2006); *Montana-Dakota Utilities Co.*, 23 FERC ¶ 61,151 (1983) (*Montana – Dakota*) ; *Longhorn Partners Pipeline*, 73 FERC ¶ 61,355 (1995).

²⁸ 23 FERC ¶ 61,151.

²⁹ *Montana-Dakota*, 23 FERC, at 61,335 (quoting *Mid-Louisiana Gas Co., et al.*, 7 FERC ¶ 61,316 (1979), *aff'd Transcontinental Gas Pipe Line Corp. v. FERC*, 652 F.2d 179 (D.C. Cir. 1981)).

³⁰ 43 FERC ¶ 61,104, *reh'g denied*, 43 FERC ¶ 61,502.

³¹ *Minnesota Power*, 43 FERC at 61,342. See also *Duquesne Light Holdings Inc.*, 117 FERC ¶ 61,326, at n.47 (2006) ("Under Commission policy, rate recovery of an acquisition adjustment in traditional cost-based requirements rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers").

³² 83 FERC ¶ 61,318 (1998), *order on reh'g*, 86 FERC ¶ 61,227 (1999) (*Duke Moss II*).

our future approval of an acquisition adjustment when they offered to pay \$180 million more than the net book value of the facility in question.”³³

27. We find that PNM has failed to provide the substantial evidence of tangible ratepayer benefits that *Montana-Dakota* requires. Although PNM has proposed to recover acquisition adjustments in the past, and the Commission has apprised PNM of the showing necessary to do so,³⁴ PNM has failed to adduce the requisite evidence here. Additionally, we note that PNM has failed to include the proposed acquisition adjustment as a separately stated component of its formula rate. As a result, we will reject PNM’s proposal without prejudice, so that if PNM believes it can show that the acquisition produced the tangible ratepayer benefits outlined in *Montana-Dakota* and its progeny, it may make a filing under FPA section 205 to include the acquisition adjustment as a separately-stated component of its formula rate. PNM must submit a compliance filing to remove the acquisition adjustment from its instant rate proposal within 30 days of the date of issuance of this order.

D. Return on Equity

28. With respect to PNM’s proposed 10.81 percent ROE, we note that PNM’s DCF analysis uses the midpoint rather than the median when establishing its base ROE. The Commission has explained that its precedent requires the use of median inasmuch as the median is the most accurate measure of central tendency for a single utility of average risk, such as PNM.³⁵ Therefore, the Commission directs PNM to use the median to establish its ROE and directs PNM to submit a compliance filing to revise its formula rate accordingly.

E. Requests for Waiver

29. We will grant PNM’s request for waiver of the requirements under section 35.13 regarding the filing of a full Period I and Period II study, consistent with our prior

³³ *Duke Moss II*, 86 FERC at 61,816.

³⁴ *Public Service Co. of New Mexico*, 137 FERC ¶ 61,119, at P 15 (2011) (stating that PNM must submit evidence demonstrating that its acquisition adjustments satisfy the Commission’s policy requirements).

³⁵ *Southern California Edison Co.*, 136 FERC ¶ 61,074, at P 30 (2011). *See also Pacific Gas and Electric Co.*, 141 FERC ¶ 61,168, at P 23 (2012); *Public Service Co. of New Mexico*, 137 FERC ¶ 61,119, at P 13 (2011).

approval of formula rates.³⁶ PNM's proposal is to establish a formula rate using a combination FERC Form No. 1 data and transmission project costs. Therefore, we find that full Period I and Period II data are not needed for an evaluation of the justness and reasonableness of PNM's proposed formula rate. However, this finding does not preclude the participants from seeking discovery of additional specific information to allow for a full evaluation of PNM's proposal.

The Commission orders:

(A) PNM's revisions to its OATT, Coordination Tariff, and Bilateral Contracts are hereby accepted for filing and suspended for five months, to become effective August 2, 2013, subject to refund, as discussed in the body of this order.

(B) PNM must file a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) PNM's request to consolidate Docket Nos. ER13-685-000, ER13-687-000, and ER13-690-000 is hereby granted.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 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 hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (E) and (F) below.

(E) 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 a 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.

³⁶ See, e.g., *Xcel Energy Services, Inc.* 122 FERC ¶ 61,098, at P 75 (2008); *American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at PP 40-41 (2007); *Trans-Allegheny*, 119 FERC ¶ 61,219, at P 57 (2007); *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison*, 119 FERC ¶ 61,238, at PP 93-94 (2007).

(F) Within thirty (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 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.

(G) 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 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.