

130 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Flint Hills Resources, LP

Docket No. OR10-2-000

v.

Mid-America Pipeline Company, LLC

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES

(Issued February 2, 2010)

1. On November 5, 2009, Flint Hill Resources, LP (Flint Hills) filed a complaint against Mid-America Pipeline Company, LLC (MAPL). Flint Hills challenges the justness and reasonableness of MAPL's rates for transporting butane, isobutene, natural gasoline, naphtha, and refinery grade butane on the Northern System portion of MAPL's interstate pipeline system. Flint Hills asks the Commission to establish new just and reasonable rates for MAPL's transportation services, as well as to award reparations and refunds, with interest.

2. MAPL responds that the Commission should dismiss the complaint because Flint Hills has not satisfied the requirements for the relief that it seeks.

3. As discussed below, the Commission will set the complaint for hearing and will hold the hearing in abeyance pending the outcome of settlement judge procedures.

**Background**

4. MAPL is a subsidiary of Enterprise Products Partners L.P. (Enterprise). MAPL's pipeline system consists of three operationally separate pipeline systems: (1) the Rocky Mountain/Four Corners System, consisting of approximately 2,548 miles of pipeline that

transports natural gas liquids (NGLs)<sup>1</sup> from points in Wyoming to Hobbs-Gains, Texas; (2) the Central System, consisting of approximately 1,938 miles of bi-directional pipeline between Hobbs-Gains, Texas, and Conway, Kansas; and (3) the Northern System, consisting of approximately 2,740 miles of pipeline that moves NGLs from Conway, Kansas, through the upper Midwest to points in Minnesota and Wisconsin.

5. MAPL's Northern System consists of the West Leg, which extends from Conway, Kansas, to Pine Bend, Minnesota, and the East Leg, which extends from Conway, Kansas, to Janesville, Wisconsin, the West Red Line, which extends from Conway, Kansas, to Mankato, Minnesota, and the East Red Line, which extends to Iowa City, Iowa, and Morris, Illinois.

6. Flint Hills is an independent refining and chemical company. It operates refining complexes in Alaska (North Pole), Minnesota (Pine Bend), and Texas (Corpus Christi), with a combined crude oil processing capacity of more than 800,000 barrels (bbls) of crude oil per day. Flint Hills is a shipper on the West Leg of MAPL's Northern System from Conway, Kansas, to Flint Hills' Pine Bend, Minnesota refinery.

7. Flint Hills states that the Commission approved an uncontested settlement agreement in Docket No. IS05-216-000, *et al.*, which reduced the ceiling rates for shipments of propane from Conway, Kansas, to Pine Bend, Minnesota.<sup>2</sup> However, continues Flint Hills, the settlement agreement did not change the shipping rate for other NGLs on that route.

8. Flint Hills states that it has shipped substantially in excess of one million bbls of NGLs per year on MAPL's Northern System at rates established in MAPL's FERC Tariff Nos. 38, 41, and 66. Flint Hills explains that it is seeking reparations for its shipments during the two-year period ending October 31, 2009, to be measured by the difference between the amount it paid for the shipments and the amount determined in this proceeding to be the just and reasonable rate. Additionally, Flint Hills estimates that it will transport substantially in excess of one million bbls during the 12-month period ending October 21, 2010. It seeks refunds for its shipments during that period and for any shipments after October 21, 2010, until the effective date of a just and reasonable rate to be prescribed by the Commission.

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<sup>1</sup> MAPL's rates for transporting propane are not at issue in this proceeding; however, Flint Hills challenges the rates applicable to MAPL's Northern System for transporting the other NGL products listed in Paragraph 1 above.

<sup>2</sup> *Mid-America Pipeline Company, LLC*, 129 FERC ¶ 61,061 (2009).

9. Flint Hills explains that it currently pays MAPL's seasonal discounted rate of \$2.67/bbl for the transportation of NGLs. Flint Hills asserts that, in the proceedings in Docket No. IS05-216-000, *et al.*, MAPL claimed that it was offering the seasonal discounted rates because it could not charge maximum rates due to market conditions, although MAPL has stated that it has the ability to cancel the discount and charge the currently-effective ceiling rate of \$3.12/bbl without further Commission review.

### **Flint Hills' Complaint**

10. Flint Hills states that a shipper that believes any oil pipeline transportation rate is unjust and unreasonable may file a complaint under section 13(1) of the Interstate Commerce Act (ICA) and that ICA section 15(1) authorizes the Commission to prescribe just and reasonable rates for the transportation services.<sup>3</sup> Flint Hills also cites the Energy Policy Act of 1992 (EPA 1992), which required the Commission to promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines and to streamline procedures in oil pipeline proceedings.<sup>4</sup> However, Flint Hills points out that Congress made it clear that the simplified procedure must ensure that oil pipeline rates remain just and reasonable "in accordance with Section 1(5) of the [ICA]."<sup>5</sup> Flint Hills also explains that section 1803 of EPA 1992 grandfathered then-existing oil pipeline rates as just and reasonable under the ICA, thereby forming a baseline for future oil pipeline rates.<sup>6</sup>

11. Flint Hills states that, in response to the EPA 1992, the Commission developed several ways to establish just and reasonable rates. First, states Flint Hills, the Commission promulgated regulations establishing an indexing system that would adjust maximum just and reasonable ceiling rates annually in accordance with changes in the Producer Price Index.<sup>7</sup> Second, continues Flint Hills, the Commission permitted pipelines to use cost-of-service proceedings to establish just and reasonable rates for

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<sup>3</sup> 49 U.S.C. app. § 15(1) (1988). *See Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1500 (D.C. Cir. 1984).

<sup>4</sup> 42 U.S.C. § 7172 (1992).

<sup>5</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,940 (1993); *order on reh'g and clarification*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000 (1994).

<sup>6</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,940 (1993).

<sup>7</sup> 18 C.F.R. § 342.3 (2009).

initial rates for new services and also for implementing changes to existing rates when the pipeline is able to demonstrate that there is a substantial divergence in the pipeline's costs and its rates.<sup>8</sup> Third, continues Flint Hills, the Commission permitted pipelines to seek Commission authorization to charge market-based rates.<sup>9</sup>

12. Flint Hills further asserts that the Commission allows shippers to challenge pipeline-initiated rates at any time by means of complaints filed pursuant to ICA section 13(1).<sup>10</sup> Further, Flint Hills explains that, in a complaint proceeding (1) the burden of proof is on the complainant;<sup>11</sup> and (2) to be heard on the merits, a complaint against an existing rate that has been indexed must allege reasonable grounds for believing that the discrepancy between the actual cost experience by the pipeline and the existing rate is so substantial that the existing rate level is not just and reasonable.<sup>12</sup> According to Flint Hills, by adopting the "reasonable grounds" standard, the Commission expressly recognized that, in light of the lack of data provided by a pipeline under the indexing rules, that it would be "inappropriate" to impose upon a complainant a requirement to allege "specific facts."<sup>13</sup>

13. Flint Hills alleges 10 grounds for believing that MAPL's rates for transporting NGLs from Conway, Kansas, to Pine Bend, Minnesota are unlawful:

- a. Since 2005, MAPL has increased its ceiling rates for transporting NGLs from Conway, Kansas, to Pine Bend, Minnesota, raising the rate from \$1.32/bbl to \$3.12/bbl, an increase of 136 percent.
- b. MAPL did not support its \$3.12/bbl rate with a separate cost of service for its Northern System. Instead, MAPL attempted in Docket No. IS05-216-000 to support an overall rate increase of 23 percent based on a system-wide cost of service that included all three of MAPL's separate

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<sup>8</sup> 18 C.F.R. § 342.4(a) (2009).

<sup>9</sup> 18 C.F.R. § 342.4(b) (2009).

<sup>10</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,953 (1993).

<sup>11</sup> *Id.* at 30,955.

<sup>12</sup> *Id.* at 30,956. *See also BP West Coast Products, LLC*, 121 FERC ¶ 61,141, at P 10 (2007).

<sup>13</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,964-65 (1993).

operating pipeline systems. Similarly, in Docket No. IS06-238-000, MAPL again increased its rates by 60 percent based on a system-wide cost-of-service study. Because shippers protested these rate increases, the Commission set them for hearing.<sup>14</sup>

- c. At the hearing, MAPL admitted that its rates were not based on the fully-allocated costs of the Northern System. Instead, MAPL explained that it simply increased, first by 23 percent and then by 60 percent, most of the rates that were effective in 2002 when Enterprise acquired MAPL.
- d. The Commission Trial Staff's evidence filed in Docket No. IS05-216-000, *et al.*, purported to support a Northern System cost of service of \$56,804,000 and a fully-allocated cost-based rate of \$1.61/bbl for transporting butane and propane from Conway, Kansas, to Pine Bend, Minnesota.<sup>15</sup>
- e. MAPL's evidence filed in Docket No. IS05-216-000, *et al.*, purported to support a Northern System cost of service of \$70,674,000 and a fully-allocated cost-based rate.<sup>16</sup>
- f. MAPL's evidence does not support either its \$3.12/bbl ceiling rate or its \$2.67/bbl seasonal discount for deliveries from Conway, Kansas, to Pine Bend, Minnesota. Specifically, MAPL's claimed cost of service for the Northern System was \$70,674,000, approximately 24 percent higher than Commission Trial Staff's calculation of the cost of service. By implication, MAPL's fully-allocated, cost-based rates should be approximately 24 percent higher than the Commission Trial Staff's proposed rates. Accordingly, if Commission Trial Staff's fully-allocated cost-based rate for movements from Conway, Kansas, to Pine Bend, Minnesota, was \$1.61/bbl, MAPL's cost-based rate for the same movement would be approximately \$2.02/bbl ( $1.61 \times 1.24 = \$2.02$ ). Thus, there is a substantial divergence between the company's own

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<sup>14</sup> *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,264, at P 10 (2006).

<sup>15</sup> Ex. S-49, page 1 (revised November 27, 2007) attached as Ex. E.

<sup>16</sup> Ex. M-103, page 2 (revised October 23, 2007) attached as Ex. F.

fully-allocated costs and the existing ceiling rate of \$3.12/bbl and the seasonal discount rate of \$2.67/bbl.<sup>17</sup>

- g. The actual just and reasonable cost-based rate supported by MAPL's evidence would be lower than \$2.02/bbl because MAPL's cost of service on the Northern System was inflated by an improper capital structure, the inclusion of two laterals located in Conway, Kansas, that were improperly included in the Northern System cost of service, and MAPL's improper inclusion of labor expenses attributable to a non-jurisdictional ammonia pipeline in calculating the allocation of corporate overhead to the Northern System pursuant to the *Kansas-Nebraska* methodology.
- h. MAPL's only evidence attempting to support the \$3.12/bbl ceiling rate in Docket No. IS05-216-000, *et al.*, was an iterative discount adjustment whereby MAPL performed a rate calculation under which throughput was reduced until all rates were equal to or in excess of the proposed rates. The end result of MAPL's iterative study produced rates as high as \$24.21/bl. Judge Silverstein rejected MAPL's iterative discount as "ludicrous."
- i. On October 23, 2009, the Commission approved the Settlement Agreement in Docket No. IS05-216-000, *et al.*, which reduced MAPL's proposed \$3.12/bbl rate for transporting propane from Conway, Kansas, to Pine Bend, Minnesota, to \$2.21/bbl.
- j. There is no information available to determine whether MAPL has experienced increases in costs subsequent to the 2006 test period used to calculate the cost of service of the Northern System in Docket No. IS05-216-000, *et al.* MAPL's Form 6 filed at the Commission does not separately identify costs incurred to operate the Northern System. Instead, MAPL's Form 6 reflects the combined costs of all three of its systems.

14. Flint Hills maintains that, while MAPL's Form 6 filings reflect a system-wide increase in costs from 2005-2008, there is no basis for assuming that any portion of such increase is attributable to the Northern System. On the contrary, continues Flint Hills, there is reason to believe that most of such increase is attributable to two expansion projects completed in mid-2007 on the Central System for 65,000 barrels per day (BPD) and on the Rocky Mountain System for 50,000 BPD. According to Flint Hills, no major

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<sup>17</sup> See Sworn Declaration of Barry Sullivan, attached as Ex. B.

projects were implemented on the Northern System. Further, states Flint Hills, during the same 2005-2008 period, the Form 6 indicates that total barrels transported in the aggregate increased by 40,000,000 bbls, a level consistent with the addition of 115,000 BPD of capacity to the Central and Rocky Mountain Systems.

15. Flint Hills contends that, even assuming a modest increase in costs incurred to operate the Northern System, the new plant and throughput on the Central and Rocky Mountain Systems will increase the allocation of corporate overhead costs to those systems, thereby providing an offsetting decrease in costs allocated to the Northern System. Flint Hills recognizes that the cost of service in a complaint will be based on a more recent 12-month period. However, Flint Hills states that discovery will be needed to obtain access to such information.

16. Flint Hills states that it has complied with section 343.2(c)(1)<sup>18</sup> and other applicable regulations in filing its complaint. Flint Hills also states that it has engaged MAPL in unsuccessful informal negotiations to resolve this matter, and it does not believe that Alternative Dispute Resolution (ADR) will be effective. Instead, Flint Hills asks the Commission to set its complaint for hearing to determine whether the rates in MAPL's FERC Tariff Nos. 38, 41, and 66 are just and reasonable.

### **Notice and Intervention**

17. Public notice of the complaint was issued November 9, 2009, providing that comments were due no later than November 25, 2009. The Propane Group<sup>19</sup> filed a motion to intervene, but did not submit comments concerning the complaint.

### **MAPL's Answer**

18. MAPL filed a timely answer to the complaint, denying the allegations and asking that the complaint be dismissed. MAPL states that Flint Hills appears to challenge both the seasonal rate and the general commodity rate under MAPL's FERC Tariff No. 66 for the Northern System.

19. MAPL explains that its Northern System rates were the subject of an investigation in Docket No. IS05-216-000, *et al.*, which began with a MAPL tariff filing on March 31, 2005 (2005 MAPL Rate Case).<sup>20</sup> MAPL emphasizes that the 2005 MAPL Rate Case was

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<sup>18</sup> 18 C.F.R. § 343.2(c)(1) (2009).

<sup>19</sup> The Propane Group includes AmeriGas Propane, L.P., CHS Inc, ConocoPhillips Company, Ferrellgas, L.P., and the National Propane Gas Association.

<sup>20</sup> See *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,016, at P 1-6 (2008).

settled following a hearing and initial decision and that the Commission approved the settlement in an order issued October 23, 2009.<sup>21</sup> According to MAPL, the settlement requires it to establish new settlement rates for propane movements on its Northern System, but does not change its rates for movements the NGL products listed by Flint Hills. MAPL emphasizes that no shipper of those other products, including Flint Hills, protested any of the rates at issue in the case. However, continues MAPL, shortly before the Commission issued the order approving the settlement, Flint Hills sought to intervene in the proceedings and seek clarification of the offer of settlement. MAPL observes that the Commission denied Flint Hills' request to intervene as untimely.<sup>22</sup>

20. MAPL argues that Flint Hills has failed to allege any reasonable grounds to support its complaint and warrant an investigation. MAPL asserts that Flint Hills fails to show that MAPL's general commodity rates or seasonal discount rates for the movement at issue are not and were not just and reasonable. According to MAPL, Flint Hills' challenge relies on data from the 2005 MAPL Rate Case. However, MAPL contends that the 2005 MAPL Rate Case did not involve current costs and throughput, but instead involved two tariff filings, the first with a base period from January 1, 2004, through December 31, 2004, and the second with a base period from February 1, 2005, through January 31, 2006.<sup>23</sup> MAPL emphasizes that costs and throughput from such historical time periods are too remote to support a challenge to the justness and reasonableness of MAPL's current rates.

21. MAPL next contends that Flint Hills fails to account for significant differences between movements of propane and the other NGLs, which are heavier. According to MAPL, these differences include the additional fuel and power costs required to pump the heavier NGLs and the fact that movements of such products use a greater amount of capacity/bbl than propane movements.

22. MAPL next asserts that the complaint fails to show substantially changed circumstances sufficient to permit a claim to lie against a grandfathered rate. MAPL points out that the EAct 1992 provides that rates that were in effect for the 365-day period ending on EAct 1992's October 24, 1992 enactment date are deemed just and reasonable if they were not subject to a complaint, protest, or investigation during that

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<sup>21</sup> *Mid-America Pipeline Company, LLC*, 129 FERC ¶ 61,061 (2009).

<sup>22</sup> *Id.* P 5 (“Flint Hills cannot insert itself at this juncture into a proceeding in which an uncontested settlement has been filed.”).

<sup>23</sup> *See Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,016, at 15 n.15 (2008).

time.<sup>24</sup> Further, continues MAPL, the Commission has held that subsequent cost-of-service filings to increase a rate above the grandfathered level do not affect the grandfathered portion of the rate.<sup>25</sup> MAPL emphasizes that the rates challenged by Flint Hills are based on prior grandfathered rates, which establish a floor below which rates may not be reduced unless Flint Hills can demonstrate substantially changed circumstances.

23. MAPL contends that EAct 1992 further provides that no person may file a complaint against a rate deemed to be just and reasonable under this provision unless evidence is presented to the Commission establishing that a substantial change has occurred after the date of enactment of the EAct 1992 in the economic circumstances of the pipeline, which were a basis for the rate, or in the nature of the services provided, which were the basis for the rate.<sup>26</sup> MAPL argues that failure to meet this requirement obligates the Commission to dismiss the complaint.<sup>27</sup>

24. Next, MAPL states that Flint Hills fails to substantiate its claim of overcharges, stating only that it was overcharged for shipments of the heavier NGL products and that it is continuing to incur damages for overcharges. However, MAPL maintains that, under the ICA, the term “overcharges” refers to charges for transportation services in excess of the charges under tariffs lawfully on file with the Commission. MAPL adds that Flint Hills does not appear to claim that it was charged more than the applicable rates set forth in MAPL’s tariffs, instead merely alleging that MAPL’s filed rates have exceeded a just and reasonable level.

25. Finally, MAPL asserts that the ICA bars reparations for any period more than two years prior to the date of a complaint. MAPL points out that Flint Hills’ complaint was filed on November 5, 2009. Thus, continues MAPL, even if Flint Hills were entitled to reparations, it would not be entitled to any reparations for movements that occurred on or before November 5, 2007.

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<sup>24</sup> See *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,944 (1993).

<sup>25</sup> See *America West Airlines, Inc. v. SFPP, L.P.*, 121 FERC ¶ 61,241, at P 3 (2007).

<sup>26</sup> See *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,956 (1993).

<sup>27</sup> *ARCO Products Co. v. SFPP, L.P.*, 106 FERC ¶ 61,300 (2004); Opinion No. 435, *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,072 (1999); *Santee Distributing Company v. Dixie Pipeline Company*, 71 FERC ¶ 61,205, at 61,775 (1995).

**Flint Hills' Motion for Leave to Answer**

26. Flint Hills filed a motion for leave to answer and an answer challenging MAPL's assertion that the complaint should be dismissed. Flint Hills contends that many of the arguments MAPL raised go, at most, to the scope of the potential relief. According to Flint Hills, the extent of grandfathered rate protection, if any, for MAPL's current rates can be addressed at the hearing.

27. Flint Hills argues that the cost data it cited provide reasonable grounds to investigate MAPL's Northern System rates. Flint Hills acknowledges that the Docket No. IS05-216-000 cost data were from 2006 and that MAPL has experienced system-wide cost increases since that time, but Flint Hills argues that neither MAPL's 2007 and 2008 Form 6 Annual Reports, nor any other publicly available information provides a separate breakout of Northern System costs necessary to determine whether MAPL experienced cost increases on its Northern System subsequent to the 2006 test period in Docket No. IS05-216-000.

28. Flint Hills observes that MAPL does not deny the assertion that the majority of the increased costs for MAPL's pipeline system between 2005 and 2008 are attributable to the Central and Rocky Mountain Systems, but not to the Northern System. Further, states Flint Hills, while MAPL fails to offer even a ballpark estimate of any purported cost of throughput changes on the Northern System since 2006, MAPL denies that any additional overhead allocated to the Central and Rocky Mountain Systems as a result of expansion projects on those systems will offset increases in Northern System costs.

29. Flint Hills emphasizes that its reliance on data from Docket No. IS05-216-000 is intended only to provide reasonable grounds to commence an investigation of MAPL's rates. Flint Hills maintains that, under that standard, Flint Hills is not initially required to allege specific facts to justify an investigation of MAPL's Northern System rates.<sup>28</sup> According to Flint Hills, the relatively low evidentiary burden threshold needed to satisfy the "reasonable grounds" standard reflects the Commission's understanding that the pipeline rate indexing system provides comparatively little information to prospective complainants.

30. Flint Hills contends that it is analyzing MAPL's rates on the same basis that MAPL historically has set its own rates. Flint Hills maintains that MAPL traditionally has charged the same or higher rates for transporting propane compared to heavier NGLs. Further, continues Flint Hills, while MAPL implies that there are significant differences

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<sup>28</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,964 (1993).

in costs between transportation of heavier NGLs and transportation of propane, MAPL fails to provide even a rough quantification of this alleged cost differential.

31. Finally, Flint Hills urges the Commission to establish a hearing without holding the case in abeyance for settlement judge procedures. Flint Hills explains that, in its complaint, it expressed its belief that an ADR process will not resolve this matter. However, Flint Hills is willing to engage in settlement discussions as soon as it obtains separate cost information for MAPL's Northern System.

### **Commission Determination**

32. The existing record in this proceeding is insufficient to allow the Commission to determine whether the challenged rates are just and reasonable; therefore, the Commission is establishing a hearing to address Flint Hills' allegations. The Commission emphasizes that the burden remains on Flint Hills to prove its allegations.

33. While the Commission is setting the complaint for a trial-type evidentiary hearing, the Commission encourages the parties to make every effort to settle their dispute before the commencement of hearing procedures. To aid the parties in their settlement efforts, the Commission will hold the hearing in abeyance and establish settlement judge procedures, as described in the ordering paragraphs below.

#### **The Commission orders:**

(A) Pursuant to the authority of the ICA, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established in this proceeding to address Flint Hills' complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief ALJ 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 ALJ designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.<sup>29</sup>

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<sup>29</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief ALJ by telephone at (202) 502-8500 within five days of the date this order is issued. The Commission's website contains a list of Commission judges and a  
(continued...)

(C) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief ALJ on the status of the settlement discussions. Based on this report, the Chief ALJ shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a Presiding Administrative Law Judge (ALJ) 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 ALJ of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, an ALJ, to be designated by the Chief ALJ, shall, within 15 days of the date of the ALJ'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 ALJ 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.

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summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).