

169 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.
Jersey Central Power & Light Company

Docket No. ER20-227-000

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

(Issued December 19, 2019)

1. On October 30, 2019, Jersey Central Power & Light Company (JCP&L) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) to change its revenue requirement used to establish the Network Integration Transmission Service (NITS) rate charged for the JCP&L Zone and the Transmission Enhancement Charge (TEC) revenue requirements. JCP&L proposes to replace its current, stated revenue requirement in Attachment H-4 with a new transmission formula rate (Formula Rate) and associated protocols (Protocols) set forth in Attachments H-4, H-4A, and H-4B of the Tariff (collectively, Proposed Tariff Revisions).² As discussed below, we accept the Proposed Tariff Revisions, suspend them for a nominal period, to become effective January 1, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2018).

² PJM, Intra-PJM Tariffs, OATT, [OATT Table of Contents](#), [PJM OATT Table of Contents \(39.0.0\)](#); [OATT ATT H-4](#), [OATT Attachment H-4 - Jersey Central Power & Light \(5.0.0\)](#); [OATT ATT H-4A](#), [OATT Attachment H-4A - JCPL Annual Transmission Rates \(2.0.0\)](#); [OATT ATT H-4B](#), [OATT Attachment H-4B - Formula Rate Implementation Protocols \(2.0.0\)](#).

I. Background

2. JCP&L is a FirstEnergy Operating Company that provides retail electric and distribution services to approximately 1.14 million customers in 3,200 square miles of northern, western, and east-central New Jersey, covering an area with a population of approximately 2.7 million. JCP&L currently owns 2,598 circuit miles of transmission lines and related facilities within its service territory under the functional control of PJM.³

3. JCP&L states that it currently recovers its transmission costs through a stated transmission rate under the Tariff established in a “black box” settlement that the Commission accepted in 2018.⁴ JCP&L explains that the Proposed Tariff Revisions will aid its efforts to improve reliability and performance across its transmission system by removing regulatory uncertainty with regards to cost recovery for JCP&L’s current and future transmission assets.⁵

II. Filing

4. JCP&L explains that the proposed Formula Rate is forward-looking and will recover projected transmission costs on a calendar year basis, with a true-up mechanism to ensure that only actual costs are collected. JCP&L notes that for any difference between the projected and actual transmission revenue requirements, the interest rate will be equal to: (i) JCP&L’s actual short-term debt costs capped at the interest rate determined by 18 C.F.R. § 35.19a; or (ii) (2019) the interest rate determined by 18 C.F.R. § 35.19a if JCP&L does not have short-term debt. JCP&L adds that the true-up between the projected and actual transmission revenue requirements will be calculated the following year and applied as an addition or subtraction from the subsequent year’s net revenue requirement and resultant rate. JCP&L maintains that the proposed Formula Rate is similar to multiple other forward-looking transmission formula rates used by other transmission owners in PJM.⁶ JCP&L states that it projects a NITS revenue requirement of \$147.5 million, and a TEC revenue requirement of \$22 million for 2020.⁷

³ Transmittal at 3.

⁴ *Id.* (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,140 (2018)).

⁵ *Id.*

⁶ *Id.* at 4-5.

⁷ *Id.* at 10.

5. JCP&L states that the Protocols provide a mechanism for parties to review and obtain information about the annual update filed with the Commission, and present preliminary and formal challenges to the annual update. JCP&L contends this is consistent with Commission precedent in the *MISO* proceeding and other recent cases, and that there are sound reasons for any deviations from the protocols approved in that proceeding.⁸ Specifically, JCP&L states that the Protocols include language: (i) pertaining to affiliate cost allocation and (ii) that reserve JCP&L's right to make limited, single-issue FPA section 205 filings to change certain values that are included as stated inputs to the Formula Rate, namely amortization and depreciation rates, post-employment benefits other than pensions rates (PBOPs), or any changes required in a final FERC rulemaking associated with excess/deficient Accumulated Deferred Income Taxes (ADIT).⁹ JCP&L notes that the Commission has accepted such single-issue filings in prior cases.¹⁰ JCP&L requests that the Commission accept the proposed Protocols without hearing and settlement procedures. JCP&L requests that, if the Commission determines a change to the Protocols is necessary, the Commission order any changes to be made through a compliance filing.

6. JCP&L states that the proposed Protocols will require that JCP&L include in its annual informational filing a detailed description of the methodologies used to allocate and/or directly assign costs between JCP&L and its affiliates by service category or function, the magnitude of such costs that have been allocated or directly assigned between JCP&L and each affiliate by service category or function, and a copy of any service agreement between JCP&L and any JCP&L affiliate that went into effect during the rate year. JCP&L asserts this practice is consistent with Commission precedent.¹¹

7. JCP&L states that it uses the straight-line remaining life method, with the average service life procedure, to determine depreciation rates, and maintains that this approach is widely accepted. JCP&L adds that it is changing the cost of removal approach for developing net salvage values for the transmission-allocated share of general and intangible assets to be consistent with how it treats all other transmission

⁸ *Id.* at 8-9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance filing*, 146 FERC ¶ 61,212 (2014) (*MISO*)).

⁹ *Id.* at 9.

¹⁰ *Id.* (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,083 (2019); *Sw. Power Pool, Inc.*, 167 FERC ¶ 61,202 (2019); *Va. Elec. & Power Co.*, Docket No. ER19-1543-000 (May 7, 2019) (delegated order)).

¹¹ *Id.* at 5 (citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016), *reh'g denied*, 158 FERC ¶ 61,060 (2017)).

assets. JCP&L explains that it previously expensed removal costs as they were incurred, but now intends to establish a depreciation reserve based on estimated net value percentages and amortizing the cost of removal over the life of the asset. JCP&L maintains that its approach for establishing net salvage values is the most common accrual method in the industry.¹²

8. JCP&L proposes to include a fixed return on equity (ROE) of 10.8 percent, reflecting a base ROE of 10.3 percent plus a 50 basis point ROE adder for participation in a regional transmission organization (RTO), based on the results of a Discounted Cash Flow model, Empirical Capital Asset Model, Expected Earnings approach, and Risk Premium method. JCP&L maintains that the Commission supports using multiple financial models to determine ROEs.¹³ JCP&L explains that application of these four models results in a composite ROE zone of reasonableness of 7.86 to 13.71 percent, with median and midpoint values of 10.03 and 10.63 percent, respectively. JCP&L explains that it averaged these two values to produce a base ROE of 10.3 percent. JCP&L maintains that including a 50 basis point adder will produce a total ROE within the zone of reasonableness. JCP&L requests that the Commission approve the 50 basis point adder without a hearing.¹⁴

9. JCP&L explains that, because the Protocols are not yet in effect, it will use special procedures to ensure that interested parties can review and seek information regarding the 2020 projections before they go into effect, as requested, on January 1, 2020. JCP&L states it will arrange for its calendar year 2021 projected costs to be posted on the PJM website no later than October 31, 2020.

10. JCP&L requests that the Proposed Tariff Revisions become effective on January 1, 2020. JCP&L maintains that the Commission should impose, at most, a nominal suspension because the Formula Rate should not result in substantially

¹² *Id.* at 7. JCP&L submitted an errata filing of its depreciation study, Exhibit No. JCP-302, after determining that column and related headers were inadvertently removed when converted for the initial filing.

¹³ *Id.* (citing *Martha Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018) (*Coakley* Briefing Order); *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018) (*MISO* Briefing Order)).

¹⁴ *Id.* at 8.

excessive rates under *West Texas*.¹⁵ Moreover, JCP&L states there will be significant complications in setting transmission charges for the initial year if the Commission suspends the Formula Rate beyond the requested effective date.

III. Notice of Filing and Responsive Pleadings

11. Notice of JCP&L's filing was published in the *Federal Register*, 84 Fed. Reg. 59,797 (2019), with interventions and protests due on or before November 20, 2019. The New Jersey Division of Rate Counsel, the New Jersey Board of Public Utilities (collectively, the NJ Agencies) and the Public Power Association of New Jersey (PPANJ) (collectively, Protesters) submitted timely motions to intervene. On November 20, 2019, the NJ Agencies and PPANJ filed protests. On December 5, 2019, JCP&L filed a motion for leave to answer and an answer. On December 16, 2019, the NJ Agencies filed a motion for leave to answer and an answer. On December 16, 2019, the International Brotherhood of Electrical Workers Local 1289 (IBEW) filed a motion to intervene out of time. On December 17, 2019, JCP&L filed an answer to NJ Agencies' answer.

A. Protests

12. Protesters contend that JCP&L's requested base ROE of 10.3 percent is unjust and unreasonable because JCP&L did not correctly apply the methodology proposed in the *Coakley* and MISO Briefing Orders, resulting in a ROE above the applicable portion of the zone of reasonableness.¹⁶ NJ Agencies further contend that JCP&L's ROE should be set according to Opinion No. 554.¹⁷ Additionally, NJ Agencies assert that JCP&L's request for a 50 basis point ROE adder is not sufficiently supported, specifically with evidence that the adder will benefit ratepayers by inducing future voluntary conduct.¹⁸ Protesters assert that the proposed ROE is, by itself, sufficiently excessive to justify a 5-month suspension under the *West Texas* standard.¹⁹

13. NJ Agencies assert that JCP&L incorrectly presents its capital structure, specifying that JCP&L presents a net long-term debt figure, but that the Commission requires use of a gross long-term debt figure instead. NJ Agencies contend that, as a

¹⁵ *Id.* at 11 (citing *West Tex. Utils. Co.*, 17 FERC ¶ 61,236 (1981), *order on reh'g*, 18 FERC ¶ 61,189, at 61,374 (1982) (*West Texas*)).

¹⁶ PPANJ Protest at 4; NJ Agencies Protest at 5.

¹⁷ NJ Agencies Protest at 3-4.

¹⁸ *Id.* at 37.

¹⁹ PPANJ Protest at 4; NJ Agencies Protest at 62.

result, JCP&L's cost of capital is improperly increased, and recommend that the Commission require JCP&L to use a gross long-term debt figure in its capital structure calculation.²⁰

14. Protesters request that the Commission establish hearing and settlement judge procedures to thoroughly examine JCP&L's proposed depreciation rates. NJ Agencies maintain that JCP&L fails to provide sufficient information in its depreciation study to properly evaluate its proposed rates.²¹

15. PPANJ alleges that JCP&L fails to propose transparent, replicable rate treatment of PBOPs.²²

16. NJ Agencies argue that JCP&L does not show that it properly credited all transmission-related ADIT balances against transmission rate base. NJ Agencies also argue that JCP&L fails to support its allocation and functionalization of excess ADIT. In addition, NJ Agencies allege that it is unreasonable for JCP&L to use a quarterly proration method for ADIT. NJ Agencies argue that JCP&L should instead use a monthly proration method, which they maintain would produce a more accurate forecast of estimation-period total ADIT because JCP&L's formula uses thirteen monthly balances.²³

17. While NJ Agencies state that JCP&L does provide a placeholder for unfunded reserves as offsets in its Formula Rate, NJ Agencies argue that in practice JCP&L proposes to implement its own Formula Rate incorrectly.²⁴ JCP&L, according to NJ Agencies, shows a zero balance for unfunded reserves, however there were significant balances in accounts that typically hold unfunded reserves in its Formula Rate. NJ Agencies argue that JCP&L should provide explanations as to why these do not qualify.

18. NJ Agencies argue that JCP&L's reporting of its regulatory assets and liabilities lacks transparency and does not allow customers to determine whether JCP&L included amounts related to unapproved regulatory assets and liabilities in its Formula Rate. NJ Agencies contend that rate recovery from the operation of certain accounts requires

²⁰ NJ Agencies Protest at 38-39.

²¹ *Id.* at 40-42; PPANJ Protest at 14-15.

²² PPANJ Protest at 11-12.

²³ NJ Agencies Protest at 42-48.

²⁴ *Id.* at 49-50.

prior Commission approval, as stated in Commission Order No. 552.²⁵

19. NJ Agencies state that JCP&L's proposed Formula Rate includes "Taxes Other than Income Calculation," which provides calculations that purport to support the formula's collection of non-income taxes.²⁶ According to NJ Agencies, however, it fails to transparently exclude taxes that are not levied on the provision of transmission service. Additionally, NJ Agencies aver that JCP&L's treatment of Gross Receipts Tax should be more transparent as NJ Agencies contend the printed version of Attachment H-4A included Gross Receipts Tax as if it were properly included in the revenue requirement, whereas the Excel version excludes Gross Receipts Tax in the revenue requirement.²⁷ According to NJ Agencies, the right result is excluding Gross Receipts Tax from the revenue requirement. NJ Agencies state this is because, whether or not such taxes are collected in a given year, whatever Gross Receipts Taxes are collected presumably will relate entirely or predominately to services other than unbundled transmission service furnished and priced under the Tariff.

20. NJ Agencies argue that JCP&L has distribution facilities attached to its transmission poles and towers, enabling it to avoid the need to construct additional distribution poles. NJ Agencies assert that this benefit to JCP&L's distribution function is not recognized in the proposed Formula Rate. NJ Agencies maintain that JCP&L should be required to impute the value of this benefit and develop a revenue crediting mechanism against the transmission function to reflect it.²⁸

21. NJ Agencies aver that JCP&L's proposed interest rate for refunds and surcharges is unjustified. They state that under JCP&L's proposal, if its short-term debt rate is lower than the rate established under 18 C.F.R. § 35.19a, any refunds the utility owes to customers will bear a lower interest amount than the Commission's regulations provide. NJ Agencies argue that this deviation from the regulations fails the just and reasonable standard under FPA section 205.²⁹

²⁵ *Id.* at 51-52.

²⁶ *Id.* at 53.

²⁷ *Id.* at 54.

²⁸ *Id.* at 55-56.

²⁹ *Id.* at 56-58.

22. Protesters argue that the Commission should reject JCP&L's proposal in section IV.I of the Protocols to make single-issue rate filings.³⁰ NJ Agencies ask the Commission to direct JCP&L to publish its projected transmission revenue requirement on an earlier date than October 31 of each calendar year.³¹ PPANJ asks the Commission to direct JCP&L to amend the Protocols to require a periodic refiling of updated inputs for the stated inputs at least every three to five years. PPANJ also asks that customers be able to obtain then-current information underlying such fixed inputs in the annual information exchange. PPANJ complains that the Protocols lack typical customer information requirements. PPANJ also asks the Commission to direct JCP&L to remove section VIII.B in the Protocols because, PPANJ alleges, it is confusing.³²

B. Answers

23. JCP&L states that the Commission should not suspend its filing, and if any suspension is appropriate, the Commission should only nominally suspend the filing, to become effective January 1, 2020.³³ JCP&L argues that the proposed total ROE of 10.8 percent should be accepted without hearing.³⁴ JCP&L contends that Protestors' arguments regarding JCP&L's ROE calculations are contrary to Commission precedent.³⁵ JCP&L further states that it voluntarily joined PJM, its membership is ongoing, and as such, it is eligible for the 50 basis point adder under Commission precedent.³⁶

24. JCP&L avers that its proposed Protocols comport with Commission precedent and guidance, and that Protestors' objections are meritless.³⁷ JCP&L also contends its proposed Formula Rate is just and reasonable and states that the Protestors' arguments, including regarding the use of placeholders for future line items, ADIT accounting, and

³⁰ *Id.* at 58-60; PPANJ Protest at 12-13.

³¹ NJ Agencies Protest at 60-61.

³² PPANJ Protest at 13-14.

³³ JCP&L First Answer at 5.

³⁴ *Id.* at 8.

³⁵ *Id.*

³⁶ *Id.* at 9.

³⁷ *Id.* at 28.

the treatment of inapplicable taxes, lack merit.³⁸ JCP&L further maintains that it resolved all concerns related to its proposed depreciation rates in filing an errata to its depreciation study.³⁹

25. In their response to JCP&L's answer, the NJ Agencies reiterate that the Commission should suspend JCP&L's filing for five months because they identified adjustments whose dollar value exceeds the *West Texas* threshold.⁴⁰ The NJ Agencies argue that the Commission should calculate JCP&L's ROE using the methodology set out in Opinion No. 569, which establishes a new, industry-wide standard, and which undermines various arguments made by JCP&L.⁴¹ The NJ Agencies also reiterate their argument that JCP&L has not shown it is entitled to the 50 basis point adder.⁴²

26. In its response to the NJ Agencies' answer, JCP&L asserts that Opinion No. 569 does not currently apply to this case. JCP&L further contends that, to the best of its knowledge, the Commission has never suspended for more than a nominal period a filing where a PJM transmission owner has moved from a stated to a formula rate.⁴³

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), the Commission will grant IBEW's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

³⁸ *Id.* at 32.

³⁹ *Id.* at 37.

⁴⁰ NJ Agencies Answer at 3.

⁴¹ *Id.* at 5, 7. As of the date of this order, the period of time to seek rehearing of Opinion No. 569 remains open.

⁴² *Id.* at 10.

⁴³ JCP&L Second Answer at 1.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We will accept JCP&L's and the NJ Agencies' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

29. We conditionally grant the request for a 50 basis point adder to JCP&L's base ROE for its participation in PJM. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁴⁴ The purpose of the rule that section 219 directed the Commission to establish is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.⁴⁵ The Commission subsequently issued Order No. 679,⁴⁶ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

30. We find that, as conditioned below, the requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁴⁷ Order No. 679 provides that an entity will be presumptively eligible for the incentive if it is a member of an RTO.⁴⁸ NJ Agencies do not identify evidence to rebut this presumption of eligibility for JCP&L. We condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and

⁴⁴ 16 U.S.C. § 824s(a), (b) (2018).

⁴⁵ *Id.*

⁴⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴⁷ *See, e.g., Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238, at P 26 (2012) (granting 50 basis point adder for RTO participation).

⁴⁸ Order No. 679, 116 FERC ¶ 61,057 at P 327 ("An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going.").

settlement judge procedures ordered below. Further, our approval of this incentive is conditioned on JCP&L's continuing membership in PJM.

31. We find that, except for the 50 basis point adder for its membership in PJM, JCP&L's Proposed Tariff Revisions raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below.

32. Our preliminary analysis indicates that JCP&L's Proposed Tariff Revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The filing raises issues of material fact, including, but not limited to, the determinations of base ROE and capital structure, the treatment of excess ADIT, the treatment of PBOPs as well as various Protocols provisions. Accordingly, we accept and suspend for a nominal period the Proposed Tariff Revisions,⁴⁹ effective January 1, 2020, as requested, subject to refund, and set them for hearing and settlement judge procedures.

33. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. 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. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁵¹ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement

⁴⁹ In *West Texas*, 18 FERC at 61,374-75, the Commission explained that when its 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, our preliminary analysis indicates that the proposed rates may not be substantially excessive, as defined in *West Texas*, and therefore we deny Protestors' request for the maximum suspension period.

⁵⁰ 18 C.F.R. § 385.603 (2019).

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 (5) 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>.

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) JCP&L's Proposed Tariff Revisions are hereby accepted for filing and suspended for a nominal period to become effective January 1, 2020, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the 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 JCP&L'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 (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief 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.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

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

Kimberly D. Bose,
Secretary.