

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southern Company Services, Inc.	Docket Nos. ER04-563-002 ER04-563-003
Southern Company Services, Inc.	Docket No. ER05-413-003 ER05-413-004
Southern Company Services, Inc.	Docket Nos. ER03-379-003 ER03-355-004
Southern Company Services, Inc.	Docket No. ER05-518-002
Southern Company Services, Inc.	Docket Nos. EL04-87-000 EL06-81-000

ORDER ON REMAND, REHEARINGS, COMPLIANCE FILINGS,
CONSOLIDATING PROCEEDINGS, INSTITUTING SECTION 206 PROCEEDING,
AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 20, 2006)

1. In this order, the Commission addresses several transmission service agreements filed by Southern Company Services, Inc. (Southern)¹ that include restrictions on the ability of its customers to rollover their service at the end of their contract terms,²

¹ Southern acts as agent for its affiliates Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company.

² In brief, section 2.2 of Southern's open access transmission tariff (Southern OATT) permits long-term firm transmission customers to rollover (*i.e.*, continue) their service at the end of their contract terms subject to certain conditions, such as matching
(continued...)

including two which are the subject of a remand.³ As discussed below, we will grant Southern's request for rehearing in Docket No. ER04-563-002 to provide it a forum in which to address its assertions and institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)⁴ in Docket No. EL06-81-000, in order to provide Southern that forum. We also consolidate Docket No. EL04-87-000 with Docket No. EL06-81-000. As for the remaining proceedings captioned above, similar rollover issues are presented, but because the underlying transmission service agreements have expired, we dismiss those proceedings as moot.

I. Background

A. Description and Procedural Status of Mooted Dockets

1. Remand and Related Proceedings – Docket Nos. ER03-355-004, ER03-379-003, ER05-413-003, and ER05-413-004

2. In Docket No. ER03-355-000, the Commission addressed a transmission service agreement between Southern and Oglethorpe Power Company (Oglethorpe); in Docket No. ER03-379-000, the Commission addressed a transmission service agreement between Southern and Williams Energy Marketing & Trading Company (Williams), both of which included rollover restrictions. The Commission rejected the rollover restrictions, because the grounds on which Southern relied to restrict the rollovers (native load reservations)

the rate and term of a competing customer's request for the same service. This provision of Southern's OATT is consistent with section 2.2 of the Order No. 888-A *pro forma* OATT. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,665, *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ *Southern Co. Servs., Inc. v. FERC*, 416 F.3d 39 (D.C. Cir. 2005) (*Southern*).

⁴ 16 U.S.C. § 824(e) (2000).

had not been included in the original transmission service agreements, but were added to subsequent rollover agreements.⁵

3. In *Southern*, the U.S. Court of Appeals for the D.C. Circuit reviewed these Commission decisions; however, because the Williams agreement (which is docketed on remand as Docket No. ER03-379-003) had already expired, the court dismissed that portion of the appeal as moot.⁶ The Oglethorpe agreement (which is docketed on remand as Docket No. ER03-355-004) was last rolled over by Oglethorpe for the term December 1, 2004 through November 30, 2005, and therefore, was addressed by the court in the *Southern* opinion decided in July 2005.

4. In the *Southern* court's view, the Commission first announced its original transmission service agreement requirement on December 20, 2001, in *Nevada Power Co.*,⁷ which was issued after Southern and Oglethorpe had entered into their original agreement. Thus, the court ruled, Southern did not have notice of this original agreement requirement prior to entering into the Oglethorpe transmission service agreement, and therefore, Southern should not be bound by this requirement. The court remanded the issue to the Commission.

5. Before the *Southern* opinion was issued, however, Oglethorpe assigned its agreement to Progress Ventures, Inc. (Progress), and Southern required Progress to execute a new transmission service agreement covering the assigned service, which was docketed as Docket No. ER05-413-000. In this proceeding, the Commission rejected Southern's proposed rollover restriction on the assigned service. The Commission required the restriction to be removed in a compliance filing and subsequently denied rehearing, because Southern had not included the rollover restriction in the original agreement.⁸ Citing to the *Southern* opinion, however, Southern requested rehearing of this decision in Docket No. ER05-413-003, and also filed, in Docket No. ER05-413-004, a motion to withdraw its compliance filing removing the rollover restriction.

⁵ *Southern Co. Servs., Inc.*, 103 FERC ¶ 61,117 (2003), *reh'g denied*, 108 FERC ¶ 61,174 (2004) (reviewing agreements between Southern and Oglethorpe); *Southern Co. Servs., Inc.*, 102 FERC ¶ 61,201, *reh'g denied*, 104 FERC ¶ 61,140 (2003) (reviewing agreements between Southern and Williams).

⁶ 416 F.3d at 44.

⁷ 97 FERC ¶ 61,324 (2001).

⁸ *Southern Co. Servs., Inc.*, 110 FERC ¶ 61,191, *reh'g denied*, 112 FERC ¶ 61,127 (2005).

6. Notice of Southern's withdrawal request was published in the *Federal Register*⁹ with interventions and protests due on or before September 15, 2005. Progress filed a timely motion to intervene and protest. Southern filed an answer and Progress responded.

2. Docket No. ER05-518-002

7. In this proceeding, Southern filed an unexecuted agreement for point-to-point transmission service with Morgan Stanley Capitol Group (Morgan Stanley) that included a rollover restriction. Morgan Stanley had sought to modify its delivery point under certain previously accepted agreements, and Southern viewed this as a new request for service.¹⁰ On March 29, 2005, the Commission issued an order accepting the Morgan Stanley agreement subject to Southern removing the proposed rollover restriction.¹¹ The Commission accepted Southern's compliance filing removing the rollover restriction by delegated authority on June 1, 2005. Southern sought rehearing of the March 29 Order in Docket No. ER05-518-002. Morgan Stanley filed an answer to this request for rehearing and Southern responded to Morgan Stanley's answer.

B. Docket No. EL04-87-000

8. Docket No. EL04-87-000 presents the same issues involving Southern's rollover restrictions, but is in a different procedural posture. On December 30, 2003, in Docket No. ER04-353-000, Southern filed two executed rollover transmission service agreements with rollover restrictions. One agreement was between Southern and Oglethorpe, which was to become effective on December 1, 2003, with service continuing to November 30, 2004. The second was between Southern and Calpine Energy Services, L.P. (Calpine), which was to become effective on January 1, 2004, with service continuing until December 31, 2004. Calpine filed a protest, asserting that Southern was attempting to improperly restrict the rollover of its transmission rights.

9. Because the Commission inadvertently failed to act on Southern's filing by February 27, 2004, the two rollover transmission service agreements became effective by operation of law. On March 16, 2004, the Commission issued an order initiating a paper hearing in Docket No. EL04-87-000, which proposed to find the two agreements unjust

⁹ 70 Fed Reg. 52,999 (2005).

¹⁰ The previous agreements were accepted by delegated authority in Docket No. ER02-1917-000, on July 3, 2002.

¹¹ *Southern Co. Servs., Inc.*, 110 FERC ¶ 61,379 (2005) (March 29 Order).

and unreasonable pursuant to section 206 of the FPA because of the rollover restrictions.¹²

10. Southern filed a timely response, and Calpine filed a timely motion to intervene and comments. Additional motions to intervene were filed by Morgan Stanley, Oglethorpe, the Georgia Transmission Corporation (Georgia Transmission), and MEAG Power (MEAG). On April 21, 2004, Southern filed an answer to the motions to intervene, opposing intervention by any entity other than a signatory to the agreements at issue. Southern also responded to Calpine's arguments in its comments. On May 7, 2004, Calpine filed a motion for leave to reply and a reply to Southern's answer. The Commission has not yet issued a decision in this paper hearing.

C. Docket Nos. ER04-563-002 and -003

11. On February 17, 2004, in Docket No. ER04-563-000, Southern filed an executed service agreement with Calpine to provide long-term firm, point-to-point transmission service beginning June 1, 2006 and ending May 31, 2012. Southern included a rollover restriction. Specifically, the rollover restriction in proposed section 5.0 provided that “[t]he Transmission Provider has performed an analysis that indicates that, after May 31, 2012, insufficient capacity exists to accommodate both the future rollover of this Service Agreement by the Transmission Customer and to provide service to Transmission Customers having an earlier priority for transmission service.”¹³ Proposed section 5.0 further provided that “[b]ased on the Transmission Provider's most recent analysis of its native load needs, the Transmission Provider has determined that 7500 MW of transmission capacity are required to meet forecasted native load growth through 2011.”¹⁴

12. Proposed section 5.0 of the Calpine agreement went on to state that, based on a December 17, 2003 Transmission Facility Study Report, “insufficient capacity exists to accommodate the future rollover of this Service Agreement by the Transmission Customer, the service associated with the above-listed OASIS Reference Numbers, and the Transmission Provider's service requirements to meet native load needs.”¹⁵ It further provided that Calpine's rollover rights were to be expressly conditioned upon the availability of sufficient transmission capacity after the requests for transmission service on the Georgia Integrated Transmission System, having an earlier priority than Calpine, have been accommodated.

¹² *Southern Co. Servs., Inc.*, 106 FERC ¶ 61,248 (2004).

¹³ Section 5.0 of the originally proposed agreement.

¹⁴ *Id.*

¹⁵ *Id.*

13. On May 19, 2004, in response to a Staff request for additional information, Southern provided data that it stated supported its duty to serve “native load, network, and point-to-point customer obligations that have higher-priority firm rights to transmission capacity than any rights Calpine has to that capacity” beyond the term of Calpine’s agreement.¹⁶ Southern further asserted that “if Calpine’s right to roll over its service agreement is not conditioned to reflect higher priority commitments, then reliability will be threatened because the Calpine Facility Study shows that there will not be sufficient transmission capacity to simultaneously accommodate all such uses of the transmission system.”¹⁷

14. Southern’s response also provided data on Southern’s native load growth projections. Additionally, Southern provided a list of “higher-priority transmission service reservations” that, Southern argued, when included in these studies demonstrated how Southern’s capacity could be constrained and insufficient to support Calpine’s rollover request. However, Southern stated these higher-priority agreements were not restrictions, but conditions on Calpine’s rollover rights.

15. On July 29, 2004, the Commission issued an order accepting the Calpine agreement, subject to the modification that section 5.0 be removed as an impermissible restriction on rollover rights.¹⁸ In the July 2004 Order, the Commission set out its general policy concerning rollover rights:

The Commission has consistently stated that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term. The Commission has further stated that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future.^[19]

The July 2004 Order went on to explain that, to make the necessary demonstration, “a transmission provider must identify the pre-existing contracts” commencing in the future

¹⁶ Southern Response at 2.

¹⁷ *Id.* at 3.

¹⁸ *Southern Co. Servs., Inc.*, 108 FERC ¶ 61,093 (2004) (July 2004 Order).

¹⁹ *Id.* at P 10 (footnotes omitted).

or “show that native load growth projections are sufficiently specific and supported in the record at the time of the original transmission service agreement.”²⁰

16. The Commission held that Southern had not met the required standard. The July 2004 Order rejected Southern’s position that its pre-existing agreements had a higher priority than the Calpine agreement, and would have rights to transmission capacity superior to that of Calpine. Rather, the Commission explained:

[O]nce a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such a request, as it has here, the Commission’s rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provider [sic] service to that customer should the customer request rollover of its contract term. If the transmission system becomes constrained (for reasons other than those initially identified, *i.e.*, reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider to either curtail service to all affected customers (not just the later accepted firm customers) pursuant to provisions of its OATT or to build more capacity to relieve the constraint.^[21]

In other words, the Commission stated, “[r]estricting rollover rights based on the potential exercise of other customers’ rollover rights is not an option.”²²

17. The July 2004 Order further indicated that the load forecasts and base case studies that Southern submitted in support of its claims, while “a significant amount of data,” were insufficient to allow the Commission to conclude that Southern cannot provide rollover rights to Calpine “simply because Southern will have native load growth” or pre-existing contracts commencing in the future that would require the transmission capacity that would be used by Calpine.²³

²⁰ *Id.* at P 11 (footnote omitted).

²¹ *Id.* (footnotes omitted).

²² *Id.*

²³ *Id.* at P 12.

18. Accordingly, the July 2004 Order accepted the Calpine agreement, subject to the removal of section 5.0. Instead, the Commission held, Calpine's rollover rights would be governed by section 2.2 of Southern's OATT.

19. On rehearing, in Docket No. ER04-563-002, Southern maintains that its proposed section 5.0 of the Calpine agreement precisely followed the directions of Order Nos. 888-A and 888-B by "expressly reserv[ing] future transmission capacity to meet the future load growth needs of [its] native load and network customers based on reasonably forecasted load growth projections in 2012 and beyond."²⁴

20. Southern also asserts that the data it submitted in support of the rollover restrictions imposed on Calpine "are based on reasonable projections of future native load growth" as well as the needs of "point-to-point customers" with "higher-priority reservations" than Calpine.²⁵ Southern faults the July 2004 Order for its conclusory rejection of the submitted data without addressing the evidence.²⁶

21. Southern also made a compliance filing under protest, in Docket No. ER04-563-003, in which it removed section 5.0 of the Calpine agreement in response to the Commission's directives in the July 2004 Order. Notice of Southern's compliance filing was published in the *Federal Register*,²⁷ with protests or comments due on or before September 20, 2004. None was filed.

II. Discussion

A. Procedural Issues

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they moved to intervene. While Southern opposed the interventions filed by Morgan Stanley, Georgia Transmission, and MEAG in Docket No. EL04-87-000, we will grant them as they have demonstrated a sufficient interest in the outcome of this proceeding.

²⁴ Southern Request for Rehearing at 12.

²⁵ *Id.* at 22.

²⁶ *Id.* at 22-23, 33-36.

²⁷ 69 Fed. Reg. 54,664 (2004)

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits answers to protests or answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to protests and other answers filed by the parties in these proceedings and will therefore reject them. Additionally, Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2005), prohibits answers to requests for rehearing, and therefore, we reject the answer to the rehearing and the responsive pleading thereto in Docket No. ER05-518-002 on this basis.

B. Mooted Proceedings

24. Since the agreements before us on remand in Docket Nos. ER03-379-003 and ER03-355-004 have expired by their own terms, no further action is required in these proceedings and they are hereby terminated. Progress²⁸ and Southern filed the rollover of the agreement at issue in Docket Nos. ER05-413-003 and -004 for another one year term effective December 1, 2004. That agreement expired by its own terms on November 30, 2005. Progress and Southern subsequently filed another rollover of the same agreement in Docket No. ER06-375-000, in which Southern did not seek to limit Progress' ability to rollover its service for another term, but indicated that it might seek to do so in subsequent rollovers to the extent permitted by Commission policy at the time. The Commission subsequently accepted this agreement by letter order.²⁹ Consequently, we will dismiss the rehearing in Docket No. ER05-413-003, as well as Southern's motion to withdraw its compliance filing in Docket No. ER05-413-004, as moot. Finally, the agreement at issue in Docket No. ER05-518-002 has expired by its own terms and has not been rolled over. Consequently, we will also dismiss the rehearing in Docket No. ER05-518-002 as moot.

C. Docket Nos. ER04-563-002 and -003 and Docket No. EL04-87-000

25. Upon further consideration and as discussed below, we will grant rehearing to provide Southern a forum in which to address its assertions that "[t]he Transmission Provider has performed an analysis that indicates that, after May 31, 2012, insufficient capacity exists to accommodate both the future rollover of this Service Agreement by the

²⁸ Progress is the assignee of the Oglethorpe agreement in Docket No. ER03-355-000, which was addressed by the court in *Southern*. As noted above, upon the assignment of the agreement from Oglethorpe to Progress, Southern filed the assigned agreement in Docket No. ER05-413-000.

²⁹ *Southern Co. Servs., Inc.*, 114 FERC ¶ 61,139, at P 6-7 (2006) (clarifying that Southern may, in the future, propose rollover limits that are consistent with then-effective Commission policy and that Progress has the right to object to such proposals).

Transmission Customer and to provide service to Transmission Customers having an earlier priority for transmission service,” and that it has “native load, network, and point-to-point customer obligations that have higher-priority firm rights to transmission capacity than any rights Calpine has to that capacity.” The issues to be addressed include: (1) whether Southern can demonstrate that it has native or network load growth that prevents Southern from providing rollover service to Calpine over the specific transmission capacity used by Calpine (i.e., contract path); and (2) how Southern’s “point-to-point customer obligations” meet the Commission’s policy concerning rollover rights and how those obligations can have higher-priority firm rights to transmission capacity than any rights Calpine has to that capacity.

26. Because the Commission accepted Southern’s filing in the July 2004 Order without suspension or hearing, subject to the modification that the rollover restriction be removed, we will institute a section 206 proceeding in Docket No. EL06-81-000, with a refund effective date, to provide Southern the forum discussed above.³⁰

27. Given common issues of law and fact, we will also consolidate the ongoing paper hearing proceeding in Docket No. EL04-87-000 with the proceeding in Docket No. EL06-81-000, so that the rollover restrictions sought by Southern in these proceedings may be addressed in the hearing and settlement judge procedures ordered below.

28. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b), as amended by the Energy Policy Act of 2005,³¹ requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,³² we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the proceeding in Docket No. EL06-81-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make

³⁰ In light of the fact that we are granting rehearing in Docket No. ER04-563-002 and instituting an investigation and evidentiary hearing concerning Southern’s rollover restrictions in Docket No. EL06-81-000, we will defer action on the compliance filing in Docket No. ER04-563-003 pending the outcome of this investigation.

³¹ Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

³² See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

such decision. Given the nature and complexity of the matters to be resolved, we expect that, assuming the case does not settle, the presiding judge should be able to render a decision by July 31, 2007. If the presiding judge is able to render a decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions or by March 31, 2008.

29. While we are setting these matters for investigation and a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³³ 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.³⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The rehearing request in Docket No. ER04-563-002 is hereby granted and an investigation instituted in Docket No. EL06-81-000, as discussed in the body of this order.

(B) The ongoing proceeding in Docket No. EL04-87-000 is hereby consolidated with Docket No. EL06-81-000 for purposes of settlement, hearing, and decision, as discussed in the body of this order.

(C) The settlement judge or presiding judge, as appropriate, shall determine the procedures best suited to accommodate the consolidation.

³³ 18 C.F.R. § 385.603 (2005).

³⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(D) Docket Nos. ER03-379-003, ER03-355-004, ER05-413-003, ER05-413-004, and ER05-518-002 are hereby terminated as moot, as discussed in the body of this order.

(E) 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 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), the Commission hereby institutes a proceeding in Docket No. EL06-81-000, as discussed in the body of this order. However, the investigation and hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), 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.

(G) 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 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.

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

(I) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under section 206 of the FPA in Docket No. EL06-81-000 in the *Federal Register*.

(J) The refund effective date in Docket No. EL06-81-000, established pursuant to section 206(b) of the FPA, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (I) above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.