

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oklahoma Municipal Power
Authority

Docket Nos. EL05-38-001
EL05-38-002

v.

American Electric Power Service Corporation

American Electric Power Service Corporation

Docket No. EL05-126-000

ORDER DENYING REHEARING AND CONDITIONALLY ACCEPTING
COMPLIANCE FILING, INSTITUTING INVESTIGATION, AND ESTABLISHING
REFUND EFFECTIVE DATE AND HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued July 25, 2005)

1. In this order, we will deny American Electric Power Service Corporation's (AEP) request for rehearing of the Commission's March 4, 2005 order in this proceeding.¹ We also will conditionally accept AEP's proposed Network Integration Transmission Service Agreement (NITSA) submitted to comply with the March 4 Order, and make it effective December 9, 2004. Further, we will institute an investigation under section 206 of the Federal Power Act (FPA),² establish a refund effective date, and establish hearing and settlement judge procedures.

I. Background

2. On December 6, 2004, OMPA filed a complaint against AEP requesting that the Commission direct AEP to file an unexecuted service agreement for additional network

¹ *Oklahoma Municipal Power Authority v. American Electric Power Service Corp.*, 110 FERC ¶ 61,228 (2005) (March 4 Order).

² 16 U.S.C. § 824d (2000).

transmission service that OMPA requested to facilitate OMPA's contracted-for acquisition of an increased ownership in a generating station called Oklaunion Unit No. 1 (Oklaunion).³

3. OMPA stated that it submitted two separate requests to AEP for transmission of 54 or 29 MW over facilities that interconnect the ERCOT transmission network to Southwest Power Pool's (SPP) transmission network, specifically the North High Voltage Direct Current Interconnection (North Tie),⁴ or, if no tie capacity was available, OMPA's funding, with appropriate credits, of additional tie capacity. In response to OMPA's requests, AEP performed a System Impact Study. OMPA stated that the study indicated that the North Tie facilities needed to be upgraded in order to provide OMPA either 29 or 54 MW of transmission service and also indicated the necessity to advance construction of an AEP transmission line elsewhere in the system. OMPA stated that, subsequently, AEP performed a Facilities Study to estimate OMPA's share of the cost of any required network upgrades. After receiving the results, on November 9, 2004, OMPA requested that AEP file an unexecuted service agreement under AEP's OATT. AEP informed OMPA that it would not file the agreement, which resulted in OMPA filing its complaint.

4. Prior to January 1, 2005, OMPA was a network transmission customer under AEP's OATT and Oklaunion was a designated resource under AEP's OATT. In a settlement agreement between AEP and Central and South West Corporation (CSW) (Merger Settlement), OMPA agreed to take network transmission service under SPP's OATT. On January 1, 2005, OMPA began to take network transmission service, including service from Oklaunion, under SPP's OATT pursuant to an unexecuted NITSA and Network Operating Agreement (NOA) filed by SPP.⁵ The Commission accepted

³ Oklaunion is jointly owned by several entities including OMPA and affiliates of AEP. It is a 690 MW coal-fired generating station located in Wilbarger County, Texas, which operates under the Electric Reliability Council of Texas (ERCOT).

⁴ Oklaunion lies adjacent to the North Tie. The North Tie is one of two HVDC interconnections that interconnect the transmission network operated in ERCOT and the transmission network operated under SPP.

⁵ See *Southwest Power Pool*, 110 FERC ¶ 61,304 (2005) (*SPP*). We note that OMPA is already receiving transmission service from SPP for Oklaunion output and that the instant proceeding only concerns OMPA's request for additional output from Oklaunion.

AEP's notice of cancellation of OMPA's network service agreement under AEP's OATT effective January 1, 2005.⁶

5. In the March 4 Order, the Commission granted OMPA's complaint and directed AEP to file with the Commission an unexecuted service agreement for the network transmission service OMPA requested. The Commission found that AEP violated its OATT by refusing to file the unexecuted service agreement upon OMPA's request. In addition, the Commission found that AEP acted contrary to the Commission's directive in *American Electric Power Service Corp.*, 107 FERC ¶ 61,209 at P 18 (2004), where the Commission stated its expectation that AEP exercise due diligence in expanding or modifying AEP's transmission system to meet OMPA's legitimate needs for transmission service.

II. Request for Rehearing

A. Transmission Provider: AEP or SPP?

6. AEP argues that the Commission's directive that AEP file an unexecuted service agreement under AEP's OATT was arbitrary and did not represent reasoned decision making because, as of January 1, 2005, OMPA ceased to be a network transmission service customer under the AEP OATT. AEP states that in Order No. 2000 and subsequent cases involving both the Midwest Independent Transmission System Operator, Inc. (MISO) and the SPP regional transmission organization (RTO), the Commission has been clear that, where there is established a legitimate regional transmission provider, it should be the sole provider of transmission service in the region.⁷ It argues that as a result of the March 4 Order directive, the new service OMPA requested will operate side by side with the SPP RTO network integration service that OMPA now uses to deliver energy output from its existing network resources to its loads that are connected to the AEP transmission system in Oklahoma. AEP argues that such parallel network service arrangements present administrative and operational problems that would be avoided if SPP were OMPA's only transmission service provider.

7. We find AEP's arguments unpersuasive. As we found in the March 4 Order, OMPA was a transmission customer under AEP's OATT at the time of its request. The fact that the service should now be under SPP's OATT has no bearing on whether AEP should have filed an unexecuted service agreement at the time of OMPA's request.

⁶ *American Electric Power Service Corp.*, 111 FERC ¶ 61,188 (2005).

⁷ *Citing Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 109 (2004).

Furthermore, AEP has misconstrued the March 4 Order by inferring that AEP and SPP will operate simultaneously as OMPA's transmission providers. We never stated in the March 4 Order that there would be two transmission providers providing OMPA with transmission service. Rather, our requirement for AEP to file a service agreement was based on the fact that AEP was the transmission provider until January 1, 2005. Therefore, we deny rehearing on this issue.

8. Since January 1, 2005, SPP has become OMPA's transmission provider. AEP's refusal to file a timely unexecuted NITSA and OMPA's ensuing complaint resulted in the instant NITSA being filed after SPP became the transmission provider. Although we directed AEP to file an unexecuted NITSA in accordance with its OATT, we clarify that because OMPA is now receiving transmission service from SPP, AEP's proposed NITSA should govern only the first phase of the service request, which is OMPA's right, under section 5 of AEP's OATT,⁸ to construct and own the upgrade to the North Tie in order for OMPA to receive its requested additional service. AEP is obligated to allow OMPA to exercise its section 5 rights because OMPA's request for service was made when it was still under AEP's OATT. With regard to the second phase of the request, i.e., the provision of additional transmission service, however, we agree with AEP that it is not required to provide such transmission service. The additional transmission service, along with the pricing of the service and whether or not OMPA is entitled to credits, should be governed by a separate NITSA negotiated between OMPA and SPP. Therefore, we encourage OMPA to work through these issues with SPP and to obtain a new NITSA

⁸ Section 5 provides:

Whenever planning is undertaken by AEP to increase the capacity of the HVDC Facilities, but at intervals of no more than every three years after June 30, 1989, with respect to the North Interconnection, and after June 30, 1989, with respect to the East Interconnection, until in either case June 30, 2004, electric utilities in ERCOT and the SPP will be given opportunity to participate in the planning of increases in the capacity of the HVDC Facilities and of participating in the ownership of any incremental capacity added, provided that each party that wishes to participate pays its *pro rata* share of all costs of constructing the HVDC Facilities in which it wishes to participate and undertakes to pay its *pro rata* share of the costs of operating and maintaining such HVDC Facilities and agrees further to be bound by the terms and conditions of the agreement between owners of such HVDC Facilities.

under SPP's OATT. In this regard, OMPA, pursuant to section 32.4 of SPP's OATT,⁹ may execute a NITSA with SPP or request SPP to file an unexecuted NITSA.¹⁰ In addition, SPP may also seek to amend its recent transmission service agreement with OMPA to reflect the additional service.

B. Posting of Security

9. On rehearing, AEP reiterates its argument that OMPA's request for service was invalid once OMPA failed to make a timely posting of the required security under section 32.4 of AEP's OATT.¹¹ It states that nothing in AEP's OATT says that AEP must first make a demand for a letter of credit and it is not sufficient that a transmission customer announce that it is ready to post the necessary credit if AEP insists that that be done. AEP states that it did not demand security because it made no sense for OMPA to seek partial network service from AEP with respect to a network resource that OMPA does not yet control and where the transmission facilities required to provide the requested service would not be in place until many months after the time that the SPP RTO became OMPA's sole source of transmission service.

10. AEP's arguments are unavailing. As we found in the March 4 Order, AEP did not refuse to file the unexecuted service agreement because of OMPA's failure to post proper security, but because, as AEP reiterates in its rehearing request, "OMPA should have requested the service from the SPP RTO."¹² Indeed, AEP never requested OMPA to post any security and, in fact, rejected OMPA's request before OMPA was required to post

⁹ Section 32.4 of AEP's OATT states that once a Facilities Study is completed,

[t]he Eligible Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement

¹⁰ *See, e.g., Southwest Power Pool, Inc.*, 110 FERC ¶ 61,304 (2005).

¹¹ Section 32.4 of AEP's OATT states that once a Facilities Study is completed,

[t]he Eligible Customer shall have thirty (30) days to . . . provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

¹² AEP's Request for Rehearing at 7.

any security.¹³ For AEP now to argue that OMPA's request was invalid because it failed to post the required security is disingenuous.

C. Due Diligence

11. AEP argues that the Commission erred in finding that AEP had not acted with diligence to advance OMPA's request for service. It argues that it promptly responded to OMPA's request by assisting OMPA in making proper OASIS postings of its service and performing the required studies. In addition, AEP argues that OMPA has maneuvered to place this matter before the Commission in an effort to gain through litigation disparate treatment to OMPA's advantage.

12. We disagree. AEP's arguments are irrelevant to the matter at issue, which is whether AEP filed the unexecuted service agreement consistent with its OATT, as requested by OMPA. Because AEP failed to file the agreement, AEP did not act with due diligence to advance OMPA's request for service.

III. Compliance Filing

A. AEP's Proposed NITSA

13. On April 25, 2005, AEP filed an unexecuted NITSA under its OATT in order to comply with the March 4 Order.¹⁴ The NITSA provides for the delivery of the energy output from a 54 MW undivided interest in Oklaunion to OMPA's loads that are connected to the Public Service Company of Oklahoma transmission system. Under the agreement, OMPA will own a new 54 MW High Voltage Direct Current (HVDC) intertie located adjacent to the North Tie and construct the facilities pursuant to section 5 of the AEP OATT.

¹³ See OMPA's Complaint, Affidavit of Roland L. Dawson at P 16-18 (noting that OMPA received the Facilities Study on November 5, 2004, requested that AEP file an unexecuted agreement on November 9, 2004, and was told by AEP that it would not file the agreement on November 24, 2004, less than 30 days from the completion of the Facilities Study).

¹⁴ AEP states that the unexecuted agreement anticipates that AEP will operate and maintain the new intertie pursuant to an operation and maintenance agreement that will have to be negotiated between AEP and OMPA before commercial operation of the new intertie commences.

B. Notice of Compliance Filing and Protest

14. Notice of AEP's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 24,571 (2005), with comments, interventions and protests due on or before May 16, 2005. OMPA filed a protest objecting to certain aspects of AEP's filing and requesting that the Commission suspend AEP's NITSA and set it for hearing, although it suggests that the Commission may be able to make a settlement judge procedure work. AEP filed an answer to OMPA's protest. OMPA and AEP subsequently filed additional answers to each other's answers.

C. Discussion

1. Procedural Matters

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept AEP's or OMPA's answers and will, therefore, reject them.

2. Commission Determination

16. We will address the issues raised by AEP's NITSA below.

a. One-Day Term, Pricing and Credits

17. The NITSA provides that it will remain in effect for one day after the effective date, and OMPA will thereafter take all transmission service under SPP's tariff. The NITSA does not provide for OMPA to receive credits for the upgrade to the North Tie it plans to own and construct. Also, the NITSA does not obligate AEP to provide the additional service OMPA requested.

18. OMPA objects to the NITSA being effective for one day only, after which OMPA will take service under SPP's OATT, since this will cause OMPA to begin the negotiation process all over again with SPP when SPP has no counterpart to section 5 of the AEP OATT. OMPA also argues that AEP's proposed one-day term of service is a material breach of OMPA's rights as an AEP OATT transmission customer, absent assurance that OMPA will be held harmless. OMPA states that it is entitled to enjoy its rights under the AEP OATT and AEP cannot defeat those rights by specifying a patently unreasonable one-day term of service.

19. Specifically, OMPA argues that the costs of the upgrade to the North Tie that it plans to own and construct should be folded into the AEP transmission revenue requirement (TRR) in the "AEP-West" zone within SPP (or otherwise spread within

SPP). In addition, it argues that it is entitled to credits for its own TRR for the upgrade (pursuant to section 30.9 of AEP's OATT). Although OMPA does not object to the transfer of the upgrade to SPP's control, OMPA argues that AEP is the transmission provider responsible for assuring the provision of the new (post January 1, 2005) transmission service.

20. OMPA further argues that although it agreed to terminate its existing arrangements for transmission service and transfer that service to the SPP Tariff no later than January 1, 2005, pursuant to the Merger Settlement, the section 5 service at issue here is service that is not contained in the SPP OATT, and is to be provided by AEP post-January 1, 2005, and by definition falls outside the transfer obligation of the Merger Settlement.

21. The only rights section 5 of AEP's OATT confers upon transmission customers are the rights to own and construct facilities to increase capacity on the North Tie. As we discussed above, we agree that OMPA's section 5 rights should be preserved since OMPA requested additional service when it was under AEP's OATT. Therefore, AEP's proposed NITSA should govern OMPA's rights to construct and own the upgrade that is necessary to the North Tie.

22. What we do not agree with is OMPA's argument that exercising its rights under section 5 automatically triggers AEP's transmission pricing and crediting provision. Because OMPA began receiving transmission service under SPP's OATT on January 1, 2005, the pricing of the additional service, which the parties suggest may commence in 2007, or whether or not OMPA is entitled to credits, should be governed by a separate NITSA negotiated between OMPA and SPP -- the transmission provider who will actually provide the service. Given that section 5 is limited to ownership and construction of upgrades to the North Tie, coupled with the unique circumstances of having a transmission customer transition to a new transmission provider, it would be unjust and unreasonable for SPP to be forced to adopt AEP's pricing or crediting provision simply because OMPA changed transmission providers.

23. Furthermore, OMPA has not presented any evidence that it entered into the Merger Settlement on the condition that it would receive AEP's transmission service pricing once it joined SPP. To the contrary, it appears that OMPA understood that it had to renegotiate the terms of its AEP-provided network transmission service with SPP given the fact that SPP recently filed a new NITSA for that network service.¹⁵

¹⁵ *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,304 (2005).

24. With regard to AEP's proposed one-day term for the NITSA, we find that it is unjust and unreasonable and require AEP to delete it. Allowing the NITSA to be effective only one day diminishes OMPA's rights under section 5 to own and construct the upgrade to the North Tie. The NITSA should remain ongoing until the upgrade is constructed.¹⁶ AEP should make a compliance filing within 30 days of the date of this order reflecting this deletion from its NITSA.

25. Therefore, we find that OMPA is entitled to its section 5 rights from AEP, but is neither entitled to AEP's pricing nor credits from AEP.

b. Assignment

26. Article 3.2 of the NITSA states that "[t]he Transmission Provider has placed control of its transmission facilities in the SPP region under a regional tariff supervised by [SPP]. The Parties agree that this Agreement may be assigned to the SPP."

27. OMPA argues that AEP's unilateral right of assignment is contrary to contract law, and thus illegal, unless (1) SPP can provide the services necessary, and (2) OMPA is held harmless from additional costs or obligations arising from the assignment.¹⁷ OMPA argues that it has no assurance that it will have essentially the same rights under the SPP OATT, assuming that SPP can even provide such service.

28. We find AEP's "assignment" language to be unjust and unreasonable and require that it be deleted. Because OMPA began to take service under SPP's OATT on January 1, 2005, the network service that is the subject of AEP's proposed NITSA can only transition to SPP via SPP and OMPA negotiating a new NITSA and filing it with the Commission. As discussed above, section 32.4 of SPP's OATT allows SPP to file a service agreement with the Commission in either an executed or unexecuted form. Therefore, AEP's proposed NITSA cannot simply be assigned to SPP, but must transition

¹⁶ We note that OMPA and AEP may have to file with the Commission other agreements before construction may commence under section 5, e.g., construction agreement.

¹⁷ AEP would have to demonstrate that: (1) the value of OMPA's section 5 rights will be maintained; (2) that the rates, terms, and conditions of the requested new service under the SPP OATT will be materially the same as under the AEP OATT; and (3) that OMPA faces no additional risk or burden as a result of the proposed transition from the AEP OATT to the SPP OATT.

in accordance with the Commission-approved framework consistent with SPP's OATT. AEP should include this revision in its compliance filing ordered above.

c. Posting of Security

29. As discussed above, Article 3 of the NITSA includes a provision that the NITSA will only become effective when, among other things, OMPA "shall have posted the security required by Section 32.4 of the AEP Tariff to assure payment for the New Facilities."

30. OMPA argues that it has provided AEP with sufficient financial assurances. OMPA states that both AEP and OMPA agree that OMPA intends to own and pay for the construction costs of the upgrade and that section 32.4 anticipates that AEP will own and pay for the upgrade. OMPA emphasizes that the cost which AEP will incur in the construction is zero, and that nothing in the commercial practices established by the Uniform Commercial Code suggests that such an entity that incurs no risk is entitled to any security. OMPA adds that it is not clear that AEP will be its agent for construction. Furthermore, OMPA states that no such requirement was imposed in any of the construction contracts in which OMPA was a joint owner with AEP (or its predecessor in interest) of a generation facility. OMPA concludes that there is no reason to provide a letter of credit covering the amount that OMPA will have to pay.

31. Moreover, OMPA states that it has provided AEP with a letter from a banker assuring that a letter of credit will be available in the future. OMPA argues that because the timing is not set, it is unreasonable to require OMPA to maintain a letter of credit, when it costs 0.85 percent of the credit amount per year to keep such a letter open.

32. We find that under section 32.4 of AEP's OATT AEP is entitled to a letter of credit if AEP constructs the upgrade requested by OMPA. Section 32.4 anticipates that the transmission provider, i.e., AEP, will construct any upgrades on behalf of the transmission customer, i.e., OMPA. However, as OMPA points out, it is not clear that AEP will construct the upgrade in question. Therefore, only to the extent that AEP will construct the upgrade, is AEP entitled to a letter of credit under section 32.4 of AEP's OATT.

d. Effective Date

33. The NITSA provides that it will become effective on the date on which the last of the following events have occurred: (1) AEP and OMPA have executed the NITSA or OMPA has requested AEP that it file an unexecuted service agreement; (2) AEP and OMPA enter into a network operating agreement; (3) the new facilities have been placed into service; (4) OMPA posts the required security; and (5) the Commission accepts the

agreement and makes it effective by Commission order, in which case the effective date shall be specified in the Commission order.

34. Under section 15.3 of AEP's OATT, once OMPA submitted its request, AEP had 30 days to file the unexecuted agreement with the Commission. OMPA requested that AEP file an unexecuted agreement on November 9, 2004. Because AEP failed to file the unexecuted agreement as requested, we will make the proposed NITSA effective the day AEP should have filed the agreement with the Commission--December 9, 2004. Accordingly, we will require AEP to revise the NITSA to reflect the December 9, 2004 effective date. AEP should include this revision in its compliance filing ordered above.

e. Other Issues

35. In addition to the above issues raised by OMPA, it also argues that: (1) OMPA should not have to pay carrying costs associated with the construction of a new 138 kV circuit to the Snyder-Altus Junction project as it is necessary now to ensure N-1 reliability; (2) section 2.1, Cost Recovery Protection, which appears to be stranded costs, makes no sense for upgrades that OMPA will primarily own and fund; and (3) it requested to fund a 100 MW or 200 MW upgrade, but AEP only provides for a 54 MW upgrade.

36. In light of these concerns raised by OMPA and upon our preliminary analysis of the proposed NITSA, we will institute an investigation, under section 206 of the FPA, in Docket No. EL05-126-000, into the justness and reasonableness of the proposed NITSA and will establish a refund effective date. In addition, because the investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing

37. Although we are instituting an investigation and establishing hearing procedures, we believe that it would be in the best interest of the parties to resolve this dispute expeditiously and consensually rather than through litigation. Accordingly, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁸

¹⁸ 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 the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The settlement judge shall report to the Chief Judge and the Commission within 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 for commencement of a hearing by assigning the case to a presiding judge.

38. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,¹⁹ we will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of our investigation in Docket No. EL05-126-000, is published in the *Federal Register*.

39. Section 206 of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, 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 such a decision. To implement that requirement, we will direct the presiding judge to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the presiding judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or issuance of initial decision.

The Commission orders:

(A) AEP's request for rehearing is hereby denied.

(B) AEP's compliance filing is hereby conditionally accepted for filing, and the NITSA is made conditionally effective December 9, 2004.

(C) AEP is hereby required to file a revised NITSA with the Commission within 30 days of the date of this order, as discussed in the body of this order.

¹⁹ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Electric Light Co.* 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (2005); *Canal Electric Company*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred by the Commission by section 402(a) of the Department of Energy Organization Act, particularly section 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), an investigation is hereby instituted, in Docket No. EL05-126-000, concerning the continued justness and reasonableness of AEP's proposed NITSA. The investigation will be held in abeyance, however, pending a further Commission order.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding ordered in Ordering Paragraph (D) above, under section 206 of the Federal Power Act, in Docket No. EL05-126-000.

(F) The refund effective date in Docket No. EL05-98-000, established pursuant to section 206(b) of the Federal Power Act, shall be sixty (60) days following publication in the *Federal Register* of the notice in Ordering Paragraph (E) above.

(G) 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 the proceeding ordered in Ordering Paragraph (D) above 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. We will hold these settlement judge procedures in abeyance, however, pending a further Commission order.

(H) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission 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 discussion, 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 Chief Judge and the Commission of the parties' progress toward settlement.

(I) If the settlement judge procedures fail and a formal 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 conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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)

Linda Mitry,
Deputy Secretary.