

141 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Colton, California

Docket No. ER13-207-000

ORDER ACCEPTING PROPOSED TRANSMISSION OWNER TARIFF AND
TRANSMISSION REVENUE REQUIREMENT AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued December 20, 2012)

1. On October 26, 2012, City of Colton, California (Colton) submitted for filing with the Commission its Transmission Owner Tariff (TO Tariff) and base Transmission Revenue Requirement (TRR).¹ Colton requests that the Commission accept its TO Tariff and TRR and also grant certain waivers. Colton requests an effective date of January 1, 2013, and it consents to return any payments it receives from the California Independent System Operator Corporation (CAISO) for its TRR in excess of the TRR ultimately approved by the Commission.² As discussed below, we grant Colton's request for waiver of the filing fee, accept Colton's TO Tariff for filing, effective January 1, 2013, as requested, accept its TRR for filing, and set the matter for hearing and settlement judge procedures.

¹ Colton's October 26, 2012 Petition for Approval of Transmission Revenue Requirement and Transmission Owner Tariff and Conditional Request for Waiver of Filing Fee at 1 (Petition), at 4. The Petition was filed under section 205 of the Federal Power Act. The TO Tariff includes a proposed mechanism to implement pass-through treatment of costs associated with Colton's Existing Transmission Contracts with Southern California Edison Company (SoCal Edison), while the TRR includes a High Voltage Transmission Revenue Requirement (High Voltage TRR) and a Transmission Revenue Balancing Account Adjustment (TRBAA).

² Colton Answer at 2.

I. Background

2. According to Colton, it operates an electric utility through the city's electric department. Accordingly, Colton is not subject to the Commission's jurisdiction but is regulated by the Colton City Council. It is located in the Los Angeles basin and is electrically surrounded by SoCal Edison. Colton had a peak load of approximately 86 MW in 2012. Colton provides electricity to approximately 18,000 residential, commercial, and industrial customers within the Colton City limits. Colton meets its customers' needs via internal generation resources totaling 50 MW, and by purchasing power and energy from resources outside of its system. Colton is dependent upon SoCal Edison and the CAISO for delivery of its external resources.³

3. The Colton City Council approved the transfer of Colton's transmission entitlements to the CAISO's Operational Control for the purpose of becoming a Participating Transmission Owner on June 19, 2012. Colton's application to become a signatory to the CAISO Transmission Control Agreement and a Participating Transmission Owner in the CAISO was approved by CAISO on September 13, 2012, and will become effective January 1, 2013.⁴

II. Colton's Filing

4. Colton is not a public utility but will be a Participating Transmission Owner in the CAISO. The CAISO Tariff requires Participating Transmission Owners to develop a TRR, TRBAA⁵, and a resulting High Voltage TRR and Low Voltage TRR, as applicable.⁶ Colton would be compensated by CAISO through CAISO's collection of a Transmission Access Charge (TAC) from its transmission customers for the use of Colton's transmission facilities and its entitlements to external transmission capacity. Rate changes that affect the CAISO TAC require a section 205 filing under the Federal

³ Petition at 4.

⁴ *Id.*

⁵ The TRBAA is a tracking mechanism used to ensure that all revenues forecasted to be received by a Participating Transmission Owner in a given year from wheeling service, usage charges, and the sale of financial transmission rights benefit CAISO transmission customers without delay, subject to an annual true-up.

⁶ Petition at 5-6 (citing CAISO Tariff § 26.1.1).

Power Act (FPA)⁷ to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charged by the CAISO.⁸

5. In this filing, Colton has submitted its TRR and TO Tariff and requests that the Commission: (1) issue an order accepting its base TRR, High Voltage TRR, TRBAA, and Gross Load Forecast; (2) approve its TO Tariff, effective January 1, 2013; and (3) waive the filing fee.

6. Colton states that its proposed base TRR is \$3,256,017, based upon a calendar year 2013 projected test period. Colton explains that its base TRR reflects its projected Administrative and General (A&G) costs, regulatory expenses, and a portion of the Colton Electric Department's payment to the City of Colton's General Fund.⁹

7. Colton participates in and has entitlements to capacity on two transmission projects (Mead-Adelanto Project,¹⁰ and Mead-Phoenix Project)¹¹ through the Southern

⁷ 16 U.S.C. § 824d (2006).

⁸ Petition at 6-7 (citing *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at PP 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006)).

⁹ *Id.* at 8.

¹⁰ Under the Mead-Adelanto Project Transmission Service Contract, Colton is entitled to 23 MW of firm, bi-directional service over this 500 kV transmission line extending from the Marketplace Substation in southern Nevada to the Adelanto Switching Station located in southern California. The adjusted test year annualized cost of Colton's entitlement in the Mead-Adelanto Project is \$616,000.00, which includes half of the cost of a related entitlement to 33 MW of firm, bi-directional service on the 500 kV alternating current transmission line between the Marketplace Substation and McCullough Switching Station. Petition at 9.

¹¹ Under the Mead-Phoenix Project Transmission Service Contract, Colton is entitled to firm, bi-directional service over this 500 kV transmission line, which consists of two segments. The first segment extends between the Westwing Substation near Phoenix, Arizona to the Mead Substation in southern Nevada. The second segment extends between the Mead Substation and the Marketplace Substation. Colton's entitlements in both of these segments equal 4 MW. The adjusted test year annualized cost of Colton's entitlement in the Mead-Phoenix Project is \$81,900.00, which includes half of the cost of a related entitlement to 33 MW of firm, bi-directional service on the

(continued...)

California Public Power Authority (SCPPA). Colton states that the total annualized cost for Colton's entitlements in the SCPPA projects is \$697,900.00 for the 2013 test year. Colton provides that this amount is based upon the combination of 50 percent of Colton's share of the fiscal year 2013 budgeted costs and 50 percent of Colton's share of fiscal year 2014 forecasted costs for each project.

8. According to Colton, it has an entitlement to transmission capacity pursuant to the Adelanto-Lugo/Victorville Firm Transmission Service Agreement with the Los Angeles Department of Water and Power (LADWP). Colton states that this agreement provides it with a 23MW entitlement to firm, bi-directional transmission service between the Adelanto Switching Station and the midpoint of the Lugo-Victorville 500 kV transmission line (Adelanto-Victorville-Lugo). According to Colton, the cost of this entitlement, which is based upon a rate established by LADWP, is projected to be \$81,420.00 for the 2013 test year.¹²

9. Colton also has contractual entitlements to transmission capacity pursuant to four agreements with SoCal Edison. These entitlements are described as follows: (1) Palo Verde Nuclear Generating Station Firm Transmission Service Agreement (Lugo/Victorville-Vista) (3 MW entitlement to firm, uni-directional transmission service); (2) Pasadena Firm Transmission Service Agreement (Lugo/Victorville-Vista (18 MW entitlement to firm, uni-directional transmission service); (3) Hoover Firm Transmission Service Agreement (Mead-Vista) (3 MW entitlement to firm, uni-directional service); and (4) 1995 San Juan Unit 3 Firm Transmission Service Agreement (Devers-Vista) (14.043 MW entitlement to firm, uni-directional transmission service). Colton provides that the charge for these four entitlements is stated in SoCal Edison's TO Tariff and is referred to as the High Voltage Existing Contract Access Charge (HVECAC). The costs for the four ETCs for the 2013 test year are based on the currently-effective HVECAC, \$1,949,323.00.¹³

10. With respect to A&G expenses related to transmission, Colton estimates that its personnel costs, salary and salary-related costs by four Electric Department personnel working on CAISO transmission matters will total \$67,250.00 during the 2013 test year.¹⁴ Colton estimates its regulatory expenses, including legal and consulting fees and

500 kV alternating current transmission line between the Marketplace Substation and McCullough Switching Station. *Id.* at 9-10.

¹² *Id.* at 10.

¹³ *Id.* at 11.

¹⁴ *Id.* at 11-12.

expenses related to Colton's transmission activities during the 2013 test year to be \$164,122.00. Colton provides that this amount is based upon Colton's actual legal and consulting costs for the most recent twelve-month period, an estimate of the cost to prepare and submit future annual TRBAA and ETC Pass-Through Clause update filings, and estimated costs for the instant proceeding. Specifically, Colton anticipates that it will incur \$250,000.00 in regulatory expenses related to this TRR and TO Tariff filing, the preparation of its corresponding application to become a Participating Transmission Owner, and litigation and/or settlement of this proceeding, which Colton proposes to amortize over two years.¹⁵ Additionally, Colton will incur approximately \$39,122 for annual TRBAA and ETC Pass-Through Clause update filings.

11. Colton pays an annual General Fund Transfer to the city as required by Ordinance No. 0-09-02. Colton states that for fiscal year 2013, the General Fund Transfer amount will be 10 percent of Colton's gross revenues for the preceding Fiscal Year. To calculate the portion of the General Fund Transfer associated with Colton's transmission entitlements, 10 percent was applied to the subtotal of Colton's test year annualized TRR, resulting in a General Fund Transfer amount of \$296,002.00. Colton asserts that the General Fund Transfer is similar to a return on equity.¹⁶

12. Colton asserts that the TRBAA is to ensure that certain offsets against the TRR of a Participating Transmission Owner (referred to as Transmission Revenue Credits or TRCs) are flowed through to transmission customers. Colton explains that the TRBAA is a balancing/tracking account whereby amounts not collected in previous periods are collected in the next period and/or amounts over-collected in one period are applied against the next period. Under the CAISO Tariff, Colton contends that the changes in the TRBAAs of the Participating Transmission Owners are intended to become effective as of January 1st of each year. Colton provides that TRCs include revenues for Wheeling Service. Because Colton has not received Wheeling revenues in the past, but anticipates receiving such revenues upon becoming a Participating Transmission Owner, Colton calculated expected Wheeling revenues. Colton's proposed TRBAA will be credited against its base TRR for 2013, and then trued up as part of its first annual TRBAA filing during the fourth quarter of 2013. Colton states that when the proposed TRBAA of \$21,439 is credited against Colton's proposed base TRR, the resulting High Voltage TRR is \$3,234,578.¹⁷

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 12-13.

¹⁷ *Id.* at 13-14.

13. Colton explains that the Gross Load associated with its proposed TRR is 372,179 MWh. Colton states that the Gross Load reflected in this filing is consistent with the 2013 forecast Colton provided to the California Energy Commission and is used in Colton's internal resource planning and procurement decisions.¹⁸

14. Colton states that its proposed TO Tariff is substantially the same as the TO Tariffs of the Cities of Anaheim, Azusa, Banning, Pasadena, and Riverside, California. Thus, Colton requests that the Commission approve the attached TO Tariff for Colton, effective January 1, 2013.

15. Colton states that its proposed TO Tariff also includes an ETC Pass-Through Clause mechanism to recover its actual, invoiced SoCal Edison ETC costs each year. Under this mechanism, Colton will perform a forecast of its ETC costs, and it will calculate its actual ETC costs as invoiced by SoCal Edison for a prior, typically 12-month period. Each year, Colton will file its forecast and the true-up calculation (which will include interest on over- or under-collections at the Commission-approved rates) with the Commission as a separately-stated component of its base TRR. Colton states that a Pass-Through Clause is appropriate because its ETC costs have been volatile, such that a Pass-Through Clause will ensure that Colton neither over- nor under-recovers these costs.

16. Finally, Colton requests that the Commission waive any filing fees otherwise required under 18 C.F.R. § 385.207 (2012) for a petition of a declaratory order. Colton notes that the Commission has indicated a willingness to waive the filing fee for electric cooperatives seeking to clarify their rights under the reciprocity requirements of Order No. 888.¹⁹

III. Notice of Filing and Responsive Pleadings

17. Notice of Colton's filing was published in the *Federal Register*, 77 Fed. Reg. 66,458 (2012), with interventions, comments, and protests due on or before November 16, 2012. Timely motions to intervene, comments, and/or protests were filed by the following: Modesto Irrigation District, the City of Santa Clara, California and the M-S-R Public Power Agency, Pacific Gas and Electric Company (PG&E), Southern California Edison (SoCal Edison), California Department of Water Resources State Water Project, and Trans Bay Cable LLC. Colton filed an answer.

¹⁸ *Id.* at 14.

¹⁹ Petition at 16.

A. Protests

18. PG&E states that Colton's inclusion of a General Fund Transfer in the amount of \$296,002 and costs associated with the preparation of this regulatory filing and its application to become a Participating Transmission Owner may be excessive and requests that the Commission set the case for hearing and settlement.²⁰ Similarly, SoCal Edison asserts that Colton's proposed TRR may be unjust and unreasonable, and asks that the Commission set the issues associated with the Colton's TRR for discovery and hearing procedures. Specifically, SoCal Edison argues that Colton's proposed inclusion in its TRR of a \$296,002 (10 percent) annual contribution to the city's General Fund has not been shown to be appropriate.²¹ Additionally, SoCal Edison states that this charge appears to be calculated based on the base TRR, which includes Operation and Maintenance (O&M) expenses and A&G expenses, and that this approach has also not been shown to be just and reasonable. Third, SoCal Edison submits that it is not evident that the 10 percent General Fund fee, even if otherwise applicable to CAISO ratepayers, is a reasonable rate. Moreover, SoCal Edison provides that Colton has provided no evidence that the resulting amount of revenue generated by the General Fund Transfer would yield a just and reasonable return when applying the traditional rate base model used by the Commission.²²

19. Likewise, SoCal Edison asserts that Colton includes in its proposed base TRR regulatory expenses of \$164,122, comprising transmission-related legal and consulting costs associated with the city's participation "in a number of proceedings related to transmission by the other [Participating Transmission Owners]."²³ In addition, SoCal Edison states that Colton provides a summary of monthly costs with no supporting information for these amounts. Thus, SoCal Edison argues that Colton's forecast cannot be accepted without sufficient support that these legal and consulting fees are reasonable regulatory expenses.

B. Answer

20. Colton requests that if the Commission finds that the Petition presents issues requiring further review, it issue and order (i) accepting Colton's initial base TRR,

²⁰ PG&E at 3.

²¹ SoCal Edison at 3.

²² *Id.*

²³ *Id.* at 4.

TRBAA, High Voltage TRR, Gross Load forecast, and TO Tariff for filing effective as of January 1, 2013; (ii) establishing hearing or settlement procedures to resolve any contested issues; and (iii) permitting CAISO to use Colton's TRR for rate setting and rate collection purposes effective January 1, 2013, subject to refund in the event the Commission determines in a final order that a different TRR is proper. In its answer, Colton consents to procedures in the nature of refund obligations for any payments it receives from CAISO for its initial TRR that may be in excess of the TRR ultimately approved by the Commission, but Colton explains that its consent is solely for the purpose of its TRR Petition. Colton states that to transfer operational control of its transmission entitlements to CAISO on January 1, 2013, its TRR and TO Tariff must be effective, subject to refund, if appropriate.²⁴

21. Regarding challenges from SoCal Edison and PG&E that its regulatory expenses are unsupported, Colton states that it has included in its regulatory expense forecast both its anticipated costs of this proceeding and costs consisting of Colton's forecasted legal and consulting costs for ongoing activities. Colton notes that these activities include monitoring of and intervention in transmission revenue requirement proceedings, proceedings that impact Colton entitlements at both the Commission and CAISO, and transmission policy development at the Commission, CAISO, and WECC.²⁵ Colton asserts that there is no basis upon which to conclude that Colton's historical invoiced costs do not approximate the costs it is likely to incur going forward.²⁶ Finally, Colton agrees to provide supplemental documentation of its costs to parties that sign a Non-Disclosure Certificate and agree to abide by the terms of the Commission's Model Protective Order.²⁷

22. Colton asserts that the objections raised by SoCal Edison to its General Fund transfer are not justified. Colton reiterates that the General Fund transfer is similar to a return-on-equity. Colton contends that just as SoCal Edison (and PG&E) shareholders recover a return from CAISO ratepayers, Colton residents, who are analogous to shareholders in the city utility system, should be entitled to the same type of compensation. Colton states that its residents bear the risks associated with the city's

²⁴ Colton Answer at 1-2.

²⁵ *Id.* at 4.

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 6.

investment in transmission facilities, and provide a benefit to other transmission customers.²⁸

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Finally, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by Colton because it provided information that assisted us in our decision-making process.

B. Standard of Review

24. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).²⁹ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of CAISO's jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."³⁰ The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the

²⁸ *Id.* at 6-7. Colton is not categorically opposed to the use of an alternate methodology for the recovery of a return to its customer-owners based upon their investments in transmission facilities. However, Colton notes that the approach traditionally used by the Commission does not fit the governmentally-owned utilities. *Id.* at 7.

²⁹ See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

³⁰ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

CAISO rates are just and reasonable.”³¹ Subsequently, the court upheld the Commission’s decision that subjecting the TRRs of non-jurisdictional utilities (like Vernon) to a full section 205 review is “the only way to ensure that CAISO’s rate is just and reasonable.”³²

25. However, in *TANC*, the court ruled that the Commission had no authority to order Vernon to pay refunds under section 205 of the FPA. The court held that the structure of the FPA clearly reflects Congress’s intent to exempt governmental entities and non-public utilities from the Commission’s refund authority under section 205 of the FPA over wholesale electric energy sales.³³ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”³⁴

26. Therefore, we find that it is appropriate to apply the just and reasonable standard of section 205 to Colton’s TO Tariff rates. To determine the justness and reasonableness of Colton’s TO Tariff rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

27. Furthermore, Colton is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA. However, we note that Colton has agreed to refund any payment it receives from the CAISO for its TRR in excess of the TRR ultimately approved by the Commission.³⁵

C. Hearing and Settlement Judge Procedures

28. We note that Colton’s decision to turn over its transmission entitlements to the CAISO will benefit CAISO market participants and we affirm that finding here.³⁶ We continue to encourage the participation of new transmission owners, including non-

³¹ *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

³² *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

³³ *Id.* at 673-74.

³⁴ *Id.* at 674.

³⁵ Colton Answer at 2.

³⁶ *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,194 at P 16.

jurisdictional entities in the Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs).³⁷

29. Colton's proposed TO Tariff rates raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

30. Our preliminary analysis indicates that Colton's TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Colton's TO Tariff, including its proposed TRR, for filing, make it effective as of January 1, 2013, as requested, and set all issues for hearing and settlement judge procedures.

31. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.³⁸ 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.³⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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.

D. Other Issues

32. Finally, we will grant Colton's request for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are

³⁷ *Id.*

³⁸ 18 C.F.R. § 385.603 (2011).

³⁹ 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 list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

exempt from the filing fees required by Part 381.⁴⁰ Colton explains that the Commission has indicated its willingness to waive the filing fee for non-public utility entities seeking to clarify their rights under the reciprocity requirements of Order No. 888. We find that waiver from the filing fee required for a rate filing is appropriate for Colton, as a municipal entity.

The Commission orders:

- (A) Colton's proposed TO Tariff is hereby accepted for filing, effective January 1, 2013, as discussed in the body of this order.
- (B) Colton's proposed TRR is hereby accepted for filing, as discussed in the body of this order.
- (C) Colton's request for waiver of the filing fee is hereby granted, as discussed in the body of this order.
- (D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Colton's TO Tariff rates, 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 (D) and (E) below.
- (E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates 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.
- (F) 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

⁴⁰ 18 C.F.R. § 381.108 (2012).

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and 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.