146 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Old Dominion Electric Cooperative and
North Carolina Electric Membership Corporation

v. Docket No. EL10-49-000

Virginia Electric and Power Company

ORDER ON RESERVED ISSUE

(Issued March 20, 2014)

1. On March 17, 2010, Old Dominion Electric Cooperative (ODEC) and North Carolina Electric Membership Corporation (NCEMC) (collectively, Complainants) filed a complaint against Virginia Electric and Power Company (Dominion), alleging that certain costs were improperly included in Dominion's 2010 Annual Transmission Revenue Requirement (2010 ATRR) (Complaint). The Commission's October 4, 2010 Complaint Order reserved for Commission resolution the issue of whether Dominion should exclude from its 2010 ATRR the incremental costs of undergrounding the Garrisonville, Pleasant View-Hamilton, and DuPont Fabros transmission line projects (collectively, Projects) in the event that parties were unable to settle.[1] As discussed below, the Commission rules on this reserved issue by granting this portion of the Complaint in part.

I. Background

2. In the Complaint, Complainants requested that the Commission direct Dominion to remove three categories of costs from its ATRR: (1) the costs for generator interconnection facilities included in Dominion's Bear Garden second 230 kV line

[1] *Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 133 FERC ¶ 61,009, at P 35 (2010) (Complaint Order).

(Project s0167) (Bear Garden);[2] (2) the costs related to legacy retail delivery tap facilities and the six Supplemental Projects;[3] and (3) the incremental costs associated with undergrounding the Pleasant View-Hamilton, Garrisonville, and DuPont Fabros projects, in the event the Commission did not exclude all costs related to the delivery point facilities for these projects.

3. In the Complaint Order, the Commission dismissed the portion of the Complaint concerning the Bear Garden line, finding that the costs of the Bear Garden line could not be assigned to Dominion because they were not included in the Interconnection Service Agreement. The Commission set the portion of the Complaint concerning cost allocation for the legacy retail delivery tap facilities and six Supplemental Projects for hearing and settlement judge procedures. The Commission found that the issue of whether to exclude the incremental costs of undergrounding the Garrisonville, Pleasant View-Hamilton, and DuPont Fabros projects could not be resolved based on the record, but was an issue that did not raise material issues of disputed fact. Accordingly, the Commission reserved the issue for Commission determination in the event that the parties were unable to settle the proceeding. The Commission stated that, if the parties were unable to settle the proceeding, they should address the undergrounding issue in their briefs on and opposing exceptions. Finally, the Commission set the refund effective date at March 17, 2010, the date of the filing of the Complaint.

4. On February 9, 2012, Dominion submitted an offer of settlement on behalf of itself, ODEC, NCEMC, Northern Virginia Electric Cooperative, Inc. (NOVEC), Central Virginia Electric Cooperative, and Virginia Municipal Electric Association No. 1 (VMEA) resolving issues set for hearing regarding cost allocation for legacy retail

[2] The Bear Garden facility is a 580 MW (nominal) combined cycle electric generating facility in Buckingham County, Virginia.

[3] The six Supplemental Projects were: Reddfield 230 kV DP (Project s0134); Nokesville 230 kV Delivery (Project s0129); Ft. Belvoir Expansion (Project s0135); DuPont Fabros 230 kV Line and Substation (Project s0126) (DuPont Fabros); Pleasant View-Hamilton 230 kV Line (Project s0133) (Pleasant View-Hamilton); and Garrisonville 230 kV Underground Line (Project s0124) (Garrisonville).

"Supplemental Projects" are defined in section 1.42A.02 of the PJM Operating Agreement as: "Regional Transmission Expansion Plan (RTEP) Project(s) or Subregional RTEP Project(s), which is not required for compliance with the following PJM criteria: System reliability, operational performance or economic criteria, pursuant to a determination by the Office of Interconnection."

delivery tap facilities and six Supplemental Projects (Settlement).[4] On the same day, in Docket No. ER12-1035-000, PJM Interconnection, L.L.C. (PJM) submitted on behalf of Dominion a new proposed Attachment H-16AA[5] to the PJM Open Access Transmission Tariff (OATT) to implement the Settlement. On May 18, 2012, the Commission issued an order approving the uncontested Settlement and accepting PJM's tariff revisions.[6]

II. The Projects

A. Pleasant View-Hamilton Project

5. The Pleasant View-Hamilton Project consists of a 230 kV, 12-mile line to the new Hamilton Substation, including approximately two miles of underground construction.[7] On April 14, 2005, Dominion filed its application for a certificate of public convenience and necessity (CPCN) with the Virginia State Corporation Commission (VSCC), proposing to construct the Pleasant-View Hamilton Project as an overhead line at an estimated cost of $36.6 million.[8] The Hearing Examiner noted in his report that, of the witnesses who testified at public hearings, "the overwhelming majority urged the Commission to require that the proposed transmission line be placed underground."[9] Among other things, witnesses argued that the planned construction of the line along the Washington & Old Dominion Trail, owned by the Northern Virginia Regional Park Authority, would result in the destruction of trees and historical structures.[10] On February 15, 2008, the VSCC approved the application for an overhead construction,

[4] The Settlement resolved all issues in this proceeding except for one issue regarding recovery of costs of undergrounding three projects, as discussed below.

[5] OATT Attachment H-16AA - Virginia Electric, 0.0.0. A conforming change was made to PJM's OATT Table of Contents, 5.0.0.

[6] *Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 139 FERC ¶ 61,137 (2012).

[7] Dominion Initial Brief at 11.

[8] Complainants' Initial Brief at 8, 14.

[9] Exhibit 9 to the Complaint at p. 154-155 (*Va. Elec. and Power Co.*, Case No. PUE-2005-00018, Virginia State Corporation Commission, Feb. 15, 2008).

[10] Exhibit 9 to the Complaint at p. 151 (Report of Howard P. Anderson, Jr., Hearing Examiner, *Va. Elec. and Power Co.*, Case No. PUE-2005-00018, Virginia State Corporation Commission, January 4, 2007).

citing the Hearing Examiner's recommendation against underground construction due to both the physical and cost to ratepayer impacts that would result.[11]

6. On April 2, 2008, the Virginia House Bill 1319 (HB 1319) was signed into law, directing the establishment of a statewide pilot program for the development of underground transmission lines. One section of this Act directed the VSCC to include the underground construction of a 1.8 mile portion of line owned by a regional park authority and used by the general public for park and recreational purposes.[12] The parties agree that this matches the description of the Pleasant View-Hamilton project. HB 1319 also specified that, for any costs not recoverable under the rates, terms, and conditions approved by the FERC, the VSCC shall approve a rate adjustment clause to provide for assignment of the costs to the utility's Virginia jurisdictional customers.[13] On May 6, 2008, the VSCC approved Dominion's request to participate in the HB 1319 pilot program by placing a portion of the Pleasant View-Hamilton Project underground.[14] The Project was placed into service on October 28, 2010 at a total cost of $90.4 million, with $32.9 million associated with the cost of the underground segment of the line.[15]

B. DuPont Fabros Project

7. The DuPont Fabros Project is a 0.71 mile double-circuit 230 kV underground transmission line, including a new substation, in Loudon County, Virginia.[16] The DuPont

[11] *Virginia Electric and Power Co. d/b/a Dominion Virginia Power*, Case No. PUE-2005-00018 (Virginia State Corporation Commission Feb. 15, 2008).

[12] "[A]s part of the pilot program established pursuant to this act, the State Corporation Commission shall approve as a qualifying project a transmission line of 230 kilovolts or less that has received a certificate of public convenience and necessity from the State Corporation Commission prior to the effective date of this act that approved the construction of an electrical transmission line in a right of way located upon land owned by a regional park authority used by the general public for park and recreation purposes…The Commission shall approve the underground construction of one contiguous segment of the transmission line that is approximately 1.8 miles in length…." 2008 Va. Acts 799, section 2.

[13] *Id.*

[14] Exhibit 9 to the Complaint at p. 153 (*Va. Elec. and Power Co.*, Case No. PUE-2005-00018, Virginia State Corporation Commission, Feb. 15, 2008).

[15] Dominion Initial Brief at 14.

[16] Complaint at 36.

Fabros Project was approved as underground construction pursuant a second section of House Bill 1319 that provided for the VSCC to establish a pilot program covering three additional projects. On July 21, 2008, Dominion filed an application for a CPCN proposing to construct the project as an underground line pursuant to HB 1319.[17] On May 29, 2009, the VSCC approved the project as a pilot project pursuant to HB 1319.[18] The DuPont Fabros Project was placed into service in July of 2010 at a total cost of $9.8 million, approximately $1.9 million greater than the $7.9 million estimated total cost of the Project in an overhead construction.[19]

C. Garrisonville Project

8. The Garrisonville Project is a five-mile double-circuit 230 kV transmission line located in Stafford County, Virginia.[20] In contrast to the Pleasant View-Hamilton Project and the DuPont Fabros Project, the Garrisonville Project was not approved as underground construction pursuant to the Virginia state statute, but rather as part of a VSCC pilot program for projects utilizing XLPE technology. In its August 30, 2006 application for a CPCN, Dominion proposed the Garrisonville Project in an overhead configuration, but amended that application on February 27, 2007 to include two underground alternatives.[21] In the proceeding before the VSCC, the Hearing Examiner stated in his report that the vast majority of residents of Stafford County preferred that the line be placed underground, and that the primary benefit of an underground line would be the elimination of the visual impact of an overhead line.[22] He stated that, of the written public comments received, 799 opposed the overhead alternative and 9 were in favor, and the vast majority of those opposed to the overhead alternative believed the negative impacts of the line could be mitigated by undergrounding the line.[23] The Hearing Examiner noted the significant cost differential between the project in an overhead

[17] Complainants' Initial Brief at 19-20.

[18] Exhibit 8 to the Complaint at p. 53 (*Va. Elec. and Power Co.*, Case No. PUE-2008-00063, Virginia State Corporation Commission, May 29, 2009).

[19] Dominion Initial Brief at 22.

[20] Complainants' Initial Brief at 15.

[21] *Id.*

[22] Exhibit No. 10 to the Complaint at p. 87 (Report of Michael D. Thomas, Hearing Examiner, *Va. Elec. and Power Co.*, Case No. PUE-2006-00091, Virginia State Corporation Commission, December 12, 2007).

[23] *Id.* at p. 36-37.

construction, estimated at $14.16 million and the first underground alternative, estimated at $82.3 million.[24] Nevertheless, the Hearing Examiner recommended, and the VSCC granted, the Garrisonville Project in an underground configuration as an XLPE pilot project under the VSCC program.[25] Construction on the Garrisonville Project was completed in July 2012. By 2011, the total cost of the underground project had risen to $131 million.[26]

III. The Reserved Issue

9. Initial briefs on the Reserved Issue were filed by Complainants, Dominion, and Staff of the Virginia State Corporation Commission (VSCC Staff). NCEMC and the North Carolina Utilities Commission (NCUC) filed a supplemental initial brief. NOVEC filed a statement in lieu of an initial brief. Reply briefs were filed by Dominion and NOVEC. VMEA and ODEC each submitted a supplemental reply brief. ODEC submitted an errata reply brief. The Virginia State Corporation Commission (VSCC) submitted a comment.

A. Initial Briefs

1. Complainants' Initial Brief

10. Complainants assert that Dominion placed the Projects underground solely to address local concerns, primarily related to local aesthetics, at the directive of the Virginia General Assembly and VSCC, and therefore Dominion's non-Virginia jurisdictional customers should not be required to pay for the incremental costs of the undergrounding. Complainants contend that the Projects' histories show that the underground configurations were not necessary to provide adequate and reliable service to customers.[27] Complainants allege that at no point did the VSCC or Dominion determine that undergrounding the Projects was required to maintain the integrity or reliability of Dominion's transmission system.

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[24] *Id.* at p. 90.

[25] Exhibit 10 to the Complaint at p. 93 (*Va. Elec. and Power Co.*, Case No. PUE-2006-00091, Virginia State Corporation Commission, Apr. 8, 2008). This VSCC pilot program also included the Clarendon-Ballston project in Arlington County approved by the VSCC as underground construction on May 25, 2007 in PUE-2006-00082.

[26] Dominion Initial Brief at 17.

[27] Complainants' Initial Brief at 23-25.

11. With respect to the Pleasant View-Hamilton project, Complainants state that Dominion initially proposed an overhead 230 kV transmission line approximately 15.7 miles long in order to meet extraordinary load growth in Loudoun County, Virginia, improve reliability in the area, and support future development of Dominion's transmission network.[28] Complainants state that, despite local opposition, the VSCC approved Dominion's line as an overhead project. However, Complainants state that, soon after the Virginia General Assembly passed HB 1319, which created a four-project, state-wide pilot program for the development of underground transmission lines and explicitly directed the VSCC to include the underground construction of a portion of line matching the description of the Pleasant View-Hamilton project as part of the program.[29] Complainants state that, as a result, the VSCC had no choice but to approve Dominion's request to participate in the pilot program by placing a portion of the project underground.

12. Similarly, Complainants state that the Garrisonville project was initially proposed as an overhead configuration and then, after public opposition to the overhead project and passage of Virginia House Bill 1919, which authorized the locality to request an electric utility to underground an overhead project if the locality agreed to provide a tax on electric utility customers in that locality to cover additional costs, Dominion amended the application to include underground alternatives.[30] Complainants also state that the Garrisonville project was approved as an XLPE underground pilot project, which allowed Dominion to recover the cost of the project from all of Dominion's Virginia-jurisdictional ratepayers (rather than just from retail customers in Stafford County).[31] Complainants state that Dominion proposed the DuPont Fabros project as part of the HB 1319 underground pilot program to avoid the public outcry it had experienced with the other projects, and the VSCC had no choice but to approve it after determining it met the criteria for the program.[32]

13. Complainants state that they do not challenge whether the Projects are integrated with Dominion's transmission system, but rather whether Dominion's allocation of the incremental undergrounding costs to wholesale transmission customers is consistent with the Commission's cost allocation policy, which dictates that FERC-jurisdictional

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[28] *Id* at 8.

[29] *Id*. at 12-13.

[30] *Id*. at 15-16.

[31] *Id*. at 32.

[32] *Id*. at 21-22.

customers should only pay for the costs of facilities which they cause to be incurred and from which they derive benefits that are roughly commensurate with the costs that are being allocated to them.[33] Furthermore, Complainants argue that permitting recovery of the incremental costs of undergrounding the Projects would establish a dangerous and costly precedent.

14. Complainants contend that, although they initiated this proceeding, the burden of proof is on Dominion to demonstrate that the benefits to wholesale transmission customers of the undergrounded facilities are roughly commensurate with the costs.[34] In fact, Complainants assert, the evidence in the proceeding indicates that undergrounding the facilities may actually be a detriment to the reliability of transmission service due to increased costs and difficulty of repairing underground lines.[35] Complainants also assert that any general claims of benefits, such as gaining experience with undergrounding or XLPE technology, are too speculative to be considered.[36]

15. Complainants state that exclusion of the incremental underground costs from wholesale rates will not result in trapped costs because Virginia state law guarantees recovery of the incremental cost of undergrounding from local customers that benefited from the undergrounding decision. Specifically, Complainants state that if the Commission does not approve the cost of undergrounding a project approved as a pilot project pursuant to HB 1319, then section 7 of HB 1319 directs the VSCC to approve recovery of those costs from Virginia-jurisdictional retail customers within three months of the utility filing a petition with the VSCC.[37] In addition, Complainants explain that the Virginia General Assembly has passed legislation allowing localities to enact tax assessments to support funding for undergrounding transmission lines in their communities.[38]

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[33] *Id.* at 6.

[34] *Id.* at 6-7.

[35] *Id.* at 37.

[36] *Id.* at 42.

[37] *Id.* at 43.

[38] *Id.* (citing 2005 Va. Acts 854; 2007 Va. Acts 260; 2009 Va. Acts 335).

16. Complainants argue that, in the *Northeast Utilities* orders relied upon by Dominion, the Independent System Operator, ISO New England, Inc. (ISO-NE), not the individual transmission owner, had determined that undergrounding expenses should be classified as Localized Costs[39] that could not be recovered on an RTO-wide basis but instead should be allocated locally or remain on the transmission owner's system.[40] Complainants argue that, while ISO-NE's Commission-approved tariff explicitly allows recovery of Localized Costs from wholesale customers, PJM's tariff does not. In addition, Complainants assert that, unlike the ISO-NE cases, PJM made no determination here that undergrounding is necessary to provide reliable service to Dominion's customers, and neither PJM nor Dominion have tariff provisions that explicitly authorize recovery of local costs from wholesale customers or non-Virginia jurisdictional retail customers. Complainants also assert that Dominion's other citations to Commission precedent for the proposition that the Commission has approved the rolled-in allocation of costs associated with undergrounding are inapposite because in those cases the lines passed through urban areas and undergrounding benefited a larger region.[41]

17. Finally, Complainants assert that under FPA section 306,[42] the filed rate doctrine, and Commission precedent, wholesale transmission customers are entitled to refunds for the improper charges back to the date that the erroneously calculated rates went into effect, i.e., January 1, 2010. In addition, rather than simply directing Dominion to remove the costs from its ATRR, Complainants request that the Commission direct Dominion to exclude the costs from recovery from any non-affiliate wholesale customers.

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[39] Localized Costs include "upgrade costs that state or local authorities determine are desirable for economic or environmental reasons (such as, for example, construction of transmission lines underground), but ISO-NE determines are not necessary for reliability reasons." *Id*. at 49 (citing *New England Power Pool*, 109 FERC ¶ 61,252, at P 4 (2004)).

[40] *Id*. at 48 (citing Dominion Answer at 21; *Northeast Utilities Service Co.*, 116 FERC ¶ 61,094 (2006) (*Northeast Utilities I*); *Northeast Utilities Service Co.*, 123 FERC ¶ 61,324 (2008) (*Northeast Utilities II*); *United Illuminating Co.*, 126 FERC ¶ 61,063 (2009)).

[41] *Id*. at 52-53 (citing *Duquesne Light Co.*, 125 FERC ¶ 61,028 (2008) (*Duquesne*); *NSTAR Electric Co.*, 125 FERC ¶ 61,313 (2008) (*NSTAR*), *order on reh'g*, 127 FERC ¶ 61,052 (2009)).

[42] 16 U.S.C. § 825e (2006).

2. Dominion's Initial Brief

18. In its initial brief, Dominion asserts that the fact that Complainants have conceded that the Projects are integrated with the transmission system is dispositive of the issue because the Commission's longstanding policy is to include in rolled-in rates the costs of all facilities that are integrated into the transmission system and to directly assign only the costs of transmission facilities that fail to demonstrate any degree of integration.[43] Dominion states that section 3.2 of the Settlement prohibits Settling Parties from challenging whether the Projects are integrated facilities.[44] In addition, Dominion states that Complainants do not challenge the prudence of the undergrounding costs.[45] Accordingly, Dominion states that the Commission should find that the costs of underground construction of the Projects should be included in rolled-in transmission rates.

19. Dominion argues that, despite Complainants' efforts to characterize the Projects as purely "local," the record demonstrates that these facilities benefit the Complainants and all transmission customers in the Dominion Zone in several respects, including improving reliability and assessing new undergrounding technologies.[46] Specifically, Dominion states that the Garrisonville substation is connected to the network using two 230 kV lines which are to be operated as a loop and will carry network flows that support the reliability of the transmission network. Dominion states that installing a 230 kV shunt reactor at the Garrisonville substation will control voltage on the network and improve reliability in the entire region and will permit Dominion to interconnect two additional networked transmission lines in the future.[47] Dominion also states that the VSCC determined that the Garrisonville Project would be integrated into the Dominion

[43] Dominion's Initial Brief at 2, 48 (citing *Mansfield Mun. Elec. Dep't v. New England Power Co.*, 97 FERC ¶ 61,134, at 61,613-14 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002) (*Mansfield*)).

[44] *Id.* at 19.

[45] *Id.*

[46] *Id.* at 2-3.

[47] *Id.* at 8-9.

transmission system,[48] and ordered that the Garrisonville Project be constructed using underground construction.

20. Dominion states that the Hamilton substation includes a 230 kV shunt reactor which will control voltages not only on the Pleasant View-Hamilton Project, but also on the network beyond the Pleasant View substation, and was approved by PJM as a Baseline Upgrade, demonstrating that it will provide reliability benefits to the region.[49] Dominion also states that the Pleasant View-Hamilton Project is being constructed as part of a significant increase in the transmission network in the Northern Virginia area to accommodate load growth, and the Hamilton substation is being constructed to accommodate two 84 MVA transformers.[50]

21. With respect to the DuPont Fabros Project, Dominion states that, while the two lines from the Beaumeade station to the DuPont Fabros substation will be operated radially in normal circumstances, the normally-open breaker between the two lines in the DuPont Fabros substation can be closed to provide network flows through the station for reliability purposes.[51] In addition, Dominion states that, once a future line is completed from the DuPont Fabros substation to a new substation, the breaker that is currently normally open will be closed so that network flows will pass through that substation under normal operating conditions.

22. Dominion asserts that the undergrounding costs should be rolled into Dominion's wholesale transmission rates because the transmission facilities are part of the integrated transmission network, and the Commission's longstanding policy is to roll in the costs of all transmission facilities that demonstrate "any degree of integration."[52] Dominion argues that, having admitted that the facilities are integrated with the transmission system

[48] *Id.* at 9-10. Dominion states that, in the order granting Dominion a CPCN for the project, the VSCC stated, "we find that the Company's transmission alternative reasonably addresses the need to provide additional distribution in the Garrisonville area, provide reliable electric service to its customers, and integrate the Company's 230 kV transmission system in the Northern Virginia region." *Id.* (citing Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, VSCC Case No. PUE-2006-00091, Final Order, p. 7 (Apr. 8, 2008) (Complaint Exh. No. 10, p. 99)).

[49] *Id.* at 11.

[50] *Id.* at 12.

[51] *Id.* at 15.

[52] *Id.* at 20-21.

and having failed to challenge whether the costs were prudently incurred, the Complainants cannot now demonstrate that the costs are ineligible for recovery.[53] Dominion contends that the Commission has rejected all prior assertions that the incremental costs of underground construction of new networked transmission facilities should be directly assigned, and approved the rolled-in allocation of costs in *Northeast Utilities I*, *Northeast Utilities II*, *Duquesne*, and *NSTAR*.[54]

23. Dominion asserts that rolled-in rate treatment of these undergrounding costs is consistent with the principles of cost causation because they were incurred for the benefit of all of Dominion's transmission customers.[55] Dominion states that the Commission has found that it need not engage in a "narrow entity-by-entity analysis of costs and benefits," but can support a broad allocation of transmission costs to the extent the upgrades "enhance a system used by many customers."[56] Dominion explains that the VSCC was required by law to consider a broader set of interests than just local aesthetics or the specific needs of retail customers of Dominion when it granted the CPCNs for the Projects. In addition, Dominion argues that each of the Projects provides reliability benefits, and the Commission has already rejected arguments that the Garrisonville and Pleasant View-Hamilton projects are local delivery facilities that only provide local benefits.[57] Furthermore, Dominion states that Complainants benefited from the underground construction of the Projects because it provided Dominion additional experience using XLPE cable, a relatively new technology.

24. Dominion explains that every utility that operates in more than one state obtains a CPCN and siting approval for a transmission project only from the state where the project is located, but that does not mean that the costs of the transmission system are allocated on a state-by-state basis. Dominion states that the Commission's policies favoring rolled-in treatment for integrated facilities would be meaningless if the Commission were

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[53] *Id.* at 20.

[54] *Id.* at 26-28 (citing *Northeast Utilities I*, 116 FERC ¶ 61,094 at P 26; *Northeast Utilities II*, 123 FERC ¶ 61,324 at PP 29-31; *Duquesne*, 125 FERC ¶ 61,028 at P 7; *NSTAR*, 125 ¶ 61,313 at P 44).

[55] *Id.* at 28.

[56] *Id.* at 28-29 (citing *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230, at PP 51-52 (2012)).

[57] *Id.* at 29-30 (citing *Va. Elec. & Power Co.*, 124 FERC ¶ 61,207, at PP 77, 85 (2008).

to decide that costs associated with cost increments imposed as part of a siting requirement are ineligible for rolled-in treatment.

25. Dominion contends that state law provisions for recovery of the undergrounding costs should not preclude recovery of these costs in transmission rates because reliance on the Virginia statutes as the primary method for recovery of the undergrounding costs would essentially rewrite the statutes to eliminate their function as a backstop and make them the primary cost recovery vehicle.[58] Further, Dominion states that there is longstanding precedent that the Commission need not abstain from exercising its jurisdiction over transmission rates under the FPA simply because the state may have concurrent regulatory jurisdiction.[59]

26. If the Commission does not permit rolled-in treatment for these undergrounding costs, Dominion states that the Commission should require it to directly assign the costs to Network Integration Transmission Service (NITS) customers for their Virginia loads in the Dominion Zone on a prospective basis.[60] Dominion argues that, because the VSCC mandated the undergrounding of the Projects for the benefit of entities extending far beyond the specific interests of Dominion's own retail customers, the narrowest allocation of costs for which there is any justification would be to allocate the costs to NITS customers for their Virginia loads in the Dominion Zone.

3. VSCC Staff's Initial Brief

27. VSCC Staff asserts that the VSCC approved the Projects as underground pilot projects because they provide Dominion system-wide reliability benefits, both in the projects themselves and in operation experience regarding XLPE installation, and therefore the Commission should treat these projects no differently than any other transmission facility on the Dominion system. VSCC Staff notes that, in approving the underground alternative for the Garrisonville Project, the VSCC agreed with Dominion that an additional study of XLPE installation was appropriate, approved the project as an XLPE pilot project, and concluded that such an installation provided reliability benefits for the entire Dominion system.

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[58] *Id.* at 35-36.

[59] *Id.* at 36 (citing *Conn. Light & Power Co. v. FPC*, 324 U.S. 515, 533 (1945); *Ind. & Mich. Elec. Co. v. FPC*, 365 F.2d 180, 183 (7th Cir. 1966).

[60] *Id.* at 3, 45-46.

28. VSCC Staff also argue that Complainants have customers in the affected areas and thus enjoy any alleged aesthetic benefits as much as Dominion's own customers. VSCC Staff contend that Complainants are also dependent on the use of the Dominion transmission system and therefore enhanced reliability from undergrounding the projects, such as their ability to withstand destructive storms, is likewise enjoyed by Complainants and their customers.

4. NCEMC's and NCUC's Supplemental Initial Brief

29. NCEMC and NCUC argue that the record shows that the VSCC approved undergrounding the Projects solely to comply with Virginia legislation enacted to appease local opposition to overhead transmission lines. NCEMC and NCUC contend that in all three cases, a technically feasible overhead alternative existed, and undergrounding the lines was not necessary to provide reliable and adequate service. NCEMC and NCUC urge the Commission not to allow Dominion to subsidize Virginia-jurisdictional retail ratepayers by allowing recovery of any portion of the undergrounding costs from North Carolina consumers. NCEMC and NCUC state that North Carolina consumers did not request that these three lines be placed underground and will not benefit from their undergrounding.

30. NCEMC and NCUC express concern that allowing a utility in one state to impose a burden on interstate commerce by imposing costs on consumers beyond its borders might result in reciprocal efforts from a neighboring state to impose costs on consumers in the first state.[61] They argue that the Commission has implicitly recognized the danger in such an approach,[62] and even where the Commission has authorized recovery of localized costs from wholesale transmission customers pursuant to a Commission-approved tariff explicitly allowing such recovery beyond the local customers that caused the costs to be incurred, the Commission limited recovery to wholesale customers within the same state as the local communities imposing the localized costs.[63]

31. NCEMC and NCUC argue that Dominion will not suffer any trapped costs should the Commission determine that the undergrounding costs be excluded from the rates charged to North Carolina customers because HB 1319 guarantees such recovery from Virginia customers.

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[61] NCEMC and NCUC Brief at 8-9 (citing *Public Utilities Commission of Rhode Island v. Attleborough Steam and Elec. Co.*, 273 U.S. 83 (1927)).

[62] *Id.* at 10 (citing *Orange and Rockland Utilities, Inc.*, 111 FERC ¶ 61,248, at P 2 (2005)) (*Orange and Rockland*).

[63] *Id.* (citing *Northeast Utilities II*, 123 FERC ¶ 61,324).

5. NOVEC's Statement in Lieu of Initial Brief

32. NOVEC states that the incremental costs of undergrounding the Projects were incurred primarily due to local political opposition to above-ground lines and not for electrical reasons of feasibility or reliability. NOVEC states that, although the facilities are deemed integrated and thus ordinarily subject to rolled-in treatment, it is evident that the incremental cost of undergrounding was incurred with an expectation that such costs could be collected from Dominion's retail customers pursuant to Virginia legislation. NOVEC does not oppose this outcome, but asserts that any localized allocation of costs must be done only under the auspices of the Virginia legislation pursuant to which the particular projects were undergrounded.

B. Reply Briefs

1. Complainants' Reply Brief and Errata Reply Brief

33. In their reply brief, Complainants argue that Dominion and VSCC Staff fail to acknowledge that Dominion initially proposed to construct both the Pleasant View-Hamilton and Garrisonville lines completely overhead, that Dominion's witnesses testified to the excessive costs associated with undergrounding the lines, that an overhead alternative was available and feasible for the DuPont Fabros project, and that HB 1319 was passed to override the Virginia Commission's approval of overhead construction for the Pleasant View-Hamilton line given public opposition to it.[64] Complainants contend that this history of the opposition to the proposed overhead lines demonstrates that the primary beneficiaries of the undergrounding decision are those who opposed its overhead construction.[65]

34. Complainants respond to Dominion's arguments regarding the ways in which the facilities benefit transmission customers by arguing that the overhead alternatives would have been adequate and less expensive approaches.[66] Complainants also argue that VSCC Staff's statement that the VSCC approved underground construction of each project based at least in part on regional reliability benefits afforded by such construction seeks to deflect the Commission's attention from evidence showing that the lines were undergrounded primarily to address public opposition to overhead lines, not to gain more

[64] Complainants' Reply Brief at 8.

[65] *Id.* at 10.

[66] *Id.* at 14.

experience with XLPE technology.[67] Complainants state that the fact that the VSCC found that the projects provide benefits to Dominion's Virginia-jurisdictional retail customers does not mean that the undergrounding decisions provide reliability benefits to other customers.

35. With respect to Dominion's arguments regarding integration of the undergrounded facilities with the transmission grid, Complainants assert that they are red herrings.[68] Complainants argue that Dominion's focus on the "any degree of integration" test ignores the fact that undergrounding the facilities was never necessary to integrate the projects or to provide adequate and reliable service to wholesale customers. Complainants maintain that they do not challenge whether the transmission lines are integrated, but rather the allocation of the incremental cost of undergrounding the lines. Complainants also argue costs may be prudently incurred to satisfy obligations but may nonetheless have nothing to do with the provision of adequate and reliable transmission service to wholesale transmission customers.

36. Complainants state that the issue before the Commission is not whether the existence of the lines provides benefits, but rather whether the decision to underground the lines provides any incremental benefits to wholesale customers, i.e., over and above the benefits that would have been received if the lines had been constructed overhead.[69] Complainants argue that Dominion's point that certain wholesale customers serve retail customers in counties where the Pleasant View-Hamilton and Garrisonville projects are located does not mean that wholesale customers receive benefits from the undergrounding of the lines because those loads would be located just as close to and better served by an overhead alternative.

37. Complainants urge the Commission to disregard arguments that use of XLPE cables conferred a benefit on Dominion's wholesale customers because the record does not support that the lines were undergrounded for that purpose.[70] With respect to Dominion's argument that the VSCC considered a broad set of interests in deciding to grant a CPCN, Complainants state that this may be true, but it is irrelevant to the question

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[67] *Id.* at 15. Complainants cite the hearing examiners in the Pleasant View-Hamilton and Garrisonville certificate proceedings, arguing that both found that the primary benefit of undergrounding the lines was avoidance of the visual impact of the overhead lines. *Id.* at 16.

[68] *Id.* at 18.

[69] *Id.* at 20.

[70] *Id.* at 29-32.

of whether costs are found by the Commission to be just and reasonable for recovery in rates subject to the FPA.[71]

38. Complainants argue that the Commission should reject Dominion's request for prospective reallocation of incremental undergrounding costs if Complainants are successful because it would make no sense for the Commission to rule that the costs were not properly included in wholesale customer rates and then turn around and directly assign those same costs to those same wholesale customers.[72]

2. ODEC's Supplemental Reply Brief

39. ODEC contends that NCEMC's and NCUC's requested relief must be rejected in its entirety because their request that the Commission require Dominion to allocate costs to only customers in one state is inconsistent with the Commission-approved zonal cost allocation and has not been shown to be possible under Dominion's current formula rate. ODEC argues that the cost allocation at issue in this proceeding is one of either wholesale or retail allocation, not state versus state, and making such a state-by-state allocation would be unreasonable and discriminatory. Furthermore, ODEC explains that Dominion's transmission formula does not contain provisions to charge customers in only a portion of the Dominion Zone.

3. Dominion's Reply Brief

40. Dominion contends that the history of the VSCC's approval of the CPCNs for the project is irrelevant to the resolution of this proceeding because the Commission's policy is to roll in the costs of all integrated transmission facilities, including integrated undergrounded facilities.[73] Dominion states that Complainants concede that the facilities at issue are integrated in Dominion's transmission system and that this concession disposes of the case.

41. Dominion argues that Complainants incorrectly assert that Commission precedent requires a precise determination of the benefits of and allocation of the costs of new transmission facilities; rather, the Commission's policy is that costs should be allocated roughly commensurate with benefits and presumes that integrated facilities benefit all users of the grid.[74] Dominion also argues that cases cited by Complainants do not

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[71] *Id.* at 33.

[72] *Id.* at 41.

[73] Dominion's Reply Brief at 2.

[74] *Id.* at 3.

support direct assignment of the costs at issue and, in fact, certain ones stand for the proposition that the Commission need not pinpoint direct benefits to specific cost causers.[75]

42. Dominion also asserts that efforts to re-cast the VSCC's approval of the projects as driven solely by aesthetic reasons misstate the record because the VSCC looked beyond local aesthetics, as it is statutorily required to do when it issues a CPCN, and the VSCC approved underground construction for each project as part of a pilot program to evaluate the potential benefits of XLPE technology.[76] Dominion contends that the Commission should not ignore a state's CPCN and should not base its ratemaking decision on less costly project configurations that were not ultimately approved.[77] Dominion states that taking such a step would involve the Commission in an endless process of second-guessing state regulatory commission siting decisions and would discourage transmission investment if the outcome of this process led to non-compensatory transmission rates.[78] Furthermore, Dominion argues that granting the Complaint would repeal decades of Commission precedent concerning how the benefits of new transmission are to be assessed and how transmission costs are allocated and create substantial uncertainty.[79]

43. Dominion contends that the existence of "backstop" cost recovery provisions in the Virginia statute does not justify denying recovery of Dominion's legitimate transmission costs in transmission rates.[80] Dominion asserts that this is not a filed rate doctrine case because Complainants cite no provision of the PJM Tariff that was misapplied and have not challenged the fact that the transmission costs are properly booked to the formula rate accounts in Attachment H-16A of PJM's Tariff.[81]

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[75] *Id.* at 7-12.

[76] *Id.* at 15-16.

[77] *Id.*

[78] *Id.* at 5, 17.

[79] *Id.* at 21-22.

[80] *Id.* at 20.

[81] *Id.* at 5, 24.

4. VSCC Staff's Reply Brief

44. In their reply brief, VSCC Staff contend that Complainants wrongly assume that any aesthetic benefit provided by a project nullifies the reliability benefits, allowing wholesale customers to contribute only their share of a hypothetical, cheaper overhead alignment. VSCC Staff assert that the regulatory regime the Complainants want the Commission to impose would allow any wholesale customer to challenge any transmission facility that was approved where a less costly alternative exists, and would allow the Commission to shift the incremental costs of such projects from wholesale customers to retail customers. VSCC Staff argue that this is contrary to Commission precedent, which finds that if a project provides system-wide benefits, all customers on the system should pay for the facility. VSCC Staff contends that placing the Projects underground provided benefits to all users of the transmission system by allowing evaluation of XLPE technology and by providing reliability benefits that have been called for in light of recent power outages due to storms.

5. NOVEC's Reply Brief

45. In its reply brief, NOVEC argues that the PJM Tariff provides for one uniform rate for Network Integration Transmission Service (NITS) within a transmission zone and does not provide for local assignment of transmission costs.[82] Accordingly, NOVEC states that the Commission's choices are limited to either: (1) allowing rolled-in treatment; or (2) denying rolled-in treatment, in which case Dominion can seek to recover the costs from its retail customers as Virginia law provides. NOVEC asserts that the Commission has no authority to assign costs to all of Dominion's customers in Virginia, to the exclusion of customers not in Virginia, and should reject as unduly discriminatory all arguments that would result in Dominion's wholesale customers paying a different jurisdictional rate based solely on whether they are located in Virginia or not. NOVEC argues that the Commission should reject Dominion's state-by-state approach because Dominion did not underground the Projects for reliability purposes and Dominion's experiential benefit does not end concurrent with a state boundary.

46. NOVEC argues that NCEMC and NCUC ignore material distinctions when they cite to examples where the Commission allowed departures from traditional rolled-in pricing of network facilities.[83] NOVEC asserts that, in the cited cases, the public utilities either sought Commission approval for tariff authority to localize transmission costs or

[82] NOVEC Reply Brief at 2.

[83] *Id*. at 6 (citing NCEMC and NCUC Supplemental Initial Brief at 10, n.20, n.21 (citing *Orange & Rockland*, 111 FERC ¶ 61,248 at P 2; *Northeast Utilities II*, 123 FERC ¶ 61,324)).

Commission approval to localize costs pursuant to existing tariff provisions, whereas in this proceeding, neither Dominion nor PJM has requested a tariff amendment allowing for localized recovery and such authorizing language is not part of the PJM Tariff. NOVEC argues that, absent specific tariff language or a request to add such provisions, NCEMC's and NCUC's goal of localized cost recovery limited to Dominion's Virginia-located customers constitutes undue discrimination and is impossible under the filed rate.

6. VMEA's Supplemental Reply Brief

47. VMEA adopts the arguments made in NOVEC's reply brief. In addition, VMEA asserts that the establishment of separate rates for transmission customers that take service from utilities owned by a single transmission provider and which constitute a single zone of PJM based only on the state in which the load is located constitutes undue discrimination.

IV. Discussion

48. As discussed below, we find that Complainants have shown that it is not just and reasonable for wholesale transmission customers outside the Commonwealth of Virginia, i.e., customers other than NITS customers with Virginia loads in the Dominion Zone, to be allocated the incremental costs of undergrounding the Projects. Accordingly, we grant the reserved portion of the Complaint in part.

49. The Commission's policy is that the costs of transmission projects integrated with the transmission system that provide system-wide benefits should be rolled-in, and thus allocated to those parties that benefit. No party in this case disputes that the three Projects are integrated with the transmission system and that the Projects provide system-wide benefits that would normally warrant rolling in their costs. However, the Complainants assert that the actions of the Virginia legislature and VSCC in implementing pilot projects resulted in VEPCO incurring significant incremental costs to underground the transmission lines to address local concerns, primarily related to local aesthetics, and these costs were not necessary to ensure reliability.

50. Based on the facts of this case, we find that that wholesale transmission customers outside of the Commonwealth of Virginia should not be responsible for costs that are a direct result of legislation and VSCC pilot projects intended to benefit citizens of the Commonwealth of Virginia. Two of the Projects were initially proposed as overhead construction but, following extensive public comment submitted to the VSCC opposing

overhead construction, were later approved as underground construction.[84] All three projects were undergrounded pursuant to either Virginia state legislation or at the direction of the VSCC. Parties provide no indication that the Projects were constructed underground for reliability reasons, and each of the Projects incurred substantially higher costs than the feasible estimated overhead alternative.[85] It follows that, as a consequence of these initiatives by the Commonwealth of Virginia, only Virginia customers benefit from the incremental cost of undergrounding the facilities.[86] The North Carolina customers do not receive benefits from the undergrounding of the Projects that justify allocating the substantially higher costs of undergrounding to these customers.

51. While Dominion and VSCC Staff argue that undergrounding provided benefits to all wholesale transmission customers through the study of XLPE technology, enhanced reliability in storms, and aesthetic benefits, they do not support these claims with evidence of such benefits or show that such benefits justify the high cost differential between the feasible overhead alternatives and underground construction. The fact that the VSCC must consider more than aesthetic benefits in granting a CPCN does not show that all wholesale customers in the Dominion Zone benefited from the undergrounding. In light of the high costs of undergrounding relative to overhead options and the absence of a showing that the undergrounding provided corresponding benefits to wholesale customers outside of Virginia, we find it is not just and reasonable to allocate the costs of undergrounding to wholesale transmission customers beyond those NITS customers with Virginia loads in the Dominion Zone.

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[84] Exhibit No. 10 to the Complaint at p. 34 (Report of Michael D. Thomas, Hearing Examiner, *Va. Elec. and Power Co.*, Case No. PUE-2006-00091, Virginia State Corporation Commission, December 12, 2007); Exhibit No. 9 to the Complaint at p. 23 (Report of Howard P. Anderson Jr., Hearing Examiner, *Va. Elec. and Power Co.*, Case No. PUE-2006-00091, Virginia State Corporation Commission, January 4, 2007).

[85] Dominion estimated the cost of overhead construction of the 230 kV Pleasant-View Hamilton project at $36.6 million. The line was placed into service at a total cost of $90.4 million, approximately $32.9 million of which was associated with the cost of the underground segment of the line. Overhead construction of the 230 kV DuPont Fabros project was estimated to cost $7.9 million. Underground construction of the project was completed at a total cost of $9.8 million. Overhead construction of the 230 kV Garrisonville Project was estimated to cost $14.16 million and underground construction to cost $82.3 million. By 2011, the total cost of the underground project had risen to $131 million. Dominion's Initial Brief at 14, 17, 22.

[86] Indeed, the Virginia legislation contemplated that the undergrounding costs would be included in the rates of Virginia jurisdictional customers.

52. We emphasize that our finding here represents a limited exception to our general policy that utilities do not directly assign individual cost items that are included in projects that have system-wide benefits. However, for the reasons discussed above, we find that this approach is warranted by the facts of this case.

53. We decline Complainants' request that the incremental undergrounding costs of the Projects be allocated to only Dominion-affiliated wholesale transmission customers. Complainants have not shown that only Dominion customers benefit from the undergrounding of the Projects, such that it would be unjust and unreasonable for other Virginia customers to be assigned the incremental costs of undergrounding the Projects. Each Project was constructed underground at the direction of one of two Virginia state entities, the Virginia General Assembly or the VSCC. Complainants do not sufficiently support why it would not be unduly discriminatory to assign the incremental costs of undergrounding the Projects to only customers of Dominion affiliates, when customers of non-Dominion affiliates realize the same benefits of undergrounding.

54. ODEC contends that requiring Dominion to allocate costs to only customers in one state is inconsistent with the Commission-approved zonal cost allocation and has not been shown to be possible under Dominion's current formula rate. NOVEC and VMEA argue that the Commission has no authority to assign costs to all of Dominion's customers in Virginia and that this result would be unduly discriminatory. We disagree. In a section 206 proceeding, it is the statutory responsibility of the Commission to set the just and reasonable rate.[87] In this case, as discussed above, we find that amending the tariff to exclude customers outside of Virginia from being charged the costs of undergrounding the Projects is a just and reasonable remedy. This finding is not unduly discriminatory because wholesale transmission customers outside of Virginia have not been shown to benefit from the undergrounding of the Projects and therefore are not similarly situated to those within the state.

55. NOVEC argues that the undergrounding costs were incurred with an expectation that they would be collected from Dominion's retail customers pursuant to Virginia legislation and therefore any localized allocation of costs must be done only under the auspices of the Virginia legislation pursuant to which the particular projects were undergrounded. Whether the incremental costs of undergrounding the Projects should be allocated to all wholesale transmission customers is a question appropriately before the Commission, given its jurisdiction over the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce.[88]

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[87] 16 U.S.C. § 824e(a) (2012).

[88] 16 U.S.C. § 824(a) (2012).

56. The determination of the appropriate amount of undergrounding costs to be allocated to each NITS customer for their Virginia loads in the Dominion Zone is a factual matter that cannot be properly calculated based on the filings made to date. The Commission will therefore establish a hearing, before an Administrative Law Judge, for the limited purpose of determining the appropriate assignment of those costs.

57. While we are setting this issue for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.[89] 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.[90]

58. 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.

59. The complainants request that we order refunds back to the date that the rates went into effect, i.e., January 1, 2010. In the case of a complaint, section 206 of the Federal Power Act requires the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. In the Complaint Order, the Commission set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaint, which was March 17, 2010, consistent with our general policy of providing maximum protection to customers.[91] The complainants have made no argument that would permit us to require refunds earlier than the established refund effective date.

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[89] 18. C.F.R. § 385.603 (2013).

[90] 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 the date 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).

[91] Complaint Order, 133 FERC ¶ 61,009 at P 36 (citing *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989)).

The Commission orders:

(A) The Commission hereby grants the reserved portion of the Complaint in part, 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 by 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, as discussed above. 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 (2013), 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.

(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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.