

147 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Spread Electric Cooperative, Inc.

Docket No. EL12-59-000

v.

Southwestern Public Service Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued June 19, 2014)

1. On April 20, 2012, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a complaint against Southwestern Public Service Company (SPS) pursuant to sections 201, 306, and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's regulations.² The complaint alleges that the rate of return on common equity (ROE) input values of (1) 10.25 percent for the formula rate applicable to the Replacement Power Sales Agreement (RPSA) between Golden Spread and SPS, and (2) 10.77 percent for the formula rate applicable to SPS's annual transmission revenue requirement in both the Xcel Energy, Inc. (Xcel) Open Access Transmission Tariff (OATT) and the Southwest Power Pool, Inc. (SPP) OATT, are not just and reasonable. Golden Spread contends that that ROE input values for both the RPSA and the SPS transmission formula rate should be reduced to 9.15 percent. The complaint also includes a "conditional complaint" against SPP because Golden Spread takes transmission service under the SPP OATT. In this order, we establish hearing and settlement judge procedures and set a refund effective date of April 20, 2012. We also dismiss the conditional complaint against SPP.

¹ 16 U.S.C §§ 824, 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2013).

I. Background

2. Golden Spread purchases energy and capacity from SPS pursuant to the RPSA, which commenced on April 20, 2012, and will continue for a term of seven years.³ The cost-based RPSA has a formula rate that contains a 10.25 percent ROE. This ROE was established by a black box settlement in Docket No. ER06-274-003.⁴ The settlement provided that this ROE could be changed by filings made with the Commission pursuant to sections 205 or 206 of the FPA. Moreover, the RPSA contains standard language regarding the rights of the parties to seek unilateral modification of the rates, terms and conditions pursuant to section 205 or 206 of the FPA.⁵

3. Golden Spread takes Network Integration Transmission Service under the SPP OATT, with rates for service calculated pursuant to the formula rate for SPS as set forth in the Xcel OATT.⁶ The ROE formula rate input used to determine SPS's annual transmission revenue requirement, and ultimately the charges applicable to Golden Spread's transmission service, is 11.27 percent, which represents a base ROE of 10.77 percent plus a 50 basis point adder (to reflect SPS's membership in SPP). The formula rate was established by settlement in Docket No. ER08-313, *et al.*⁷ The settlement reserved parties' rights to seek changes to the negotiated ROE through filings made with the Commission pursuant to sections 205 or 206 of the FPA.

³ Golden Spread Complaint at 1, 9.

⁴ *See Golden Spread Cooperative Inc., et al.*, 123 FERC ¶ 61,054 (2008) (approving the settlement). The settlement established a formula rate for service under a then-existing power sales agreement between SPS and Golden Spread that expired on April 19, 2012. The RPSA was negotiated as part of that settlement and under its terms the rates in effect immediately prior to the commencement of service under the RPSA were to be carried forward to the RPSA.

⁵ Golden Spread Complaint at 10.

⁶ *Id.*

⁷ *See Xcel Energy Services, Inc.*, 132 FERC ¶ 61,170 (2010) (approving the settlement).

II. The Complaint⁸

4. Golden Spread asserts that a discounted cash flow (DCF) analysis performed by its expert witness is consistent with Commission policy,⁹ and the analysis shows that the just and reasonable ROE for SPS is 9.15 percent. Golden Spread claims that this analysis shows that the existing RPSA formula rate ROE of 10.25 percent and the transmission formula rate base ROE of 10.77 percent are 110 basis points and 162 basis points, respectively, above what is acceptable under the FPA's just and reasonable standard.

5. Golden Spread explains that its expert's recommended ROE is based on an analysis of a national electric utility proxy group of 11 comparable utilities, with a range of returns between 7.51 percent and 10.79 percent. Golden Spread states that the proxy group was selected using screening criteria that have been applied by the Commission in previous cases.¹⁰ Golden Spread further explains that its expert used the median of 9.15 percent (rather than the average or midpoint) because the median is the Commission's strongly preferred approach in cases involving a single utility.¹¹

⁸ On April 23, 2012, Golden Spread filed an errata, in which it submitted a revised version of its complaint that made minor corrections to the complaint filed on April 20, 2012.

⁹ Golden Spread Complaint at 11 (citing *Southern California Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070 (2000); *Golden Spread Elec. Coop., Inc. v. Southwestern Pub. Serv. Co.*, Opinion 501, 123 FERC ¶ 61,047 (2008); *Southern California Edison Co.*, 131 FERC ¶ 61,020 (2010) (SCE Paper Hearing Order); *Southern California Edison Co.*, 139 FERC ¶ 61,042 (2012) (*SoCal Edison*)).

¹⁰ *Id.* at 11-12 (including the following criteria: (1) electric utilities that are covered by *Value Line*; (2) have a Standard & Poors (S&P) corporate credit rate of A, A-, or BBB+, and a Moody's Investor Service, Inc. (Moody's) long-term issuer or senior unsecured rating of A3, Baa1, or Baa2; (3) have a Thomson Financial/IBES published analysts' consensus 5-year earnings per share growth rate; (4) are not engaged in any major merger or acquisition activity; (5) currently pay and are expected to continue paying a dividend, with no dividend cuts in the past year; and (6) are followed by at least two generally recognized industry analysts).

¹¹ *Id.* at 14 (citing SCE Paper Hearing Order, 131 FERC ¶ 61,020 at PP 84-95; *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302 (2004), *aff'd in relevant part sub nom., Pub. Serv. Comm'n of Ky. v. FERC*, 397 F.3d 1004, 1010-11 (D.C. Cir. 2005); Opinion No. 501, 123 FERC ¶ 61,047; *Va. Elec. Power Co.*, 123 FERC ¶ 61,098 (2008); *SoCal Edison*, 139 FERC ¶ 61,042).

6. Golden Spread claims that the Commission often uses only the S&P corporate credit rating screen or indicates that the use of either the S&P corporate credit rating or Moody's equivalent rating is appropriate.¹² Golden Spread states that its expert determined that it is preferable to use both the S&P corporate credit ratings and the Moody's ratings for the credit rating screen, because in many instances these ratings diverge, and thus using both screens results in a more fairly representative proxy group. Golden Spread also explains that its expert decided not to use the \$1 billion annual revenue screen employed by the Commission in the SCE Paper Hearing Order because (1) SPS is smaller than Southern California Edison Co., with annual revenues of \$1.7 billion compared to Southern California Edison Co.'s \$10.5 billion, and (2) if this screen were employed, it would eliminate only one company, which Golden's Spread's expert found to be more comparable to SPS than any of the other companies in the proxy group.¹³

7. Golden Spread argues that section 206 of the FPA does not require a showing that the existing ROE must be above a zone of reasonableness to be unjust and unreasonable. Golden Spread refers to a pending proceeding (Docket No. EL12-39-000) similar to the instant proceeding, in which the transmission provider argued that in order to show that an existing ROE is unjust and unreasonable, the complainant must demonstrate that the challenged ROE is outside the zone of reasonableness. Golden Spread explains that the transmission provider in that case based its argument on a Supreme Court decision in which the Court observed that, with respect to ROE, there may be "a substantial spread between what is unreasonable because too low and what is unreasonable because too high."¹⁴ Golden Spread asserts that while the DCF process does involve identifying a "range of reasonableness," for ratemaking purposes, the Commission must specify a point within that range that represents the just and reasonable ROE.¹⁵ Golden Spread asserts that that point is 9.15 percent for SPS.

8. Golden Spread states that while SPS's currently effective ROEs were established years ago through negotiated settlements, circumstances have changed and SPS's RPSA

¹² *Id.* at 12 (citing *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188, at P 98 (2008)).

¹³ *Id.* at 12-13.

¹⁴ *Id.* at 14-15 (citing *Montana-Dakota Pub. Serv. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951)).

¹⁵ *Id.* at 15 (citing *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at P 14 (2008)).

and transmission rate ROEs are now well above a just and reasonable level.¹⁶ Therefore, Golden Spread urges the Commission to: (1) reduce the ROE for the RPSA to the 9.15 percent level recommended by its expert, (2) reduce the ROE for the transmission formula rate to 9.65 percent (i.e., the base rate of 9.15 percent increased by 50 basis points to reflect SPS's membership in SPP); and (3) find that the just and reasonable ROE for transmission projects that qualify for ROE incentive adders should not exceed 10.79 percent, which is the upper boundary of the zone of reasonableness. Golden Spread asserts that if the Commission does not reduce SPS's ROE as requested, SPS will over-recover \$660,000 from Golden Spread under the RPSA in the 12 months following the date of the complaint, and \$1.1 million from Golden Spread under the transmission formula rate for the same time period.¹⁷

9. Golden Spread requests that the Commission set the refund effective date as of April 20, 2012, the date on which the complaint was filed.¹⁸

10. Golden Spread also filed a "conditional complaint" against SPP because Golden Spread takes transmission service under the SPP OATT, notwithstanding the fact that the rates at issue here were established by SPS.¹⁹ Golden Spread states that it believes SPS is the proper respondent to the complaint but in an abundance of caution, it is submitting a "conditional complaint" against SPP, because other independent system operators have been named as respondents in such complaints, and the Commission has not issued any definitive guidance on whether it is necessary to name the independent system operator as a respondent. Golden Spread states that it does not consider SPP to be an essential party to the complaint and believes that relief granted pursuant to this complaint would flow through the SPP OATT whether or not SPP is a party to this proceeding.

11. Golden Spread requests that the Commission issue an order resolving this complaint expeditiously.²⁰ Golden Spread argues that Commission policy on the application of the DCF methodology is well developed, there are no material facts subject to dispute as to that methodology, and the matter can be resolved without protracted litigation via a paper hearing. Golden Spread notes that the Commission has made ROE determinations on the pleadings when there is a requirement for expedition, such as in

¹⁶ *Id.*

¹⁷ *Id.* at 16.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.* at 17.

incentive rate cases.²¹ Golden Spread also argues that after SPS provides an answer to its complaint, the Commission will have the necessary evidence and authority to render a decision without resorting to time-consuming and resource-intensive litigation. To the extent the Commission determines that a trial-type hearing is required, Golden Spread requests that the Commission identify the specific issue or issues requiring resolution via litigation and specify either that the initial decision will be omitted and briefs filed directly with the Commission or that the initial decision must be rendered within six months of the refund effective date so that the Commission will have sufficient time to act on briefs on and opposing exceptions within the fifteen-month refund period under section 206 of the FPA.²²

III. Notice and Responsive Pleadings

12. Notice of the complaint was published in the *Federal Register*, 77 Fed. Reg. 25,162 (2012), with interventions and protests due on or before May 10, 2012. On May 10, 2012, SPS filed an answer to Golden Spread's complaint.

13. The following parties filed timely motions to intervene: SPP, Occidental Permian, Ltd., New Mexico Cooperatives, and Sharyland Utilities, L.P. West Texas Municipal Power Agency (West Texas), Tri-County Electric Cooperative, Inc. (Tri-County) filed timely motions to intervene and comments in support of Golden Spread's complaint.

14. Golden Spread filed an answer to SPS's answer on May 25, 2012. SPS submitted an answer to Golden Spread's answer on June 5, 2012.

SPS's Answer

15. SPS argues that Golden Spread has not met its burden to show that the existing ROEs are unjust and unreasonable.²³ Citing *Bluefield* and *Hope*,²⁴ SPS contends that a utility's return on common equity should be sufficient to: (1) fairly compensate investors for capital they have invested in the utility, (2) enable the utility to offer a return adequate to attract new capital on reasonable terms, and (3) maintain the utility's financial integrity. SPS argues that to satisfy these criteria, the financial challenges facing the

²¹ *Id.* at 17-18 (citing SCE Paper Hearing Order, 131 FERC ¶ 61,020 at P 111).

²² *Id.* at 19.

²³ SPS Answer at 8-9.

²⁴ *Id.* at 9 (citing *Bluefield Water Works v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 693 (1923) (*Bluefield*); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*)).

utility (in this case SPS) must be considered. SPS argues that Golden Spread's complaint fails to consider the unique risks faced by SPS. SPS further argues that Golden Spread's development of its proxy group and its application of the median presume that SPS is a utility of average risk. SPS disagrees, arguing that when the facts specific to SPS are considered, they show that the ROE for SPS should be set at the high end of the zone of reasonableness developed from a proper DCF analysis utilizing an appropriate proxy group. Therefore, SPS argues that Golden Spread fails to meet its burden to show that SPS's current ROEs are unjust and unreasonable.

16. SPS challenges the validity of Golden Spread's proxy group. SPS asserts that both Moody's and Fitch have placed SPS on a negative watch and have downgraded SPS's credit outlook from "Stable" to "Negative."²⁵ SPS adds that over the next five years, SPS plans to invest approximately \$2.28 billion in capital transmission improvements. SPS argues that investors are aware of the challenges posed by rising costs and burdensome capital expenditure requirements such as those faced by SPS, especially in light of ongoing capital market and economic uncertainties. Accordingly, SPS argues that its investment risk is greater than the risk faced by companies around the median of Golden Spread's proxy group.

17. SPS also notes that only one of the eleven companies included in Golden Spread's proxy group has the same Fitch rating as SPS, with all the other companies receiving a Fitch rating indicating less risk than SPS.²⁶ Accordingly, SPS argues that the proxy group companies are less risky than SPS and are not representative of SPS's risk level.

18. SPS also argues that the median of the proxy group should not be used to derive SPS's ROE.²⁷ In SPS's view, Commission precedent holds that where a utility is not of average risk relative to the proxy group, an ROE adjustment must be made to place the utility above the measure of central tendency of risk of the proxy group.²⁸ SPS argues that a correct ROE calculation for SPS would place SPS above the median of a correctly chosen proxy group, i.e., at the upper end of the zone of reasonableness.

²⁵ SPS Answer at 10.

²⁶ *Id.* at 12.

²⁷ *Id.* at 13-15.

²⁸ *Id.* at 15 (citing Opinion No. 501, 123 FERC ¶ 61,047 at P 63 n.127; Opinion No. 445, 92 FERC at 61,266).

19. SPS contends that Golden Spread's complaint should be dismissed in light of its use of a flawed proxy group and its failure to consider the relative risks faced by SPS.²⁹ SPS states that Golden Spread's complaint presumes that, to the extent a public utility's existing ROE does not match the results of a complainant's DCF analysis and its use of the median, regardless of the sufficiency of the complainant's analysis, the current ROE must be unjust and unreasonable. SPS disagrees, arguing that the complainant is required to provide some minimal analysis of the risks of the respondent public utility in order to sustain its burden of proof warranting further procedures before the Commission.³⁰ SPS asserts that the approach advocated by Golden Spread would upset the balance between consumer and investor interests, creating an environment where a swing in credit markets and a flawed DCF analysis with no consideration of the specific utility's risk would lead to uncertainty.

20. SPS argues that, in addition to failing the first prong of its section 206 burden, Golden Spread also fails to meet the second prong of its burden, i.e., that its proposed ROE be just and reasonable.³¹ SPS states that an ROE must be commensurate with returns on investments in other enterprises having corresponding risks, and it must be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. SPS states that Golden Spread's proposed ROE of 9.15 percent is insufficient to allow SPS to secure investment in electric utility infrastructure or ensure SPS' ability to maintain credit and attract capital.³²

21. SPS concludes that if the Commission does not dismiss the complaint, the Commission should set it for hearing and settlement judge procedures, consistent with its decision in *Bangor Hydro*.³³ SPS contends that, as in that case, there are numerous issues of material fact (e.g., the development of the proxy group, the correct application of the DCF methodology to SPS, the appropriate placement of SPS within the zone of reasonable returns, and the facts unique to SPS all are factual issues that are in dispute in this case) presented by Golden Spread's complaint that would require trial-type procedures to resolve.³⁴ SPS also objects to Golden Spread's request that the

²⁹ *Id.* at 15-17.

³⁰ *Id.* at 16.

³¹ *Id.* at 17.

³² *Id.*

³³ *Id.* at 19 (citing *Martha Coakley, Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090, at P 23 (2012) (*Bangor Hydro*)).

³⁴ *Id.* at 18-19.

Commission institute paper hearing procedures to resolve its complaint. SPS asserts that the precedent cited by Golden Spread is not relevant to a complaint proceeding; rather, the cases cited by Golden Spread involve up-front ROE determinations for incentive rate projects.³⁵

22. Finally, SPS opposes Golden Spread's request that, if the Commission sets the complaint for hearing, the Commission establish Fast Track Procedures for the complaint.³⁶ In SPS's view, Golden Spread has not made the requisite showing that fast-track processing is appropriate. A condition to fast-track processing is that the complainant "presents a highly credible claim and persuasive showing that the standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief."³⁷ SPS states that Golden Spread's complaint only concerns ROE, which is an issue routinely addressed in rate cases before the Commission. SPS contends that Golden Spread's alleged economic harm is not enough to merit fast-track processing.

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 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to the answers and will, therefore, reject them.

25. We dismiss the conditional complaint filed against SPP. In doing so, we note that Golden Spread states in its complaint that it does not believe that SPP is an essential party to the complaint, and that it was only filing this conditional complaint against SPP out of an abundance of caution, because the Commission had not issued any definitive guidance on whether it is necessary to name the independent system operator as a party in a

³⁵ *Id.* at 17-18 (citing *Southern California Edison Co.*, 133 FERC ¶ 61,269, at P 19 (2010)).

³⁶ *Id.* at 20-21.

³⁷ *Id.* at 20 (citing *18 C.F.R. Parts 1b, 343, and 385 Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071, at 30,766 (1999)).

complaint.³⁸ Since the time of this complaint, however, the Commission has addressed the issue, finding that in an ROE complaint such as this one, the independent system operator is not a beneficiary to the ROE at issue, and that the transmission owners are the true parties in interest.³⁹ Accordingly, the conditional complaint filed against SPP is dismissed.

B. Substantive Matters

26. We find that the complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA. We note that the Commission is issuing Opinion No. 531, the order on initial decision in Docket No. EL11-66-001, concurrently with this order.⁴⁰ In Opinion No. 531, the Commission is changing its practice for determining the ROE for public utilities. Accordingly, we expect the evidence and any DCF analyses presented by the participants in this proceeding to be guided by our decision in Opinion No. 531.

27. 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 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.⁴¹ 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.⁴² 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.

³⁸ Golden Spread Complaint at 3.

³⁹ *Bangor Hydro*, 139 FERC ¶ 61,090 at P 23.

⁴⁰ See *Martha Coakley, Mass. Attorney Gen., et al v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

⁴¹ 18 C.F.R. § 385.603 (2013).

⁴² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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.

28. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that 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. Consistent with our general policy of providing maximum protection to customers,⁴³ we will set the refund effective at the earliest date possible, i.e., April 20, 2012, as requested.

29. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, 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 decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by June 30, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by April 30, 2016.

The Commission orders:

(A) 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 this complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) 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

⁴³ See, e.g., *Bangor Hydro*, 139 FERC ¶ 61,090 at P 26; *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 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

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.

(C) 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.

(D) 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.

(E) The conditional complaint filed against SPP is dismissed, as discussed in the body of this order.

(F) The refund effective date in Docket No. EL12-59-000, established pursuant to section 206(b) of the FPA, is April 20, 2012.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.