

151 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

San Francisco Bay Area Rapid Transit District

Docket No. EL15-30-000

v.

Pacific Gas and Electric Company

ORDER ON COMPLAINT, MOTION, AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued April 16, 2015)

1. On December 12, 2014, the San Francisco Bay Area Rapid Transit District (BART) filed a complaint (Complaint) against Pacific Gas & Electric Company (PG&E) pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure.² In the Complaint, BART requests that the Commission direct PG&E to continue providing the electronic tags (e-Tags) necessary for the transmission of power from sources outside of the California Independent System Operator Corporation (CAISO) balancing authority area to BART, pursuant to an existing network integration transmission service agreement (Service Agreement) between BART and PG&E for the remaining term of the Service Agreement. Subsequently, on December 17, 2014, BART filed a motion (Motion) requesting that the Commission issue an interim order no later than December 30, 2014, requiring PG&E to maintain the *status quo* pending Commission action on the Complaint. In this order, we deny the Motion, set the Complaint for hearing and settlement judge procedures, and establish a refund effective date of December 12, 2014.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2014).

I. Background

2. On March 20, 1998, the Commission granted a complaint filed by BART against PG&E requesting that the Commission direct PG&E to file a long-term network transmission service agreement with BART.³ In the Initial BART Order, the Commission concluded that BART qualified as an eligible customer under PG&E's *pro forma* open access transmission tariff, finding that section 701.8 of the California Public Utilities Code constitutes a state requirement for PG&E to provide unbundled retail transmission service to BART. Specifically, the Commission found that PG&E must provide BART with transmission service to facilitate its purchase of federal preference power from Bonneville Power Administration (Bonneville) and Western Area Power Administration (Western). Subsequently, BART and PG&E entered into the Service Agreement for a term beginning on March 25, 1998, and ending on December 31, 2016. The Service Agreement stipulates that PG&E will provide network integration transmission service for 70 MW of power for delivery at PG&E's Tracy substation and the California-Oregon Border.

3. Since issuance of the Initial BART Order, BART's purchase agreement with Bonneville terminated and BART now purchases almost 96 percent of its power from Northern California Power Agency (NCPA) resources, which are located outside of the CAISO balancing authority area.⁴ BART explains that NCPA delivers its purchases to a PG&E substation at Malin, Oregon for transmission by PG&E to BART. PG&E also delivers power that BART purchases from Western, located in the Balancing Authority of Northern California (BANC).

4. Because BART purchases power from resources located outside the CAISO balancing authority area, each of these interchange transactions must have an e-Tag associated with it. E-Tags are used to schedule interchange transactions in wholesale markets and document the movement of energy for reliability purposes.⁵ The North American Energy Standards Board (NAESB) business practice standards require that all interchange transactions correspond to an e-Tag submitted prior to the interchange that allows each balancing authority area to communicate the scheduling of transactions and

³ *San Francisco Bay Area Rapid Transit District v. Pacific Gas and Electric Company, et al.*, 82 FERC ¶ 61,282 (1998) (Initial BART Order).

⁴ Complaint at 4.

⁵ *See Availability of E-Tag Information to Commission Staff*, Order No. 771, FERC Stats. & Regs. ¶ 31,339, at P 3 (2012).

approve the transmission path stated on each e-Tag.⁶ E-tags for BART's transactions are completed by a third party and submitted to both the relevant source balancing authority area and sink balancing authority area, which, in this case, is CAISO. E-Tags include transaction-specific information concerning each interchange's energy profile and physical and market paths for the transaction, including each balancing authority area, each transmission provider, the purchasing-selling entities, the point of delivery, and the point of receipt.⁷

5. Under the terms of the Service Agreement, PG&E is the scheduling coordinator for BART. Pursuant to CAISO's open access transmission tariff (CAISO Tariff), the scheduling coordinator is responsible for submitting all interchange schedules in accordance with the North American Electric Reliability Corporation (NERC), Western Electricity Coordinating Council (WECC), and CAISO requirements, including the provision on e-Tags for all applicable transactions pursuant to WECC practices.⁸ CAISO's operating procedures further state that "refusal to satisfy these...tagging requirements may result in refusal by CAISO to implement the interchange schedule, irrespective of CAISO market awards."⁹ With respect to specific information reflected on e-Tags for interchange transactions, the CAISO Tariff states that CAISO cannot be listed as a purchasing-selling entity for the purposes of e-Tags and that, instead, "title to energy shall pass directly from the entity that holds title when the energy enters the

⁶ NAESB's Business Practice Standards for Coordinate Interchange state that "all requests to implement bilateral Interchange...between a Source [balancing authority area] and a Sink [balancing authority area], where one or both [balancing authority areas] are located in either the Eastern Interconnection or Western Interconnection, shall be accomplished by the submission of a completed and accurate [request for interchange] to the Sink [balancing authority area's] registered e-Tag Authority Service." NAESB Wholesale Electric Quadrant Standards for Coordinate Interchange, WEQ-004-1.

⁷ NAESB defines a purchasing-selling entity as "the entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-selling entities may be affiliated or unaffiliated merchants and may or may not own generating facilities." NAESB, Electronic Tagging Functional Specification, Version 1.8.1 (2009).

⁸ CAISO Tariff § 4.5.3.2.2.

⁹ CAISO Operating Procedure No. 2510, NERC Tagging Requirements.

CAISO-controlled grid to the entity that removes the energy from the CAISO-controlled grid.”¹⁰

II. Complaint

6. BART requests that the Commission order PG&E to maintain information required for the e-Tags and necessary for PG&E to import power for BART from outside of the CAISO balancing authority area (i.e., the power that BART purchases from NCPA and Western) for delivery to BART for the remaining term of the Service Agreement, which expires on December 31, 2016. BART states that, since 2009, PG&E has used licensed software sold by Open Access Technology International, Inc. (OATI) to create e-Tags for submission and approval to affected balancing area authorities for the transmission of BART’s imports into CAISO. BART claims that PG&E has also registered the tag “PGAESO” as a transmission customer and purchasing-selling entity.¹¹ BART states that it understands that the e-Tag software must be renewed annually with OATI and PG&E has advised BART that it does not plan to renew its current license for the software, which includes its registered purchasing-selling entity identification, beyond December 31, 2014. BART explains that, without active e-Tag software, PG&E cannot provide the information required on the e-Tags for imports into CAISO and, therefore, CAISO will reject BART’s import schedules, forcing BART to purchase replacement power at higher retail rates, which BART estimates to total an additional \$42 million through the expiration of the Service Agreement.¹² By refusing to renew its e-Tag software and purchasing-selling entity identification, BART argues that PG&E is effectively discontinuing the transmission service it is required to provide under the Service Agreement as the transmission provider.¹³ Moreover, BART contends that PG&E is fully capable of renewing its license and providing the information required for e-Tags and necessary for imports over its system into CAISO and that there is no valid reason for PG&E to cease providing the e-Tags, which it has provided for many years. BART argues that PG&E’s failure to maintain the information required on the e-Tags, which BART asserts is necessary for PG&E to provide transmission service for imports

¹⁰ CAISO Tariff § 4.5.3.2.2.

¹¹ Complaint at 6.

¹² *Id.* at 6.

¹³ *Id.* at 12.

onto its transmission system, breaches both the Service Agreement and Initial BART Order and, therefore, violates the FPA.¹⁴

7. BART also argues that, as the scheduling coordinator under the Service Agreement, PG&E is responsible for submitting to CAISO interchange schedules, which includes “providing e-Tags for all applicable transactions.”¹⁵ In addition, BART explains that, in defining a scheduling coordinator’s responsibilities, the CAISO Tariff specifically states that “title to energy being imported into...CAISO shall pass directly from the entity that holds title when the energy enters the CAISO-controlled grid to the entity that removes the energy from the CAISO-controlled grid.”¹⁶ Thus, since PG&E owns the transmission facilities used to import power into CAISO for delivery under the Service Agreement, BART argues that PG&E is the only entity capable of maintaining the e-Tags necessary for it to obtain power from resources outside of the CAISO balancing authority area.¹⁷ Furthermore, BART asserts that PG&E should not be able to evade its responsibility to submit the necessary e-Tags simply because it does not believe it meets NERC’s strict definition of a purchasing-selling entity.

III. Motion

8. In its Motion, BART requests that, until the Complaint is resolved, the Commission should require PG&E to continue to provide the e-Tags necessary for importing power into the CAISO balancing authority area and, subsequently, delivering that energy to its facilities in San Francisco, for the reasons cited in the Complaint.¹⁸

9. BART disagrees with PG&E’s claim, in its letter dated December 12, 2014, that BART should register with OATI as a purchasing-selling entity, arguing that registering its own identifier would be burdensome because BART is a transmission and electricity customer, not a transmission provider or market participant.¹⁹ BART also notes that

¹⁴ *Id.* at 7, 13.

¹⁵ *Id.* at 11 (citing CAISO Operating Procedure No. 2510, NERC Tagging Requirements).

¹⁶ *Id.* at 10 (citing CAISO Tariff § 4.5.3.2.2).

¹⁷ BART adds that NCPA advised BART that BART cannot register its own purchasing-selling entity identification because it is not a market participant. *Id.*

¹⁸ Motion at 1.

¹⁹ *Id.* at 3-4.

PG&E has failed to identify any provision of the Service Agreement that designates the responsibility for providing e-Tags to BART. Moreover, BART asserts that PG&E is required by both the Service Agreement and CAISO Tariff to provide valid e-Tags for interchange transactions and that its e-Tags must identify PG&E as the owner of the physical transmission facilities used to import power on BART's behalf.²⁰ Therefore, BART contends that it is necessary for PG&E to remain a party to its e-Tags as the relevant transmission provider for its imports.

IV. Notice and Responsive Pleadings

10. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 76,996 (2014), with interventions and answers due on or before January 2, 2015. PG&E filed answers to the Complaint and Motion on December 17, 2014, and December 18, 2014, respectively. A motion to intervene and comments were filed by NCPA. On January 2, 2015, PG&E filed an answer to NCPA's comments.

A. PG&E Answers

1. Complaint

11. PG&E states that it has not provided e-Tags for BART's transactions, contrary to BART's claims in the Complaint. Instead, PG&E explains that, as of December 31, 2014, it will not renew the registration of its purchasing-selling entity identification.²¹ PG&E contends that the other entities that complete the e-Tags for BART's transactions have reflected its PG&E-registered purchasing-selling entity identification to create BART's e-Tags because, according to PG&E, BART does not have a registered purchasing-selling entity identification of its own. PG&E argues that, because it is neither the purchasing nor the selling entity for BART's power purchases, it should not be reflected as such on BART's e-Tag. PG&E states that following the expiration of its purchasing-selling entity identification, BART should register a purchasing-selling entity identification in its own name so that it can be appropriately reflected on the e-Tags for its transactions.²²

²⁰ *Id.* at 4.

²¹ PG&E December 17, 2014 Answer to Complaint (PG&E Answer) at 1-2.

²² PG&E states that BART should take the relatively ministerial step to register a purchasing-selling entity identification in its own name and have attached copies of forms necessary to register with OATI. *Id.* at 3-4 (citing Affidavit of Erik Menzel at Exh. 2).

12. PG&E argues that no provision of the Service Agreement requires it to hold a registered purchasing-selling entity identification for BART's transactions. Instead, PG&E asserts that the Service Agreement requires BART to “maintain its facilities and system...in accordance with all applicable guidelines of NERC...including any applicable protocols for scheduling transactions...and communicating with...CAISO,” which PG&E interprets to include registering a purchasing-selling entity identification for e-Tagging its transactions.²³ Therefore, PG&E argues that it has not violated the Service Agreement or CAISO Tariff and that the Commission should deny the Complaint.

13. PG&E also disputes BART's claim that, as the scheduling coordinator and transmission provider, PG&E is the only entity capable of being the purchasing-selling entity for BART's transactions. PG&E notes that NERC's reliability standards contemplate the difference between transmission service providers and those listed as purchasing-selling entities on e-Tags. In addition, PG&E references CAISO's operating procedures, which state that scheduling coordinators “are not specifically identified in NERC and WECC standards and might not meet the strict definition of a purchasing-selling entity.”²⁴ PG&E asserts that nothing precludes BART from obtaining a purchasing-selling entity identification in its own name and that BART is not required to own transmission facilities to register as one. Thus, once BART registers as a purchasing-selling entity, PG&E states that it will continue to schedule BART's interchange transactions, but that the e-Tags for those transactions will appropriately reflect BART as the purchasing-selling entity, rather than PG&E.²⁵

2. Motion

14. PG&E requests that the Commission deny the Motion, arguing that the underlying Complaint lacks merit for the reasons that PG&E explains in its answer to the Complaint.²⁶

²³ *Id.* at 4 (citing section 2 of the Service Agreement).

²⁴ *Id.* at 5 (citing CAISO Operating Procedure No. 2510, NERC Tagging Requirements).

²⁵ *Id.* at 6.

²⁶ PG&E December 17, 2014 Answer to Motion at 1.

B. NCPA Comments

15. NCPA argues that PG&E's purchasing-selling entity identification should be reflected on BART's e-Tags until BART and PG&E resolve the dispute in the underlying Complaint.²⁷ NCPA explains that CAISO will not validate or permit interchange schedules if an entity is not listed as the purchasing-selling entity in the physical path of the e-Tag. Thus, NCPA contends that, if PG&E does not allow BART to use its purchasing-selling entity identification on its e-Tags, PG&E is effectively refusing to provide BART with the transmission and scheduling service that it is obligated to provide under the Service Agreement.²⁸

16. NCPA claims that the underlying reason behind PG&E's refusal to renew its purchasing-selling identification is the California Air Resources Board's regulations concerning greenhouse gas emissions.²⁹ Specifically, NCPA explains that, for power imported into California, the California Air Resources Board uses the purchasing-selling entity listed on the last segment of an e-Tag's physical path to identify the entity responsible for tracking and reporting emissions associated with the energy transaction. Accordingly, NCPA explains that PG&E likely did not renew its purchasing-selling entity identification to avoid certain reporting and financial responsibilities imposed by the California Air Resources Board for BART's imports. While acknowledging that the Commission does not generally interfere with state regulations, NCPA asserts that, because the Commission approved the Service Agreement, the extent to which the California Air Resources Board's rules impact the execution of the agreement is relevant to the Complaint.³⁰ Furthermore, NCPA claims that, in the event that PG&E received emissions allowances based on its inclusion of BART's load in its load forecast, it would be inequitable for PG&E to relinquish its role as BART's purchasing-selling entity.³¹

17. In addition, NCPA asserts that, contrary to PG&E's claim, NCPA has used PG&E's purchasing-selling entity identification appropriately.³² NCPA explains that, for

²⁷ NCPA December 29, 2014 Comments at 15 (NCPA Comments).

²⁸ NCPA Comments at 4.

²⁹ *Id.* at 5.

³⁰ *Id.* at 6.

³¹ *Id.* at 7.

³² *Id.* at 8.

the transaction path of power that crosses multiple balancing area authorities, an e-Tag must describe the “chain of custody,” which identifies the generator segment, transmission provider segment, and load segment.³³ NCPA also explains that, because CAISO may not be listed as the importing purchasing-selling entity in the physical path of an e-Tag, PG&E has been appropriately listed as the purchasing-selling entity in the transmission segment and the load segment of BART’s e-Tags. Moreover, NCPA asserts that PG&E has allowed BART to use its purchasing-selling identification for the last eight years; therefore, according to NCPA, PG&E’s course of performance suggests that it accepted this responsibility. NCPA asserts that PG&E’s course of performance is dispositive because “conduct of the parties subsequent to the execution of the contract and before any controversy had arisen as to its effect, is persuasive evidence determining the meaning of the agreement.”³⁴ Further, NCPA asserts that, under California law “[w]hen one party performs under the contract and the other party accepts its performance without objection it is assumed that this was the performance contemplated by the agreement.”³⁵ Therefore, NCPA requests that the Commission direct PG&E to maintain the *status quo* regarding its purchasing-selling entity registration until the issue can be appropriately resolved.

C. PG&E Answer to NCPA

18. PG&E asserts that the issues NCPA raises in its comments are beyond the scope of the Complaint, stating that issues related to the California Air Resources Board’s greenhouse gas compliance requirements are not within the Commission’s jurisdiction. PG&E also claims that, if BART were to raise the issues in its Complaint with the California Air Resources Board, the California Air Resources Board would likely find that it would be inconsistent with its regulatory intent for PG&E to assume BART’s responsibilities under the California Air Resources Board’s regulations and face potential

³³ *Id.*

³⁴ *Id.* at 13 (citing *Davies Mach. Co. v. Pine Mountain Club, Inc.*, 39 Cal. App. 3d 18, 26, 113 Cal. Rptr. 784 (1974); Restatement (Second) of Contracts § 223(2) (1981) (“a course of dealing between the parties gives meaning to or supplements ... their agreement.”); *Arkansas Elec. Coop. Corp. v. Entergy Ark., Inc.*, Opinion No. 488, 117 FERC ¶ 61,099, at P 70 (2006) (considering twenty-three years course of performance under a contract as evidence of the contract’s meaning)).

³⁵ *Id.* (citing *Alameda Cnty. Flood Control & Water Conservation Dist. v. Dep’t of Water Res.*, 213 Cal. App. 4th 1163, 1200, 152 Cal. Rptr. 845 (2013) (quoting *Bohman v. Borg*, 356 P.2d 185 (1960))).

penalties associated with BART's imports. PG&E explains that it is not the appropriate entity to track or report BART's emissions since it does not contract for, control, or manage BART's underlying purchases and that it at no time owns the power it transmits to BART under the Service Agreement.³⁶ Thus, PG&E argues that it would be inappropriate for it to assume BART's responsibilities as a covered entity under the California Air Resources Board's regulations.

D. BART's March 16 Letter

19. On March 16, 2015, BART submitted a letter to the Commission that discusses recent developments related to its Complaint. In the March 16 Letter, BART explains that, once PG&E ceased providing the e-Tag identifier needed for its imports into the CAISO balancing authority area on January 7, 2015, BART has been forced to purchase power from PG&E at rates higher than it would have paid generation suppliers outside of CAISO. Since then, however, BART states that NCPA has registered an e-Tag to use for BART's imports and, subsequently, PG&E resumed delivery of BART's imports on March 6, 2015. Under this temporary arrangement, BART asserts that it will be financially responsible for any costs charged to NCPA associated with California Air Resources Board's compliance obligations that arise from NCPA supplying power to BART. BART renews its request for the Commission to require PG&E to resume the registration of its purchasing-selling entity identifier and procurement of e-Tags needed for the import of power into the CAISO balancing authority area for delivery to BART in accordance with the Service Agreement through its expiration on December 31, 2016. On March 17, 2015, PG&E submitted a letter in response to BART's March 16 Letter disputing BART's claims.

V. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We accept PG&E's answer to NCPA's comments because they provided information that assisted us in our decision-making process.

³⁶ PG&E January 2, 2015 Answer to NCPA at 3.

B. Substantive Matters

22. 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 set the Complaint for investigation and a trial-type, evidentiary hearing under section 206 of the FPA.

23. More specifically, we find that the issues related to whether PG&E's refusal to renew the registration of its purchasing-selling entity identification is unjust, unreasonable, unduly discriminatory, or preferential are best examined at an evidentiary hearing where an Administrative Law Judge can determine the relevance of all proffered evidence and all parties will have an opportunity to cross-examine witnesses. In this regard, our analysis indicates that the following issues, in addition to any others deemed appropriate by the presiding judge, warrant further exploration: (1) whether the PG&E's obligations to provide transmission service under the Service Agreement, which designates PG&E as BART's transmission provider and scheduling coordinator, necessitate that PG&E be reflected as the purchasing-selling entity on BART's e-Tags; (2) whether PG&E has violated the Service Agreement by allowing its purchasing-selling entity identification to expire; (3) whether the CAISO Tariff and related operating procedures, which include the submission of e-Tags as a responsibility of the scheduling coordinator, require PG&E to maintain or provide information contained on an e-Tag; and (4) whether BART may register as a purchasing-selling entity, or whether BART may engage third-parties to act as the purchasing-selling entity on its behalf.

24. 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.³⁷ 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.³⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the

³⁷ 18 C.F.R. § 385.603 (2014).

³⁸ 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 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>).

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.

25. 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,³⁹ we will set the refund effective date at the earliest date possible, i.e., December 12, 2014, the date of the Complaint.

26. 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 by March 31, 2016. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately nine months of the filing of briefs on and opposing exceptions, or by February 28, 2017.

27. Finally, we deny BART's Motion, which is in essence a request for preliminary relief.⁴⁰ Based upon record evidence at this time, we are not persuaded that an interim order is warranted.⁴¹

³⁹ See, e.g., *Seminole Elec. Coop., Inc. v. Florida 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).

⁴⁰ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs., Regulations Preambles July 1996 - December 2000 ¶ 31,071, *order on reh'g*, Order No. 602-A, FERC Stats. & Regs. ¶ 31,076 (1999), *order on reh'g*, Order No. 602-B, FERC Stats. & Regs. ¶ 31,083 (1999).

⁴¹ See *id.* (describing limited circumstances in which Commission might issue what could be categorized as "interim" or "preliminary" order that is within Commission's authority to grant). For example, the Commission stated that if it were to find a complainant's case compelling based upon substantial evidence, the Commission *sua sponte* could issue a show cause or declaratory order based on the facts known at that time prior to the answer being filed. The respondent would then be directed to address

(continued ...)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 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 (2014), 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.

(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.

the requirements of the order rather than file an answer. The Commission did not find such circumstances present here.

(E) The refund effective date in Docket No. EL15-30-000, established pursuant to section 206(b) of the FPA, is December 12, 2014, as discussed in the body of this order.

(F) The Motion is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.