

115 FERC ¶61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

H-P Energy Resources, L.L.C.
PJM Interconnection, L.L.C.

Docket Nos. EL06-62-000
ER06-765-000
(Consolidated)

ORDER ACCEPTING AND SUSPENDING FILING, CONSOLIDATING
PROCEEDINGS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued May 19, 2006)

1. On March 21, 2006, PJM Interconnection, L.L.C. (PJM) filed in Docket No. ER06-765-000 an unexecuted interconnection service agreement (ISA) among PJM, H-P Energy Resources, L.L.C. (H-P), and Monongahela Power Company and The Potomac Edison Company, both doing business as Allegheny Power. The ISA facilitates the payment for, and the assignment of interconnection rights related to, the installation of certain “Merchant Network Upgrades” to the PJM transmission system (Project). On March 23, 2006, H-P filed a complaint against PJM in Docket No. EL06-62-000 alleging that PJM’s failure to provide an appropriate quantity of Incremental Auction Revenue Rights (Incremental ARR) for the Merchant Network Upgrades is contrary to Commission policy and PJM’s Open Access Transmission Tariff (Tariff). In this order, we accept for filing PJM’s proposed ISA and suspend it for a nominal period, to become effective March 21, 2006, subject to refund. We also consolidate the referenced proceedings and establish hearing and settlement judge procedures to resolve issues involving the complaint and ISA.

I. Notice of Filings and Responsive Pleadings

2. Notice of PJM’s March 21, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 16,770 (2006), with comments, interventions, and protests due on or before April 11, 2006. Allegheny Power filed a timely motion to intervene and protest. H-P filed a timely motion to intervene, protest, and motion to consolidate. On April 26, 2006, PJM filed an answer to H-P’s protest. On May 3, 2006, H-P filed an answer to PJM’s answer.

3. Notice of H-P's March 23, 2006, complaint was published in the *Federal Register*, 71 Fed. Reg. 16,137 (2006), with comments, interventions, and protests due on or before April 12, 2006. Allegheny Power and Allegheny Energy Supply Company, LLC (Allegheny Companies), Baltimore Gas and Electric Company (BG&E), and Pepco Holdings, Inc. (along with its affiliates Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company, and Conectiv Energy Supply, Inc.) (Pepco) filed timely motions to intervene. Constellation Energy Commodities Group, Inc. (Constellation) and Old Dominion Electric Cooperative (Old Dominion) filed timely motions to intervene and comments. The Borough of Chambersburg, Pennsylvania (Chambersburg) and the City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland (Hagerstown) filed timely motions to intervene and protests.

4. Exelon Corporation (Exelon) and Dominion Resources Services, Inc. (on behalf of the following jurisdictional affiliates operating within PJM and having market based rate sales authority: Armstrong Energy Limited Partnership, LLP, Dominion Energy Marketing, Inc., Elwood Energy, LLC, Fairless Energy, LLC, Pleasants Energy, LLC and Virginia Electric and Power Company) (Dominion Resources) filed motions to intervene out-of-time.

5. PJM timely filed an answer to the complaint. On April 27, 2006, H-P filed a motion for leave to respond and response to PJM's answer.

II. Background

A. ISA Filing in Docket No. ER06-765-000

1. Description of Filing

6. PJM states that it submitted the unexecuted ISA at H-P's request pursuant to section 41.7.3(a) of the PJM Tariff. The ISA contains non-standard terms not included in the form of ISA set forth in Attachment O to the PJM Tariff. PJM describes the purpose of the ISA as facilitating the payment for, and the assignment of interconnection rights related to, the installation of certain "Merchant Network Upgrades" to the PJM transmission system.¹

¹ The upgrades consist of a new wave trap at each of the two terminals of the existing Bedington-Black Oak 500 kV transmission line, the Bedington terminal located in Berkeley County, WV, and the Black Oak terminal located in Allegheny County, MD.

7. According to PJM, the ISA grants H-P any Incremental ARR that is determined to be attributable to installation of the new wave traps upon completion of a separate upgrade to the Bedington-Black Oak circuit, scheduled for 2008. According to PJM, H-P did not sign the ISA because it was not satisfied with the terms regarding award of the Incremental ARR.²

8. PJM explains that the ISA in this case does not conform to the standard PJM ISA because, among other things, this ISA requires nonstandard terms to provide for timing and procedures different from those in the PJM Tariff. The ISA also contains two appendices which are not part of the standard ISA. According to PJM, Appendix 1 contains definitions and Appendix 2 contains standard interconnection terms and conditions set forth in the PJM Tariff.

9. PJM states that the nonstandard language is necessary because of the “unique circumstances” of the installation of H-P’s merchant network upgrades.³ According to PJM, H-P submitted an interconnection request proposing to replace the 500 kV wave traps at the terminals of the Bedington-Black Oak 500 kV circuit. H-P proposed to complete this installation in December 2008. Due to a “miscommunication with field personnel,” Allegheny Power installed the wave traps, obviating the need for H-P’s proposed upgrade.⁴ “To ensure no prejudice to H-P from this error,” PJM proposes that H-P reimburse Allegheny Power for the \$80,000 cost of the wave traps and receive the same rights under the PJM Tariff that H-P would have received had it installed the wave traps itself in 2008.⁵

2. Protests

10. Allegheny Power protests the unexecuted ISA because it, among other things: (1) does not provide for the interconnection of any property owned, operated and/or controlled by H-P with any transmission facilities owned, operated and/or controlled by Allegheny Power, (2) does not address the payment of operation and maintenance costs by H-P, and (3) does not state the correct amount that H-P must reimburse Allegheny

² An earlier ISA that PJM proposed to H-P concluded that the new wave traps create no Incremental ARR. H-P opposed this conclusion and refused to execute that ISA.

³ PJM Transmittal Letter at 4.

⁴ *Id.*

⁵ *Id.*

Power for the installation of the upgrades. Allegheny Power explains that, if reimbursed at the appropriate level for such installation, including operating and maintenance costs along with any federal income tax gross-up associated with the Project, it does not object to the grant to H-P by PJM of incremental deliverability rights, incremental available transfer capability revenue rights and Incremental ARR in accordance with the PJM Tariff, but it opposes the use of an interconnection agreement as an inappropriate tool to document those rights. Allegheny Power also asks the Commission to reject the ISA on the grounds that the ISA contains irrelevant terms and conditions and to direct PJM to submit an agreement that correctly identifies the legal relationship of the parties and their rights and obligations.

11. H-P asserts that PJM's analysis to determine the Incremental ARRs for the Project is flawed. Referring to its complaint in Docket No. EL06-62-000, H-P argues that it has shown that PJM's determination of zero Incremental ARRs is inconsistent with the increase in transfer capability and decrease in congestion from the Project. H-P also contends that PJM's refusal to provide Incremental ARRs to the Project is contrary to the Commission's initiatives to promote transmission infrastructure investment. H-P also asks the Commission to consolidate Docket Nos. ER06-765-000 and EL06-62-000.

3. Answers

12. H-P, in response to Allegheny Power's protest, asserts that the protest is nothing more than a collateral attack on the Commission-approved provisions of PJM's Tariff. H-P next answers that the upgraded wave traps constitute network upgrades which are owned by the Interconnected Transmission Owner, and that this constitutes an interconnection for which an ISA is appropriate. H-P acknowledges that it is responsible for operation and maintenance expenses of the Project, and states that it will not object to a simple contractual provision to that effect. With regard to a federal income tax gross-up, H-P states that under the PJM Tariff, H-P is responsible for such tax if incurred and it is not necessary or appropriate to change the ISA to so state.

13. In response to H-P's protest, PJM asks the Commission to dismiss the protest because H-P does not object to any provision of the ISA and the relief sought by H-P is outside the scope of the proceeding. Specifically, PJM asserts that the ISA does not contain any determination of ARRs.

14. In its answer to PJM's answer, H-P reiterates its "primary position" that PJM be required to comply with the Tariff requirement that PJM provide valid estimates of Incremental ARRs before PJM presents the ISA to H-P.

B. Complaint Filed in Docket No. EL06-62-000

1. Complaint Allegations

15. Following PJM's filing of the unexecuted ISA, on March 23, 2006, H-P filed a complaint alleging that PJM violated section 46.3 of the PJM Tariff by not providing Incremental ARR for the Project that are commensurate with the increase in transfer capability resulting from the Project.⁶ According to H-P, to the extent a merchant transmission project increases the capability of the system from one point to another point, the project receives the financial value of that increased capability in the form of Incremental ARRs.

16. H-P alleges that PJM has not provided a reasonable basis for determining that the Project should be provided Incremental Delivery Rights (IDRs) of 175 MW and no Incremental ARRs, even though the analytical framework for the determination of Incremental ARRs and IDRs is generally the same under sections 1.14D and 46.3 of the PJM Tariff and section 2 of PJM Manual 14E.⁷ H-P states that it is illogical for PJM to determine, for IDR purposes, that there is an increase in transfer capability, but, for Incremental ARRs purposes for the same circuit, to determine that there is no increase in transfer capability. H-P claims that, other than conclusory statements, PJM has not provided the underlying assumptions and associated data that would justify why

⁶ H-P's complaint is based on an outdated draft ISA that is not on file with the Commission. Section 2.5 of that ISA's Specifications states: "Pursuant to Section 46 of the Tariff, Interconnection Customer shall have Incremental Auction Revenue Rights in the following quantities: None."

⁷ According to H-P, both IDRs and Incremental ARRs are determined "through the use of industry power flow software and analytical techniques." The studies for both IDRs and Incremental ARRs are conducted "under the same reliability criteria" that are used for capacity resources and baseline transmission studies. H-P states that, in addition, the PJM Operating Agreement provides in section 7.5 of Schedule 1, "Simultaneous Feasibility," that simultaneous feasibility determinations for the subject period shall take account of various elements ". . . not inconsistent with the determination of the deliverability of Capacity Resources . . ." Thus, H-P argues, consistency of deliverability determinations and system capability determinations is required by the Operating Agreement and therefore, the increase in transfer capability should be consistent for IDRs and Incremental ARRs.

Incremental ARR are not created by the Project. H-P states that PJM has not provided any information or other materials to allow H-P to validate PJM's determinations.

17. H-P also complains that PJM's explanation of its Incremental ARR determination for the Project is inconsistent with PJM's own data and analyses. H-P asserts that the Project does increase the transfer capability of the Bedington-Black Oak circuit and, thus, should be provided Incremental ARRs accordingly. H-P claims that, notwithstanding a thermal capability increase resulting from the wavetraps, PJM denies any Incremental ARRs on grounds that the reactive power problem on the circuit limits the circuit's overall transfer capability to less than the thermal limit of the Bedington-Black Oak circuit. H-P asserts that PJM itself provided a modeling analysis showing that there must be Incremental ARRs for the Project. According to H-P, PJM presented its modeling results in August 2005, which show that the reactive limit, with 350 MVAR of static VAR compensators (SVCs) would be "very close" to the thermal limit of 2,744 MW and that an additional 100 MVAR of SVC would increase the reactive limit by 35 MW. H-P claims that PJM has shown that the 525 MVAR of SVC in the baseline increases the reactive limit substantially above the existing thermal limit, and that such modeling results do not square with PJM's recent claim that the reactive limit with 525 MVAR of SVC remains below the thermal limit.

18. H-P also contends that PJM's failure to provide any Incremental ARRs for the Project cannot be reconciled with the fact that the Project has been designated a market solution, and therefore deemed to reduce congestion costs. H-P states that the Project has repeatedly been credited with relieving congestion on the PJM system.⁸ Congestion is reduced because there is an increase in transfer capability. H-P states that because the Project reduces congestion costs, it must be entitled to Incremental ARRs that reflect the reduction in congestion. H-P states that PJM's position, that the Project reduces congestion costs but is not entitled to receive any Incremental ARRs, is inconsistent with the fundamental design of locational marginal price (LMP) market design, which recognizes congestion charges and ARRs as counterparts.

19. H-P asserts that because the Commission has the requisite authority under section 205 of the Federal Power Act (FPA) to require PJM to provide the appropriate level of Incremental ARRs commensurate with the increase in transfer capability by the Project, the Commission should require PJM to do so.

⁸ According to H-P, PJM submitted comments to the Maryland Public Service Commission (MPSC) on November 30, 2005 stating that the Project will reduce congestion costs.

2. PJM's Answer

20. In its answer, PJM states that H-P's complaint should be dismissed as premature⁹ because PJM has not yet determined the Incremental ARR to be awarded H-P for the Project.¹⁰ According to PJM, section 46.2 of PJM's Tariff requires the Incremental ARR determination to be made 45 days before the in-service date in 2008, based on the system configuration and facilities at that time. PJM claims that there is no guarantee that H-P will receive Incremental ARRs in the binding determination process, but that it is also not a foregone conclusion that H-P will receive zero Incremental ARRs.

21. PJM also contends that H-P has not presented sufficient grounds for the Commission to act on H-P's complaint because, among other things, H-P presented no engineering witness or study to counter the assumptions, methodology, or results of PJM's Incremental ARR estimate.

22. PJM states that, as it explained to H-P, the preliminary Incremental ARR estimate is based on its standard ARRs model and inputs, including the reactive limit of 2,350 MW for the interface that PJM employs for its annual financial transmission rights (FTR) allocation and auction process. PJM contends that, far from being unduly discriminatory, as H-P alleges, PJM treated H-P the same as any other party requesting ARRs. According to PJM, H-P mistakenly contends that PJM should have used a higher reactive limit based on the summer months of July and August 2005. According to PJM, if the higher summer reactive limit were assumed for a simultaneous feasibility test (SFT) analysis covering an entire year, system capacity would be overestimated for the rest of the year, and H-P would be awarded more FTRs than the system could support.

23. PJM also asserts that its inclusion of the wave trap upgrade in a market window, and designation of H-P's Project as a merchant transmission project, do not guarantee that H-P will receive any particular amount of Incremental ARRs. According to PJM, while the Bedington-Black Oak interface has been a significant cause of congestion, the problem is primarily attributable to the reactive limit. PJM states that the wave trap upgrade is a very minor project that has had a very minor impact on system congestion. PJM claims that the congestion impact estimates it uses to identify projects to include in a

⁹ PJM asserts that the Commission regularly dismisses, as premature, complaints that are not yet ripe or that might be resolved by future actions.

¹⁰ PJM asserts that H-P's complaint is based on an outdated draft ISA that is not on file with the Commission.

market window are not a guarantee to prospective developers and that a merchant project, by definition, entails risk. In addition, PJM states that, while it can provide non-binding Incremental ARR estimates at an earlier stage of project development to aid the developer's decision, the risks of an economic project, including the risk that the developer will receive fewer ARRs than it expected (or even no ARRs), remain with the developer.

24. PJM states that the Commission should dismiss H-P's complaint as premature or, in the alternative, reject as unsupported H-P's objections to PJM's preliminary ARR determination.

3. Other Responses

25. Chambersburg states that it takes no position on the merits of this dispute because it does not have enough information to judge whether H-P's claims are valid. However, Chambersburg protests H-P's complaint to the extent that the relief H-P seeks further reduces ARRs allocations in the Allegheny Power (AP) transmission zone, thus adversely affecting the current or future allocation of ARRs to Chambersburg or other load serving entities (LSEs) serving native load in the AP zone.

26. Chambersburg asserts that, to the extent H-P's wave trap upgrade does increase transfer capability and eliminate congestion on the Bedington – Black Oak line, H-P might be entitled to any Incremental ARRs associated with that increased transfer capability and reduced congestion, if those ARRs are simultaneously feasible with existing outstanding ARRs. However, based on PJM's response, the upgrades appeared likely to create only a limited amount of Incremental ARRs in the AP zone.

27. Chambersburg requests that the Commission condition any relief granted in this complaint on a finding that the proposed merchant upgrade will in fact increase transfer capability and reduce congestion by a magnitude equivalent to any authorized Incremental ARRs, and that the Incremental ARRs will be simultaneously feasible with existing outstanding ARRs in the AP zone.

28. Hagerstown protests H-P's filing as unjust, unreasonable and unduly discriminatory and requests that H-P's complaint be denied. Hagerstown asserts that PJM's Incremental ARR allocation is consistent with PJM's Tariff, rules and models. Hagerstown also asserts that, since PJM is continuing to review H-P's Incremental ARR allocation, PJM may change that allocation in the future.

29. Constellation states that, consistent with the PJM Tariff and to the extent that the Project increases transfer capability and decreases congestion in PJM, the Commission

should direct PJM to provide H-P with the appropriate amount of ARR. Constellation asserts that if the Project does not increase transfer capability, the Commission should reject H-P's requested relief, since, without an increase in transfer capability, the provision of ARRs to H-P would lead to a pro rata decrease of other LSEs' ARRs.

30. Old Dominion states that, while recognizing that the instant proceeding may not be the forum for full-scale review of the current merchant AC transmission expansion rules and that H-P's complaint should be evaluated under the current rules, in the event that such a review is ongoing and would allow for consideration of H-P's complaint, the complaint might be better addressed in that forum.

4. H-P's Answer

31. H-P, in its answer to PJM's answer, asserts that its complaint is not premature since PJM is required to provide non-binding estimates for three source-sink pairs at the facilities study stage under section 41.5.5 of the PJM Tariff. According to H-P, these "best" estimates form a basis upon which the project owner must decide whether to incur the cost of the project and a basis upon which it makes binding source-sink selections. H-P also argues that the only source of revenue for a project such as this one is derived from Incremental ARRs, thereby necessitating valid Incremental ARRs estimates upon which to make significant financial decisions.

32. H-P also asserts that PJM has not justified its exclusion from its study of the upgrades approved under PJM's Reliability Transmission Expansion Plan (RTEP) or the effect of other reactive upgrades. H-P also complains that while PJM appears to acknowledge that other reactive upgrades will increase the reactive limit on the Black Oak circuit, it fails to explain why the effect of these reactive upgrades should not also be included in its estimates.

33. H-P states that, contrary to PJM's claim,¹¹ H-P is not asking for the elimination of risks for this Project and that it is fully prepared to assume the risk of relying on estimated Incremental ARRs so long as the estimates are valid.

34. In response to the concerns raised by Chambersburg and Constellation, H-P states that it seeks only those Incremental ARRs that are commensurate with increased transfer capability and reduced congestion from the Project, and that it agrees that Incremental ARRs for the Project should not come at a cost to other holders of congestion rights.

¹¹ PJM answer at 17-18.

III. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or prejudice existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept the answers and answers to answers because they have provided information that assisted us in our decision-making process.

36. For the purposes of hearing and decision, we will approve H-P's request to consolidate the proceedings in Docket Nos. EL06-62-000 and ER06-765-000 because these proceedings present common issues of law and fact.

B. Hearing and Settlement Judge Procedures

37. Upon review of the filing, we find that PJM's unexecuted ISA and H-P's complaint raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Section 41.5.5 of PJM's Tariff provides that the customer may request PJM to provide a non-binding estimate of the Incremental ARRs associated with the Merchant Transmission Facilities. However, the ultimate assignment of Incremental ARRs will be made pursuant to the allocation process set forth in section 46 of PJM's Tariff. Section 46.2 of PJM's Tariff provides that no less than forty-five days prior to the in-service date of the facility, PJM's Office of Interconnection will notify the customer that initial requests for Incremental ARRs associated with the facility must be submitted. Although the facilities at issue here have already been installed, PJM proposes that H-P receive the same rights under the PJM Tariff that it would have received if H-P had installed the facilities itself in 2008.

38. Both the complaint and the protests to the filing raise concerns about the inputs, assumptions, and methodology PJM has used to provide estimates of the ARRs associated with the Project. Such issues cannot be resolved based on the filings submitted to date, and the hearing and settlement procedures are to examine all the issues raised by the parties to these filings. In particular, the issues to be considered at the hearing include, but are not limited to, (1) whether PJM conducted the ARR study in accordance with its Tariff, (2) whether PJM appropriately classified the Project as a

market solution to congestion and, if it did, whether PJM's study is consistent with the analysis determining that it is a market solution, (3) whether there will be a projected increase in transfer capability on the Bedington – Black Oak line as a result of H-P's proposed wave trap upgrade, and, if so, the magnitude of any such increase in transfer capability (4) whether there will be a reduction in congestion on the Bedington – Black Oak line as a result of H-P's proposed wave trap upgrade, and, if so, the magnitude of any such reduction in congestion, and (5) the magnitude of simultaneously feasible ARRs, if any, that will be created as a result of the H-P proposed wave trap upgrade. In addition, the hearing should examine the issues raised by Allegheny Power in its protest, including whether an ISA is needed for the Project and the appropriate level of reimbursement for the installation of the upgrades and the appropriate level of operation and maintenance costs, if any, to be paid by H-P.

39. Our preliminary analysis indicates that PJM's proposed ISA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept PJM's unexecuted ISA, suspend it for a nominal period, make it effective March 21, 2006, as requested, subject to refund, and set it for hearing and settlement judge procedures. In both the hearing and settlement judge proceedings intervenors will have the opportunity to raise any issues regarding the proposed ISA in relation to the complaint. However, issues relating to a full-scale review of the current merchant AC transmission expansion rules, as discussed by Old Dominion in its comments, may not be raised as they are inappropriate within the context of the current proceeding.

40. 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.¹² 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. The settlement judge shall make an initial report to the Chief Judge and the Commission within thirty (30) days of the date of appointment 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.

¹² 18 C.F.R. § 385.603 (2005).

The Commission orders:

(A) The proposed ISA is hereby accepted for filing and suspended for a nominal period, to become effective March 21, 2006 as requested, subject to refund, as discussed in the body of this order.

(B) The proceedings in Docket Nos. EL06-62-000 and ER06-765-000 are hereby formally consolidated.

(C) 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 PJM's proposed ISA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief 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 in writing or by telephone within five (5) days of the date of this order.

(E) Within thirty (30) days of being appointed by the Chief Judge, the settlement judge shall file an initial 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 every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) 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 Federal Energy Regulatory

Docket Nos. EL06-62-000 and ER06-765-000

13

Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.