

121 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

R.E. Ginna Nuclear Power Plant, LLC

Docket No. EL07-77-000

v.

Rochester Gas and Electric Corporation

ORDER ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued October 24, 2007)

1. On June 25, 2007, R.E. Ginna Nuclear Power Plant, LLC (Ginna) filed a complaint against Rochester Gas and Electric Corporation (RGE) alleging that Rochester failed to comply with the terms of the Interconnection Agreement (IA) dated November 24, 2003, as amended, between Ginna and RGE by requiring Ginna to substantially reduce its output on two occasions for planned outages of a single line. Ginna further alleges that it will continue to be required to substantially reduce its output on an ongoing basis to accommodate RGE's planned maintenance activities. In this order, we establish hearing and settlement judge procedures to resolve issues raised by the complaint.

I. Background

A. Description of the Parties and Facility

2. Ginna¹ states that it owns the approximately 590 MW Robert E. Ginna Nuclear Power Plant (Facility), which is located in Ontario, New York and interconnected with

¹ Ginna is a wholly owned, indirect subsidiary of Constellation Generation Group, Inc. (Constellation).

the transmission system of RGE through five 115 kV transmission lines that are owned by RGE. Ginna states that the Commission has granted Ginna market-based rate authority and Ginna is a participant in the markets operated by the New York Independent Transmission System Operator (NYISO).

3. Ginna further states that the Facility was owned by RGE prior to its acquisition by Ginna in 2004. In conjunction with Ginna's purchase of the Facility from RGE, RGE and Constellation negotiated the IA, which was executed on November 24, 2003. RGE filed the IA with the Commission on January 12, 2004 in Docket No. ER04-395-000. By an Assignment and Assumption Agreement between Constellation and Ginna dated April 8, 2004, Constellation assigned and Ginna assumed all of Constellation's rights, title and interest in and to the IA. Upon executing the IA, the parties also executed a Substation Operating Agreement (SOA) to implement the IA.

4. Ginna states that, in an amendment to the IA dated April 17, 2006, which was accepted by the Commission on November 16, 2006, the parties added a new section to Article 10 of the IA that relates to the rights and obligations of each party with respect to RGE's monitoring of Energy Management System (EMS) contingency alarms. Ginna states that, at Ginna's request, RGE agreed to install and operate this EMS software, otherwise referred to as the "State Estimator" program, and RGE commenced such monitoring activities on July 6, 2006.

5. With the implementation of the State Estimator program, Ginna states that RGE determined that, under certain system conditions, an outage of a single line serving the Facility could result (with the next subsequent loss of a line) in Short-Time/Term Electrical (STE) rating limits for certain transmission lines being exceeded if the Facility's output was not reduced below 590 MW during the line outage. The STE limits are the reliability criteria adopted by the Northeast Power Coordinating Council, Inc. (NPCC)² and are made applicable to RGE as a Transmission Owner under the NYISO's applicable tariffs and pursuant to the IA.

B. Facility Output Reductions

6. Ginna asserts that, on two occasions in 2007, during construction periods associated with the Rochester Transmission Project (RTP), which is further described

² The NPCC constitutes an Applicable Reliability Council under the IA and its criteria constitute Applicable Reliability Standards under the IA.

below, RGE directed limited reductions in the output of the Facility due to planned outages of line 911, a double-circuit line. The first, which commenced on May 14, 2007, lasted 36.5 hours and required Ginna to reduce the Facility's output to 377 MW. The second, which commenced on June 6, 2007, lasted 10 hours and required Ginna to reduce the Facility's output to 377 MW.

C. Rochester Transmission Project (RTP)

7. Ginna states that RGE currently is undertaking the RTP as an overall upgrade of RGE's 115 kV transmission system. It entails the upgrading of a number of facilities throughout RGE's service territory, including the addition of new substations and upgrading existing transformers, transmission lines, capacitor banks, and associated controls and protection. As part of the RTP, RGE has done (and intends to do) work at Substation 13A, which includes taking a single transmission line exiting that substation out of service.³

D. Interconnection Agreement

8. Ginna states that the IA between RGE and Ginna sets forth the agreements and undertakings of the parties respecting the interconnection of the Facility to the RGE transmission system, and is based on the pro forma large generator interconnection agreement approved by the Commission in Order No. 2003.⁴

9. The IA requires that RGE provide Ginna with a form of interconnection service specified as Network Resource Interconnection Service (NRIS):

³ According to RGE, the benefits of the RTP will be greater transmission capabilities in and around the Rochester area, and better voltage support on the system. RGE claims that all transmission users should benefit from the RTP, and its work at Substation 13A is not being performed specifically to meet RGE's obligations under the IA.

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. Jan. 12, 2007).

[NRIS] is the same as the interconnection service provided to the Generating Facility under Transmission Owner's ownership of the Generating Facility.⁵

The Transmission Owner must conduct the necessary studies and construct the Network Upgrades needed to integrate⁶ the Generating Facility (a) in a manner comparable to that in which the Transmission Owner integrates its generating facilities to serve native load customers; or (b) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources.⁷ [Network Resource] Interconnection Service in and of itself does not convey any transmission delivery service.⁸

10. Ginna states that the Facility was integrated into the RGE transmission system prior to the Facility's sale to Ginna, and that the Facility has continued to be integrated into the RGE transmission system since Ginna acquired ownership in 2004.

II. Complaint

11. Ginna claims that RGE has violated the IA. According to Ginna, section 4.1.1.2⁹ of the IA obligates RGE to provide NRIS for Ginna's full output of 590 MW with no further upgrades, and Appendix H codifies the parties' agreement as to what constitutes performance of that obligation, i.e., generally that the Facility will not be required to reduce its output unless three of the five lines exiting Substation 13A are out of service.

⁵ IA § 4.1.1.

⁶ The process of integration refers chiefly to the ability of the Facility to inject its output at the point of interconnection under system normal operating conditions. RGE Answer at 8.

⁷ The IA defines a Network Resource as the portion of the generating facility that is integrated with the Transmission Owner's Transmission System, designated as a Network Resource pursuant to the terms and conditions of the tariff, and subjected to redispatch directives ordered by the Transmission Owner in accordance with the tariff.

⁸ IA § 4.1.1.1.

⁹ Ginna states that, "NRIS allows the Facility 'to be designated . . . as a Network Resource, up to the Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Owner's Transmission System. . . .'" Complaint at 8 (quoting IA § 4.1.1.2).

In this regard, Ginna contends that section 10.5¹⁰ of the IA provides that RGE must, at its sole expense, maintain its transmission system to ensure that it is capable of reliably accepting delivery from Ginna of up to 590 MW under system normal operating conditions, and under certain contingency conditions in accordance with Appendix H to the IA. Ginna argues that section 11.3¹¹ provides that: (1) as of the closing date for Ginna's purchase of the Facility, no network upgrades are associated with the Facility or the transmission system; and (2) Ginna cannot be allocated further costs unless they are required to permit generation operating levels above 590 MW. Ginna asserts that, despite these obligations, RGE is requiring Ginna to reduce the output of the Facility when one of the transmission lines existing Substation 13A is taken out of service for planned maintenance, therefore failing to provide the NRIS required by the IA and Appendix H and impermissibly shifting cost responsibility to Ginna.

12. Ginna further alleges that RGE has violated the filed rate doctrine by requiring the Facility to reduce its output in a manner directly at odds with its obligations under Appendix H of the IA, a rate schedule on file with the Commission which requires that RGE maintain its transmission system such that Ginna is not required to reduce its output when only one line is out for maintenance.

¹⁰ Ginna quotes the following portion of section 10.5 of the IA:

Transmission Owner shall be responsible for all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing and replacing Transmission Owner Interconnection Facilities, Distribution Upgrades and Network Upgrades existing as of the Closing Date, which facilities are sufficient to permit the Generating Facility to operate . . . at a net capacity of up to 590 MW.

¹¹ Section 11.3 of the IA states:

As of the Closing Date, there are no Distribution Upgrades or Network Upgrades associated with the Generating Facility or the Transmission System. Consistent with Section 10.5, the allocation of cost responsibilities for installing Transmission Owner Interconnection Facilities, Distribution Upgrades and Network Upgrades to permit the Generating Facility to operate above a net capacity of 590 MW shall be governed by the applicable Commission cost allocation rules described in Section 10.5

13. Ginna also alleges that neither changed circumstances nor anything in section 9.3,¹² which deals with the operation of facilities in a safe and reliable manner, nor section 9.7,¹³ which deals with outages and interruptions of service, gives RGE the right to deviate from Appendix H without an appropriate filing with the Commission. Ginna argues that while RGE can interrupt deliveries to maintain safety and reliability, it cannot degrade the quality of service required by the IA. Ginna asserts that RGE must plan its system to meet both its reliability requirements in the face of load growth and its obligations to Ginna under the IA, including Appendix H. Further, Ginna claims that the

¹² Section 9.3 of the IA states:

Transmission Owner shall cause the Transmission System and the Transmission Owner's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with Good Utility Practice and this IA. Transmission Owner may provide operating instructions to Interconnection

Customer consistent with this IA and Transmission Owner's operating protocols and procedures as they may change from time to time. Transmission Owner will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

¹³ Ginna quotes the following portion of section 9.7.1 of the IA:

Each Party may, in accordance with Good Utility Practice and in coordination with the other Party, remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment.

Ginna also quotes the following portion of section 9.7.2 of the IA:

If required by Good Utility Practice to do so, Transmission Owner may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Owner's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System.

Emergency Condition¹⁴ provisions of section 13.4¹⁵ of the IA are not relevant to the operation of Appendix H, since Appendix H does not pertain to emergencies, but to (1) normal operating conditions and certain identified contingencies and (2) because the transmission line outages and resultant requests by RGE to reduce the Facility's output were unrelated to an Emergency Condition envisioned under section 13.4.

14. Ginna requests that the Commission direct RGE to comply with the IA, require RGE to upgrade its system as needed to meet its performance obligations under the IA (or confirm that the RTP will enable RGE to meet such obligations), and direct RGE to cease requiring Ginna to reduce its output in a manner inconsistent with Appendix H.

15. Ginna also requests that the Commission direct RGE to reimburse Ginna for its lost revenues resulting from RGE's violation of the IA, asserting that its violation effectively shifts costs to Ginna that are expressly allocated to RGE under the IA. According to Ginna, these costs consist of the opportunity costs Ginna has and will incur pending completion of system modifications. Ginna contends that the opportunity costs

¹⁴ The IA defines an Emergency Condition as a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; (2) that, in the case of a Transmission Owner, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, Transmission Owner's Transmission System, Transmission Owner's Interconnection Facilities, or the electric system of others; (3) that, in the case of Interconnection customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security or safety of, or damage to the Generating Facility or Interconnection Customer's Interconnection facilities; or (4) any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation supply that could adversely affect the reliability of the electric system. System restoration and black start shall be considered Emergency Conditions; provided however, that Interconnection Customer is not obligated by this Agreement to possess black start capability.

¹⁵ Ginna quotes the following portion of section 13.4.1 of the IA:

Consistent with Good Utility Practice, Transmission Owner or Transmission Provider may take whatever actions or inactions with regard to the Transmission System, the Transmission Owner's Interconnection Facilities, or the Joint Use Facilities it deems necessary during an Emergency Condition. . . .

which Ginna incurred as a result of output reductions on May 14, 2007 and June 6, 2007 consist of the revenues lost from sales forgone in each hour less Ginna's fuel and variable operation and maintenance expenses in each hour. Ginna claims it incurred opportunity costs of approximately \$295,192 on May 14, 2007 and approximately \$111,108 on June 6, 2007, for a total of approximately \$406,300.

16. Ginna contends that, to ensure the maximum protection against RGE's violation of the IA, the Commission should set the refund effective date under the Complaint to be the date of its filing. According to Ginna, while it is requesting the establishment of a refund effective date, it is independently requesting that it be compensated for the costs it has already incurred pursuant to the provisions of Section 10.5 of the IA.

17. Ginna requests that, in addition, the Commission appoint a settlement judge to assist the parties in developing interim operating procedures and related compensation before Ginna may again be requested to reduce its output.

III. Notice of Filings and Responsive Pleadings

18. Notice of Ginna's complaint was published in the *Federal Register*, 72 Fed. Reg. 36,442 (2007), with answers, interventions, and protests due on or before July 16, 2007. On July 11, 2007 and July 27, 2007, RGE filed motions for an extension of time to file an answer, both of which the Commission granted, with answers ultimately due by August 20, 2007. On August 20, 2007, RGE timely filed an answer to the complaint. On August 20, 2007, the NRG Companies¹⁶ filed a motion to intervene and comments in support of the complaint. On August 31, 2007, Ginna filed a motion for leave to reply and a reply to RGE's August 20, 2007 answer. On September 17, 2007, RGE filed an answer in reply to Ginna's August 31, 2007 answer. On September 19, 2007, Ginna filed an answer in reply to RGE's September 17, 2007 answer. On September 24, 2007, RGE filed an answer in reply to Ginna's September 19, 2007 answer.

¹⁶ The NRG Companies include NRG Power Marketing, Inc., Arthur Kill Power, LLC, Astoria Gas Turbine Power, LLC, Dunkirk Power, LLC, Huntley Power, LLC, and Oswego Harbor Power, LLC.

19. In addition, the New York State Public Service Commission and New York Transmission Owners¹⁷ filed timely interventions.

A. RGE's August 20, 2007 Answer

20. In its Answer, RGE claims that it has not violated the IA or the filed rate doctrine. According to RGE, Appendix H of the IA is not a stand-alone set of obligations, but is a part of the definition of "Good Utility Practice," one provision in a complex and unambiguous contract that must be read in its entirety. RGE contends that all of the obligations of RGE under the IA are conditional, with several conditions contemplating that operating parameters applicable to the Facility will change to maintain system safety and reliability, which is a non-discretionary standard. RGE claims that under the Commission's pro forma large generator interconnection agreement, Network Resources can be directed, such as was the case here, to reduce output if necessary to preserve system safety and reliability. RGE argues that there is nothing in section 9.3,¹⁸ which requires RGE to operate its facilities in a safe and reliable manner, that subjects RGE's right to operate its system to the parameters of Appendix H in the event of a conflict, and that Appendix H does not nullify section 9.3. RGE concludes that it did not require Ginna to comply with terms and conditions not found in the IA but to conform to the requirements of the IA.

21. RGE asserts that, even on their own, the operating parameters of Appendix H are not unconditional, but rather contemplate that there may be operating restrictions imposed by RGE due to "certain unique maintenance and contingency conditions on the two double circuit sections" of the RGE transmission lines serving Ginna.¹⁹ RGE claims that the two Facility output reductions were directed due to possible STE thermal rating exceedances on one of the double circuits and, hence, the Facility output reductions did not deviate from the terms of the filed rate, namely, the IA, including Appendix H.

22. RGE also contends that Ginna's allegations are inconsistent with the SOA, which specifies the "order of precedence" to other agreements for purposes of implementing the

¹⁷ The New York Transmission Owners include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc.

¹⁸ *Supra* note 12.

¹⁹ IA, Appendix H.

SOA. RGE asserts that, consistent with the terms of the IA, the SOA states that the operating parameters of Appendix H must yield to the remaining provisions of the IA, as the IA is amended or superseded. According to RGE, the parties executed three revised SOAs subsequent to the June 2004 version, each time retaining the order of precedence and ratifying RGE's view that the IA controls Appendix H.

23. RGE asserts that once the line outage necessitated the ramp down to comply with safety and reliability requirements (e.g., to avoid exceeding STE thermal ratings), the provisions of Appendix H indicating that Ginna could deliver up to 590 MW in a single-line outage scenario ceased being a Good Utility Practice under the IA.

24. RGE also argues that, contrary to Ginna's assertions, the Emergency Condition provisions of the IA are relevant to the implementation of Appendix H. RGE contends that section 13.4²⁰ confirms the paramount authority of RGE to take whatever action it deems necessary to preserve the reliability of the transmission system and allows RGE to require Ginna to mitigate an Emergency Condition by shutting down, decreasing output, implementing a reduction or otherwise. In directing the two reductions in output, RGE claims it did not violate the quality of service required by the IA because of the restriction that a reduction in output will only be required to avoid compromising system safety or reliability based on system conditions at the time of the contemplated outage. RGE asserts that there is no basis for elevating a measure of Good Utility Practice – Appendix H – as a basis for preventing RGE from ordering a reduction in the Facility's output needed to prevent the STE thermal ratings of operable lines from being exceeded.

25. RGE further claims that it is not permitted to elevate the Facility to a level of transmission planning preference by undertaking to ensure, through ongoing system enhancements and otherwise, that its transmission system will be able to accept delivery of up to 590 MW at all times and under all conditions. RGE states that, moreover, system conditions may arise that either were not anticipated, or that cannot immediately be resolved by the transmission planning process.

26. Furthermore, according to RGE, the IA lacks any language that reflects an ongoing obligation by RGE to undertake system upgrades. RGE also argues that it is not requiring Ginna to pay for any system modifications or upgrades and neither Appendix H nor the remainder of the IA supports Ginna's claim that Appendix H "provides a specific level of interconnection reliability that [RGE] is obligated to include in its transmission planning," or defines the "system conditions that [RGE] must model when planning its

²⁰ *Supra* note 15.

system.” Further, RGE asserts that neither section 10.5²¹ nor the NYISO’s interconnection procedures require RGE to fund future upgrades to preserve, for the duration of the IA’s term, its system’s ability to accept 590 MW under normal operation conditions.

27. RGE also argues that it should not be held responsible for Ginna’s claimed, but unverified, costs, given that RGE’s actions were consistent with the IA. According to RGE, there is no provision of the IA that requires RGE to compensate Ginna if legitimate steps undertaken to sustain system reliability have the associated impact of requiring Ginna to reduce the output of the Facility. RGE also contends that, even if the Commission were to determine that RGE acted in violation of the IA, Ginna’s request for opportunity costs should be denied for two reasons: (1) section 18.1.4²² of the IA states that neither party shall be liable for any “liabilities, losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damage, including but not limited to loss of profit or revenue...;” and (2) even if opportunity costs were permitted under the IA, Ginna has failed to provide support for the calculation of such costs other than to state in conclusory fashion that such costs were incurred.

28. RGE adds that no other outages of line 911 that would require a decrease in Facility output are planned prior to the completion of the RTP and that it believes that settlement prospects would be enhanced by accepting Ginna’s proposal to request the participation of a settlement judge.

²¹ *Supra* note 10.

²² Section 18.1.4 of the IA states:

Other than the Liquidated Damages heretofore described and indemnity obligations [arising under various articles] . . . and the payment for liabilities and costs incurred as a result of third-party claims, in no event shall either Party be liable under any provision of this IA for any liabilities, losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, and strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder. The provisions of this Section 18.1.4 shall survive termination of this IA.

B. Comments of the NRG Companies

29. The NRG Companies state that the Commission should grant the complaint, as any reductions for contingencies should have been addressed (and apparently were addressed) during the NRIS study process. The NRG Companies assert that Ginna should be able to deliver its output in accordance with the IA and any reductions should only be for emergencies, and an otherwise temporary, not permanent, generator specific reduction.

IV. Discussion**A. Procedural Matters**

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and unopposed timely filed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer or protest unless otherwise permitted by the decisional authority. In this case, we are not persuaded to permit the answers to answers, and, accordingly, we will reject such answers.

B. Hearing and Settlement Judge Procedures

31. Upon review of the filings, we find that the complaint raises issues of material fact with respect to what the Commission's pro forma interconnection agreement requires in the circumstances of this case that should be addressed by the Commission but which cannot be resolved based on the record before us, such as whether and in what circumstances the parties intended Ginna to reduce Facility output for a single-line outage and whether such an occurrence constitutes a violation of the IA. Other issues that may need to be considered at the hearing include, but are not limited to: (1) whether the parties intended for RGE to undertake and to fund upgrades to preserve, for the duration of the IA's term, its system's ability to accept 590 MW under normal operating conditions; and (2) whether the parties intended for RGE to compensate Ginna for the opportunity costs it has incurred or will incur due to alleged unauthorized Facility output reductions and the amount of any required compensation. These issues are more appropriately addressed in the hearing and settlement judge procedures ordered below.

32. 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.²³ 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.

33. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the Federal Power Act (FPA), section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the filing of the complaint, but no later than five months after the filing of such complaint. Consistent with our general policy of providing maximum protection to customers,²⁴ we will set the refund effective date as of the date of the filing of Ginna's complaint, or June 25, 2007.

34. Section 206(b) also requires that, if the Commission has not rendered a final decision 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 a decision. Based on our review of the record and in consideration of the nature of the issues set for hearing, and assuming that the parties are unable to reach a settlement, we expect that a presiding judge should be able to render a decision within approximately twelve months, or, if the parties were to proceed to trial-type evidentiary hearing procedures immediately, on or before August 30, 2008. If a presiding judge were to render an Initial Decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions or by April 30, 2008.

²³ 18 C.F.R. § 385.603 (2007).

²⁴ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

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 FPA, particularly section 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 the 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 (2007), 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.

(C) 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.

(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 this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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.

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(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act, is June 25, 2007.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.