UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company — Docket No. EL05-65-000

v.

Entergy Services, Inc. and Entergy Operating Companies

ORDER ON COMPLAINT AND ESTABLISHING HEARING PROCEDURES

(Issued April 18, 2005)

1. On February 17, 2005, ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company (ExxonMobil) filed a complaint alleging that: (1) the netting restriction of a 1999 Agreement of Electric Service (Electric Service Agreement) between ExxonMobil and Entergy Services, Inc. and Entergy Operating Companies (Entergy) is unlawful and (2) Entergy unlawfully bills a Monthly Facilities Charge to ExxonMobil for network upgrades. As discussed below, the Commission rejects as unfounded the first allegation because the relevant provisions of the Electric Service Agreement are exempt from section 205 of the Federal Power Act (FPA)[1] under our regulations implementing section 210 of the Public Utility Regulatory Policy Act of 1978 (PURPA)[2] and the parties voluntarily entered into an agreement regarding the terms and conditions of PURPA sales. With regard to the second allegation, the Commission sets for hearing the issues of whether the network upgrades and related charges are subject to Commission jurisdiction and, if so, when they became subject to the Commission's jurisdiction, whether the Monthly Facilities Charge violated the Commission's policy prohibiting "and" pricing, and Entergy's potential refund obligations related to the Monthly Facilities Charge.

[1] 16 U.S.C. § 824d (2000).

[2] 16 U.S.C. § 824a-3 (2000).

2. This order benefits customers because it clarifies the charges for which Entergy's customer, ExxonMobil, is responsible.

I. Background

A. The ExxonMobil Complex

3. ExxonMobil operates a chemical manufacturing facility and a petroleum refinery complex located in Baton Rouge, Louisiana that spans 1700 acres (ExxonMobil Complex or Complex). ExxonMobil owns and/or operates two qualifying facilities (QFs) that are located at the Complex.[3] The two QFs are Baton Rouge Turbine Generator (BRTG) and ExxonMobil Cogeneration Facility (Exxon Cogen). In a previous order the Commission determined that power and energy are delivered from both BRTG and Exxon Cogen, the Complex is not a single generating plant, and each substation is a separate delivery point. The two QFs are connected to three 230 kV substations (the Exxon, Enco and Esso substations), which are interconnected with each other by 3.8 miles of 230 kV transmission lines.

4. The three substations are separately interconnected to Entergy's 230 kV transmission grid at three separate points. Through this interconnection, ExxonMobil states it is able to serve the Complex's industrial load with approximately 450 MW of cogenerated power from the two ExxonMobil QFs; to purchase backup or supplemental power from Entergy when needed; and to utilize the transmission grid to sell surplus power into wholesale markets or to Entergy at its avoided cost. ExxonMobil states that surplus energy flows onto Entergy's 230 kV transmission system, and backup or supplemental power, when needed, flows in from Entergy's 230 kV system. ExxonMobil states that total industrial load at the Complex exceeds 330 MW and that ExxonMobil sells on average 110 MW of power at wholesale to Entergy and third parties.

B. Related Agreements and Previous Complaint

5. To support ExxonMobil's sale of energy to third parties from the ExxonMobil Complex, on May 28, 1999, ExxonMobil and Entergy Gulf States, Inc., (an Entergy Operating Company) executed an Interconnection and Operating Agreement (IOA). The IOA is on file with the Commission as a jurisdictional rate schedule.[4] In addition to providing for interconnection service to run for at least one year, the IOA specifies that additional Interconnection Facilities may be constructed during the term of the agreement

[3] *Exxon Chemical Americas, et al*., 51 FERC ¶ 62, 177 (1990); *Exxon Company, U.S.A., et al.*, 83 FERC ¶ 62, 149 (1998) (certifying ExxonMobil QF facilities).

[4] The IOA was approved by a Commission Letter Order at 90 FERC ¶ 61,272 (2000), as part of a settlement agreement in Docket No. ER99-3252-000.

to deliver energy from ExxonMobil's facilities to Entergy's system. Interconnection Facilities are to include any additions or reinforcements to Entergy's system that Entergy in its sole judgment deems necessary.

6. Also on May 28, 1999, ExxonMobil and Entergy Gulf States, Inc. executed the Electric Service Agreement, pursuant to which Entergy purchases power from the ExxonMobil Complex and Entergy provides back-up service to the Complex. The Electric Service Agreement, unlike the IOA, is not on file with the Commission. Subsection E of Article VI of the Electric Service Agreement contains the netting restriction at issue in this proceeding, which prohibits the netting of generation and load for the Complex.[5] The Electric Service Agreement also provides for (in Article VII, Section A) the development of a Monthly Facilities Charge under which ExxonMobil compensates Entergy for costs incurred by Entergy for constructing facilities for ExxonMobil's benefit and for modification of the Entergy transmission system or other facilities that are required to provide services specified in the Electric Service Agreement. Rider A to the Electric Service Agreement sets forth the Monthly Facilities Charge and Entergy's investments in specified facilities.

7. In January 2000, ExxonMobil filed a complaint with the Commission, arguing that the ExxonMobil Complex should be treated as a single Point of Receipt so that when ExxonMobil's customers, including Entergy, purchase capacity or energy from the Exxon Complex, the capacity or energy would be aggregated. In an order issued on April 27, 2000, the Commission denied ExxonMobil's complaint.[6] The Commission found that ExxonMobil's sales from multiple generating units from the two Qualifying Facilities were not from a single generating plant. The Commission noted that section 13.7(b) of the *pro forma* open access transmission tariff (OATT) states that a transmission customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the transmission provider's transmission system. The resources will be considered multiple Points of Receipt unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.[7]

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[5] Subsection E of Article VI provides that: "[i]n no event will generation from either Esso Substation, Exxon Substation, Enco Substation or 1A steam turbine generator be used to offset load at any Point of Delivery other than the point to which that generation is physically connected."

[6] ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company v. Entergy Gulf States, Inc., 91 FERC ¶ 61,106 (2000) (*ExxonMobil v Entergy*).

[7] *Id.* at 61,381.

II. ExxonMobil Complaint

8. ExxonMobil alleges that it "was under intense timing pressure to complete construction and begin commercial operation of the Exxon Cogen and its $200 million plus investment, and Entergy used this leverage to force inclusion of this unjust and unnecessary 'No Netting' stricture."[8] It also claims that the netting restriction is unduly discriminatory, violates the Commission's QF and station power policies, and is ineffective due to Entergy's failure to file the Electric Service Agreement with the Commission.[9] ExxonMobil alleges that the netting restriction has forced it to acquire and pay for unnecessary retail power and transmission services from Entergy (without any operational or cost basis on Entergy's part), which needlessly raises ExxonMobil's costs of operation and unfairly burdens its competitive wholesale sales of surplus energy to third parties.

9. Further, ExxonMobil alleges that the Monthly Facilities Charge is a jurisdictional charge that should be on file with the Commission and that, because Entergy failed to file the Monthly Facilities Charge when Entergy filed the IOA with the Commission, ExxonMobil is entitled to a refund of all monies paid since 1999. ExxonMobil also asks that the Commission find that Entergy's Monthly Facilities Charge for network upgrades on the interconnection facilities that are part of Entergy's integrated network contravenes Commission policy in Order No. 2003. That policy prohibits utilities from directly assigning the costs of network upgrades to interconnection customers in cases where the customer sells off-system. ExxonMobil alleges that the Monthly Facilities Charge results in "and" pricing since Entergy also charges ExxonMobil for unbundled wholesale transmission service over the same facilities.

III. Notice and Filings

10. Notice of ExxonMobil's complaint was published in the *Federal Register*, 70 Fed. Reg. 9,940, with interventions and protests due on or before March 21, 2005. Entergy filed a timely answer. Cottonwood Energy Company, LP, filed a timely motion to intervene. Louisiana Public Service Commission, Arkansas Public Service Commission, Mississippi Public Service Commission, and Council of the City of New Orleans,

[8] Complaint at 21.

[9] ExxonMobil points out that, prior to the startup of the second QF, ExxonMobil Cogen on May 29, 1999, Entergy treated the ExxonMobil complex as one load, with all energy delivered from Entergy's Louisiana station #1 netted against the total Complex load. Complaint at 14.

Louisiana (New Orleans), filed notices of intervention. The three state Public Service Commissions and New Orleans filed a joint protest. On April 8, 2005, ExxonMobil filed an answer to Entergy's answer.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and the timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept ExxonMobil's answer and will, therefore, reject it.

B. The Netting Restriction

13. ExxonMobil argues that it should be able to aggregate all generation from the two QFs against load for purposes of measuring output. It alleges that the netting restriction is unduly discriminatory, in violation of the Commission's QF and station power policies, and is ineffective due to Entergy's failure to file the Electric Service Agreement with the Commission. It also alleges that the netting restriction is not consistent with the Commission's prior decision in ExxonMobil's prior complaint case interpreting section 13.7 of the OATT.[10]

Commission Determination

14. ExxonMobil frames the issue as whether the netting restriction is just and reasonable under the FPA and consistent with Commission precedent. However, what is at issue is a contract for the sale of power from a QF. The netting provision that ExxonMobil objects to is really a provision concerning how the sale of the electric power from the QFs is to be measured – whether the sale is to be measured at one point as ExxonMobil urges it should be, or at three points as provided for in the Electric Service Agreement. Under section 292.601 of the Commission's regulations, most QFs, including those of ExxonMobil, are exempt from most provisions of the FPA, including sections 205 and 206.[11] As a result the Commission does not directly exercise its

[10] *ExxonMobil v Entergy*, 91 FERC ¶ 61,106.

[11] *See* 18 C.F.R. § 292.601 (2004) ("Exemption to Qualifying Facilities from the Federal Power Act").

jurisdiction under the FPA over contracts for the sale of power from such QFs. Rather, the Commission exercises authority over arrangements between electric utilities and QFs pursuant to PURPA.

15. Under section 210 of PURPA, the Commission was required to promulgate rules that encourage the development of cogeneration and small power production. Among other things, the Commission's rules require electric utilities to purchase power from, and sell power to, facilities that qualify as cogeneration or small power production facilities. The Commission's regulations relating to arrangements between electric utilities and QFs are set forth in 18 C.F.R. Part 292, Subpart C (2004).[12] State commissions in turn implement the Commission's rules concerning arrangements between electric utilities and QFs. ExxonMobil's challenge to the netting provisions in its contract with Entergy is fundamentally a challenge to the implementation of PURPA and is thus properly viewed as a petition to initiate an enforcement action pursuant to PURPA. The Commission's enforcement authority is discretionary.[13] Accordingly, to the extent that ExxonMobil is requesting enforcement under PURPA, we deny that request. ExxonMobil may bring an enforcement action directly in the appropriate court.

16. Although we are not initiating an enforcement proceeding based on ExxonMobil's complaint, we note that, section 292.301 of the Commission's regulations is of particular relevance to the merits of ExxonMobil's complaint. Section 292.301(a) provides that subpart C applies to the regulation of sales and purchases between QFs and electric utilities.[14] Section 292.301(b), in turn, provides for negotiated rates or terms and states:

> Nothing in this subpart:
> (1) Limits the authority of any electric utility or any QF to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart; or
> (2) Affects the validity of any contract entered into between a QF and an electric utility for any purchase.

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[12] *See* 18 C.F.R. §§ 292.301-292.308 (2004).

[13] *See Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Policies Act of 1978*, 23 FERC ¶ 61,304 (1983).

[14] 18 C.F.R. § 292.301(a) (2004).

17. In other words, section 292.301 allows QFs and purchasing utilities to negotiate the rate and terms and conditions of an agreement for the sale and purchase of power from a QF. As authorized by this regulation, ExxonMobil entered into the Electric Service Agreement with Entergy that includes, in part, a condition relating to the measurement of sales from the QF. That provision provides for the netting of load and generation by substation rather than netting the total load of the Complex and the total generation produced by ExxonMobil's two QFs at a single point of delivery.[15] This provision, which Entergy and ExxonMobil freely negotiated in the Electric Service Agreement, and which provides how Entergy's purchases from ExxonMobil are to be measured, is consistent with Commission regulations implementing PURPA because it was agreed to by ExxonMobil and Entergy. Thus, the parties cannot now ask that the contractual provisions concerning the PURPA sales to which they voluntarily agreed be revised.

18. As a final matter, to the extent that ExxonMobil is arguing that its contention that it was "forced" to accept the netting provision it complains about somehow confers jurisdiction over this dispute to the Commission, we find that ExxonMobil has not provided sufficient support for its contention that it was "forced" to accept the contract provision about which it now complains.[16] In fact, ExxonMobil has provided no support for its allegation of "coercion." In any event, the ExxonMobil/Entergy contract providing for sales from ExxonMobil's QFs is exempt from sections 205 and 206 of the FPA.

19. Accordingly, we deny the first count of ExxonMobil's complaint.

C. The Monthly Facilities Charge

20. ExxonMobil argues that Entergy should be required to refund all Monthly Facilities Charge amounts collected, with interest, for the interconnection facilities since at least May 28, 1999, the date the parties executed the IOA. While acknowledging that the Monthly Facilities Charge rates are based on a state retail tariff, ExxonMobil argues that, because Entergy is *also* charging for the interconnection facilities under the IOA, the Monthly Facilities Charge must be filed with the Commission.

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[15] The Electric Service Agreement between ExxonMobil and Entergy provides that the transfer of power, *i.e.*, sales to Entergy or backup power to ExxonMobil, is determined by points of delivery at each substation and is not netted. The Commission found in a previous order that power and energy are delivered from both the Exxon Cogen and BRTG QFs which do not constitute a single generating plant and that each substation is not a single point of receipt under Entergy's OATT. *ExxonMobil v. Entergy*, 91 FERC ¶ 61,106.

[16] Complaint at 5, 21.

21. ExxonMobil argues that Entergy's collection of the Monthly Facilities Charge for the interconnection facilities is counter to current Commission policy. It states that the Interconnection Facilities are claimed by Entergy to be part of its integrated system and thus are network upgrades. ExxonMobil claims that it is being subjected to "and" pricing as it, and/or its surplus energy customers, are paying embedded transmission costs for backup and supplemental power and for the export of surplus power. In addition, ExxonMobil states that it has been directly assigned the full incremental costs for the network upgrades via the Monthly Facilities Charge.

22. ExxonMobil states that the Commission's crediting policy can be applied to previously-accepted interconnection agreements where the parties have protected their right to file a complaint with the Commission. It cites language from the IOA preserving the right of parties to make application to the Commission under the FPA. ExxonMobil argues that the IOA is a service agreement subject to the OATT and therefore Entergy's OATT provides it with the right to file its complaint.

23. Entergy answers that Commission approval of the Monthly Facilities Charge is not required because that charge is not jurisdictional. It argues that its provision of retail services to ExxonMobil through the Electric Service Agreement and the Monthly Facilities Charge does not involve either the provision of interstate transmission service or sales at wholesale by Entergy Gulf States. According to Entergy, the Monthly Facilities Charge is a retail facilities charge approved by the Louisiana PSC and assessed for facilities beyond those normally installed to supply comparable industrial load. It argues that the retail facilities charge applies because of ExxonMobil's decision to have additional redundant facilities built at the ExxonMobil Complex. Entergy claims that a Commission directive to refund amounts collected under the Electric Service Agreement would usurp state jurisdiction over retail rates.

24. According to Entergy, the IOA requires that ExxonMobil's proposal to include the Monthly Facilities Charge in the IOA would have to satisfy the *Mobile-Sierra* public interest standard of review.[17] Entergy argues that, under the public interest standard, ExxonMobil would bear the burden of proof; but it has not attempted to demonstrate that its requested relief is necessary to preserve the public interest.

25. Entergy argues that ExxonMobil is not subject to "and" pricing. According to Entergy, the Monthly Facilities Charge does not recover the actual operations and maintenance charges for the specific facilities at the ExxonMobil complex but rather is

[17] Entergy argues that the provision of the IOA cited by ExxonMobil, Article III.M, preserves the rights of the parties only under section 205 while Article V.B of the IOA requires written agreement of the parties to any amendment. Thus, according to Entergy, Article III.M's failure to mention section 206 rights is proof that the parties intended the *Mobile-Sierra* standard to apply.

based on Entergy Gulf States' system average O&M costs. Entergy Gulf States subtracts the facilities charge revenues collected from ExxonMobil and other facilities charge customers from its revenue requirement for OATT services. Thus, according to Entergy, Entergy Gulf States does not double collect, and there is no "and" pricing.

Commission Determination

26. While ExxonMobil and Entergy dispute whether Entergy can lawfully charge Monthly Facilities Charges on the interconnection facilities, both parties agree to several underlying facts. The parties do not dispute that the facilities at issue are being used for third party sales of energy.[18] Further, it is clear that the IOA makes provision for the construction of additional facilities to support those sales.[19] Both parties also agree that the IOA does not contain any rates or charges.[20] If Entergy has, in fact, charged ExxonMobil for costs related to the Commission-jurisdictional interconnection facilities under the IOA, such rates must be on file with the Commission.[21]

27. However, the parties also raise a number of factual disputes that cannot be resolved based on the record before us. The pleadings and their attached exhibits are not clear with regard to which Monthly Facilities Charges relate to the support of third-party transactions at the ExxonMobil Complex that are subject to the Commission's

[18] *See, e.g.*, Complaint at 18, Entergy Answer at 8. The IOA expressly states that ExxonMobil and Entergy may enter into transmission service agreements, and such agreements have been executed and are on file with the Commission.

[19] *See, e.g.*, ExxonMobil Exhibit 6, the IOA at 8 (Definition of Interconnection Facilities).

[20] Although not setting forth rates, the IOA contemplates that some costs may be subject to Commission jurisdiction. Article III.A.4 of the IOA provides that, in the event that ExxonMobil and Entergy fail to reach agreement with respect to any costs referred to in the IOA provisions relating to construction and operation of the interconnection facilities, ExxonMobil "may bring the matter before the Louisiana Public Service Commission (LPSC) and/or the Federal Energy Regulatory Commission (FERC), whichever has jurisdiction over such matters, for resolution."

[21] The exemption from the FPA applies to sales of power from QFs and is directed at eliminating the regulatory burden on QFs. The exemption does not apply to a non-QF such as Entergy when it begins providing jurisdictional transmission service to wheel the QF power to third parties. Thus, the fact that Entergy's rates for jurisdictional services must be on file with the Commission does not impact our earlier conclusion that the PURPA sales pursuant to the Electric Service Agreement are exempt from sections 205 and 206 of the FPA pursuant to our PURPA regulations.

jurisdiction and which are exempt because they relate to sales from the ExxonMobil QFs to Entergy. When an electric utility is obligated to interconnect under section 292.303 of the Commission's regulations, that is when it purchases a QF's total output, the relevant state authority exercises jurisdiction over the interconnection and allocation of the interconnection costs. However, when an electric utility interconnected with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms and conditions affecting or relating to such service.[22]

28. In addition, the record does not indicate when such facilities became subject to Commission jurisdiction (which is necessary for purposes of determining Entergy's possible refund liability). Therefore, we will set these issues for hearing as well as the issues of whether Entergy has violated the Commission's "and" pricing policy[23] by charging ExxonMobil both embedded transmission costs as well as the Monthly Facilities Charge, and Entergy's possible refund liability. [24]

29. 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 commence. 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.[25] If the parties desire, they may,

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[22] *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 813 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004); *see also order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004). *See also Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 at 61,661-62 (1992), *aff'd sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999).

[23] While the IOA between Entergy and ExxonMobil predates Order No. 2003, our policy prohibiting "and" pricing also predates Order No. 2003 and is applicable here.

[24] While section 206 of the FPA generally does not permit the Commission to require refunds of unjust and unreasonable rates prior to a date 60 days after the filing of a complaint or 60 days after the initiation of a Commission investigation on its own motion, the authority can be expanded in limited circumstances; where, as here, there is no rate on file, the Commission has authority pursuant to section 205 of the FPA to direct refunds of amounts improperly charged for Commission-jurisdictional services. *See e.g.*, *Entergy Services, Inc*., 104 FERC ¶ 61,061 at P 19 (2003), *aff'd sub nom*. *Entergy Services, Inc. v. FERC*, 400 F.3d 5 (D.C. Cir. 2005).

[25] 18 C.F.R. § 385.603 (2004).

by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.[26] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

The Commission orders:

(A) The complaint is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the 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 ExxonMobil's complaint with regard to the following issues: (1) which upgrades on the Entergy system to support transactions at the ExxonMobil Complex are subject to the Commission's jurisdiction and which upgrades are exempt because they are used solely to make sales from the ExxonMobil QFs to Entergy; (2) if any such upgrades are jurisdictional, when such facilities became subject to Commission jurisdiction; (3) whether Entergy has violated the Commission's "and" pricing policy by charging ExxonMobil both embedded transmission costs as well as the Monthly Facilities Charge; and (4) Entergy's potential refund liability. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), 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 in writing or by telephone within five (5) days of the date of this order.

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[26] If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory 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)

Linda Mitry,
Deputy Secretary.