



Services) the standards of conduct under Part 358 of the Commission's regulations; and (3) whether the Southern code of conduct is just and reasonable and whether the code of conduct should continue to define Southern Power as a "system company".

2. This order benefits customers by ensuring that affiliate transactions and relationships are just and reasonable and not unduly preferential or discriminatory.

## **I. Background**

3. In Docket No. ER00-1655-000, the Commission accepted the addition of Southern Power into the IIC.<sup>3</sup> The Commission's action was premised on Southern Services' representations to the Commission that adding Southern Power to the IIC (and thus the Southern Pool) was one of several "ministerial" changes to the IIC that had no substantive effect on rates, practices or procedures under the IIC, and was intended only to produce "operational efficiencies" for Southern Companies and to consolidate, in one company, the wholesale marketing activities then being performed by the several Southern retail operating companies. In the order, the Commission stated that Southern Services'

[S]tatements make clear that NewCo [Southern Power] will stand in the shoes of the existing Operating Companies, *i.e.*, it will simplify the existing wholesale activities without any change in how costs and revenues from wholesale transactions are shared by the existing Operating Companies. Accordingly, we will accept [Southern Services'] addition of NewCo, as well as the other changes, to the IIC.<sup>4</sup>

Since that order was issued, some five years ago, Southern Power has become a regional competitor and a key supplier of long-term power to its affiliated operating companies. As is explained in more detail below, the Commission has become concerned that Southern Power's current functions are different from what their functions were represented to be and that Southern Power's inclusion in the IIC, and participation in the Southern Pool, may cause, as parties have alleged, undue preferences and undue competitive advantages. Further representations made by Southern Companies when adding Southern Power to the IIC were that "NewCo [Southern Power] is being created to simplify resource planning and expedite decision making among decentralized management groups. To this end, NewCo is expected to develop and build new

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<sup>3</sup> *Southern Company Services, Inc.*, 91 FERC ¶ 61,259, *request for clarification dismissed*, 92 FERC ¶ 61,167 (2000).

<sup>4</sup> 91 FERC at p. 61,903-4.

wholesale generation that would otherwise have been developed by one or more of the existing Operating Companies...NewCo [Southern Power] will not be engaged in any marketing activities.”<sup>5</sup>

4. On April 7, 2003, as amended on May 16, 2003, Southern Power submitted for filing, in Docket No. ER03-713-000, two long-term power purchase agreements (PPAs) between Southern Power and two of its affiliates, Georgia Power Company (Georgia Power) and Savannah Electric and Power Company (Savannah Electric). The PPAs provided for the sale of capacity and energy from two new 620 MW gas-fired, combined cycle generating units (McIntosh Units 10 and 11) to be constructed by Southern Power in Effingham County, Georgia. Southern Power was to provide Georgia Power with 1040 MW of power under one PPA, and Savannah Power with 200 MW under the other. Both PPAs were proposed to be effective on June 1, 2005, and terminate on May 31, 2020. The PPAs were the result of a Spring 2002 request for proposals (RFP) by Georgia Power and Savannah Electric. The RFP was issued on April 3, 2001 for 2000-2500 MW of power. Out of nineteen proposals submitted, Southern Power and Duke Energy Southeast Marketing, LLC were awarded contracts. In its application, Southern Power stated that it was submitting the PPAs for approval because they involve market-based sales to affiliates with franchised service territories.

5. On July 9, 2003, the Commission accepted the PPAs for filing, suspending them for a nominal period, and making them effective, subject to refund.<sup>6</sup> In the July 9 Order, the Commission stated that, under Commission precedent,<sup>7</sup> affiliate transactions must be examined to prevent affiliate abuse, to ensure prices that are consistent with competitive outcomes, and to ensure that such affiliate transactions do not adversely affect either customers or wholesale competition. The Commission added that intervenors raised concerns regarding the RFP process and the impact of the PPAs on wholesale competition, including, for example, that Southern Companies had used its control of the transmission service reservation process to provide a competitive advantage to Southern Power during the RFP process.

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<sup>5</sup> Southern Companies Supplemental Response, May 8, 2000.

<sup>6</sup> *Southern Power Company*, 104 FERC ¶ 61,041 (2003) (July 9 Order).

<sup>7</sup> See e.g., *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar Electric*).

6. In the July 9 Order, the Commission stated:

As a matter of policy, the Commission carefully scrutinizes all transactions involving public utilities and their affiliates, including the potential adverse impacts of those transactions on customers or wholesale competition. Where, as here, there is insufficient evidence to determine whether affiliate transactions will adversely affect wholesale competition, the Commission examines these matters in evidentiary hearings.<sup>8</sup>

7. Accordingly, the Commission set for hearing (a) whether in the design and implementation of the RFP Georgia Power and Savannah Electric unduly preferred its own affiliate, Southern Power; (b) whether the analysis of the RFP bids unduly favored Southern Power, particularly with respect to evaluation of non-price factors; (c) whether Georgia Power and Savannah Electric selected the affiliate based upon a reasonable combination of price and non-price factors; (d) whether Southern Power received an undue preference or competitive advantage in the RFP as a result of access to its affiliate's transmission system; (e) whether and to what extent the PPAs impact wholesale competition; and (f) whether the PPAs are just and reasonable and not unduly discriminatory.<sup>9</sup>

8. The participants engaged in discovery and filed testimony, and a hearing was scheduled to commence on May 25, 2004. On May 20, 2004, Southern Power amended its filing to withdraw the PPAs, stating that it had obtained the approval of the Georgia Public Service Commission (Georgia Commission) to sell McIntosh Units 10 and 11 to Georgia Power and Savannah Electric, and requested that the proceeding be terminated. According to Southern Power, because of the withdrawal of the McIntosh PPAs, all issues that the Commission set for hearing in Docket No. ER03-713-000 would be moot due to the approval of the Georgia Commission and because Southern Power no longer seeks to have this Commission approve the PPAs. Southern Power claims that any particular issues involving the RFP would be moot because Southern Power would now be unable to perform under its selected bid.

9. In response to Southern Power's filing, the hearing was suspended, and, pursuant to a notice issued on May 24, 2004, the participants were invited to file comments no

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<sup>8</sup> July 9 Order, 104 FERC ¶ 61,041 at P 16.

<sup>9</sup> *Id.* at P 27.

later than June 9, 2004 on Southern Power's request to withdraw the PPAs and terminate the proceeding and on whether there were issues raised in Docket No. ER03-713-000 that remain unresolved, despite Southern Power's request to withdraw the PPAs.

10. On June 9, 2004, Commission Trial Staff (Trial Staff), Calpine Corporation (Calpine), Electric Power Supply Association (EPSA), Williams Companies (Williams), and El Paso Merchant Energy, L.P. (El Paso Merchant) filed comments. Coral Power, L.L.C. (Coral Power) filed an out of time motion to intervene and comments. On June 24, 2004, Southern Power and its affiliated service company, Southern Company Services, Inc. (Southern Services), jointly filed comments out of time.

## **II. Procedural Matters**

11. All parties that were intervenors in Docket No. ER03-713 are granted party status in Docket No. EL05-102-000, and the Presiding Judge should rule on all motions to intervene in Docket EL05-102-000, including that of Coral Power (which was initially filed in Docket No. ER03-713-003).

12. We will reject the out of time comments filed by Southern Power and Southern Services. The May 24<sup>th</sup> notice of Southern Power's requests to withdraw the PPAs and terminate the proceeding specified that comments were to be filed no later than June 9, 2004. While Southern Power and Southern Services style their pleading as "reply comments," the notice did not provide for reply comments, but rather specified one date for all comments.

## **III. Summary of Comments on Southern Power's Request To Withdraw PPAs and Terminate Proceeding**

13. The commenters either supported or did not oppose the withdrawal of the PPAs, but (with one exception<sup>10</sup>) argued that there are unresolved issues that remain, including affiliate abuse by Southern Companies. These commenters generally believe that the alleged misconduct surrounding the McIntosh PPAs evidences broader structural problems (including Southern Power's inclusion in the Southern pool via the IIC) that would continue in the future and adversely affect wholesale competition and ratepayers, unless remedied by the Commission. Thus, they requested that the Commission either not terminate Docket No. ER03-713-000, or terminate it and initiate a section 206 proceeding in its stead where the investigation may continue.

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<sup>10</sup> El Paso Merchant takes no position on whether there are unresolved issues despite the withdrawal of the PPAs.

14. Trial Staff stated that the six issues that the Commission set for hearing in the July 9 Order should be considered moot. However, Trial Staff maintained that there are good reasons not to terminate the instant docket. It believes that the evidence generated by the participants in Docket No. ER03-713-000 raises substantial questions about the propriety of the RFP process administered by Southern Services and that equally compelling questions are raised about the propriety of Southern Power's continued membership in the Southern pool. According to Trial Staff, resolving these issues will help ensure and maintain wholesale competition in the Southeast. For these reasons, Trial Staff urged the Commission to initiate a section 206 proceeding that would include examining Southern Power's presence in the IIC and the Southern pool.

15. According to Trial Staff, there is considerable evidence in the testimony and exhibits filed to date that Southern Power may receive unfair competitive advantages by virtue of its membership in the pool, including having pool resources serve as a firm backstop for Southern Power's own generation. Trial Staff noted that, since Southern Power has been very successful in winning RFPs, it is important that the Commission ensure that its membership in the Southern pool does not afford it an unfair advantage vis-à-vis other competitors in the region. Trial Staff believes that, while the Commission earlier accepted Southern Power's inclusion as an operating company under the IIC, given the passage of time and the evidence of affiliate abuse that has arisen since Southern Power was added to the IIC, it is appropriate to revisit the issue of whether Southern Power should remain within the Southern pool under the IIC.

16. Trial Staff also urged the Commission to set for hearing the issue of whether Southern Power should be considered a "marketing affiliate" under the Southern code of conduct, noting that because it currently is considered a "system company," its officers and employees are not barred by the code of conduct from sharing market information with other affiliates. Trial Staff requested that the Commission allow the parties to use the evidence that has been developed in Docket No. ER03-713-000 in the section 206 investigation and to allow the parties to supplement that evidence through further discovery and testimony, as needed.

17. In its comments, Calpine argued that the types of alleged affiliate abuse by Southern Companies that affected the McIntosh PPAs will continue unabated and, unless corrected, will continue to adversely impact wholesale markets in the southeast. The withdrawal of the PPAs, Calpine claimed, does not alter the need for the Commission to investigate and remedy instances of past or ongoing affiliate abuse or discriminatory conduct by the Southern Companies. Calpine requested that the Commission remedy the structural problems that are, it claimed, the root cause of affiliate abuse by Southern Companies and that permit Southern Companies to discriminate in favor of their affiliates.

18. For these reasons, Calpine requested that the Commission institute a section 206 proceeding to continue investigating whether the alleged affiliate abuses discussed in the testimony and exhibits filed to date violate the FPA or involve preferential sharing of transmission system information among affiliates that violates Part 37 of the Commission's regulations. Calpine agreed with Trial Staff that the participants in the new section 206 proceeding should be permitted to preserve and supplement the testimony and exhibits submitted to date in Docket No. ER03-713-000.

19. Calpine urged that the section 206 investigation examine whether, in order to prevent any undue preferences conferred on Southern Power through its membership in the Southern pool, Southern Power's market-based rates should be revoked until either Southern Power leaves the pool or the pool is opened to all power marketers. Calpine also wanted the proceeding to examine whether the Southern retail operating companies are improperly subsidizing Southern Power's wholesale market activities.

20. Calpine maintained that the testimony and exhibits compiled to date indicate a pattern of pervasive affiliate abuse that will not be resolved by the proposed withdrawal of the McIntosh PPAs. Moreover, it argued, these alleged affiliate abuses are premised on institutional and structural relationships among the Southern affiliates which this Commission can and should remedy. Calpine listed examples of what it alleged to be instances of affiliate abuse, both in the past and on a continuing basis: (1) Southern Services allegedly disclosed competitively sensitive, confidential information only to Southern Power, while withholding that information from non-affiliated bidders; (2) Southern Power allegedly received at least six months' advance notice of the RFP's draft terms and conditions, and the opportunity to review and comment on those terms prior to their release to non-affiliates; (3) Southern Power receives allegedly unduly preferential access to confidential information regarding projected Southern Companies' generation and transmission needs through the Southern Services planning council; and (4) Southern Power receives allegedly unduly preferential access to confidential generation and transmission information through its participation on the Southern pool's Operating Committee.

21. Like Trial Staff, Calpine urged the Commission to re-examine Southern Power's inclusion in the IIC and the Southern pool. It argued that, while Southern had initially claimed that the role of Southern Power (then known only as NewCo) was to simplify existing wholesale activities without any changes to the retail operating companies' sharing of costs and revenues, in reality, Southern Power is much more than a passive repository of generation assets. Rather, Calpine argued, it is an aggressive power marketer that has at least five PPAs (other than the McIntosh PPAs) with its affiliates and that has participated in numerous competitive solicitations. Moreover, it participates in RFPs in its own name, rather than through Southern Services, as Southern originally claimed.

22. In Calpine's view, Southern Power's pool membership confers on it several important competitive advantages, including access to confidential generation and transmission information, principally through Southern Power's seat on the pool's Operating Committee. Calpine was concerned that, not only do non-affiliates not receive comparable information, but that the automatic access to confidential information provided by Southern Power's seat on the Operating Committee violates the standards of conduct in Part 37 of the Commission's regulations.

23. Calpine noted that under section 4.2 of the IIC, decisions of the Operating Committee with respect to operation of the pool, generation expansion, and other matters related to Southern Companies, must be unanimous. This, it contended, gives Southern Power an effective veto right, and thus the ability to shape the planning decisions of the Operating Committee, which no other competing power marketer shares.

24. Calpine argued that another competitive advantage that Southern Power's pool membership confers is that Southern Power can use the pool for backup power deliveries when its expected supply source is not available. Calpine explained that this is because, as a pool member, Southern Power has the right to serve its contractual obligations using pool energy. Moreover, Calpine maintained, this backup power supply is delivered automatically, without Southern Power having to arrange any additional supplies or transmission paths. In contrast, a non-affiliate that does not belong to the pool has no right to pool energy, must find other power supplies if its anticipated source is unavailable, and also must arrange for alternate transmission, if needed, to the delivery point.

25. According to Calpine, one source of the alleged affiliate abuse seen during the RFP is Southern Power's extensive reliance on Southern Services' management and resources. It claimed that the institutional arrangements between Southern Services and Southern Power, such as sharing employees, make it impossible for Southern Power to comply with the Commission's regulations on information sharing and also create what Calpine characterizes as conflicts of interest for any RFP process conducted by Southern Services in which Southern Power participates. Calpine added that both Southern Power and Southern Services have acknowledged a lack of formal firewalls to prevent inappropriate sharing of information between the bid preparation team and the bid evaluation teams.

26. Calpine complained that Southern Services' role as agent for Southern Power goes beyond that of most other service companies which, according to Calpine, meet only the mundane administrative needs of their affiliates. In contrast, Calpine stated, Southern Services functions as the transmission agent for the operating companies and performs the transmission service functions required by Southern Companies' open access transmission tariff. Southern Services also, Calpine contended, performs the coordinated



system planning which the Southern pool requires; produces generation expansion plans for review for the pool's Operating Committee; and determines which Southern Power units participate in the pool's reserve sharing.

27. Calpine argued that the withdrawal of the McIntosh PPAs does not moot further Commission consideration of these issues and their impact on wholesale competition, because the issues will continue notwithstanding the withdrawal of the two specific rate schedules. It maintained that, if the Commission were to decline to pursue these issues further, the alleged abuses would have evaded regulatory review and would remain capable of repetition in the future. This, Calpine stated, would send the wrong signal to the wholesale market participants.

28. EPSA argued that the withdrawal of the McIntosh PPAs does not moot, and is not sufficient to terminate the investigation into, the allegedly unduly discriminatory practices of the Southern Companies. These practices, it maintained, indicate affiliate abuse and undue preferences that must be remedied on a going-forward basis. In particular, EPSA maintained, the McIntosh PPA proceeding raised serious questions about the justness and reasonableness of the IIC, and the testimony that was submitted showed that the administration and economic dispatch of the Southern pool pursuant to the IIC unduly prefers Southern Power while unduly discriminating against unaffiliated competitors, and also could involve impermissible subsidies from franchised load to Southern Power. These concerns, EPSA contended, are not mooted by the withdrawal of the McIntosh PPAs.

29. Williams maintained that, notwithstanding the withdrawal of the McIntosh PPAs, the issues of undue preference and unfair competitive advantage remain unresolved. It argued that the Commission should continue investigating such allegations to avoid signaling to other entities that transferring a questionable contract, transaction, or asset to a local jurisdiction (which, Williams states, Southern Power has done by selling the McIntosh units to Savannah Electric and Georgia Power, a transaction requiring only state approval) is an acceptable means by which to avoid having this Commission resolve allegations of undue preference.

#### **IV. Discussion**

30. By notice issued August 4, 2004 in Docket No. ER03-713-000, the Commission stated that it had allowed the withdrawals of the McIntosh PPAs to be accepted. The notice also stated that in accepting these withdrawals, "the Commission made no determination on what additional steps may need to be taken in light of the allegations and evidence in" Dockets Nos. ER03-713-000, ER03-713-001, ER03-713-002, and ER03-713-003.

31. Upon review of the timely comments, we are persuaded that the withdrawal of the McIntosh PPAs did not resolve the issues of affiliate abuse and whether certain jurisdictional rates and practices affecting rates remain just and reasonable and not unduly discriminatory or preferential. Therefore, we will direct the initiation of a section 206 investigation into the following issues: (1) the justness and reasonableness of the IIC (including the justness and reasonableness of Southern Power's continued inclusion in the Southern pool and whether that inclusion involves undue preference and undue discrimination that adversely affect wholesale competition and customers in the southeast); (2) whether any of the Southern Companies, including Southern Power, have violated or are violating (either on their own or through their agent, Southern Services) the standards of conduct under Part 358 of the Commission's regulations; and (3) whether the Southern code of conduct is just and reasonable and whether the code of conduct should continue to define Southern Power as a "system company".

32. In cases where the Commission institutes a section 206 investigation on its own motion, as here, section 206(b) requires the Commission to establish a refund effective date that is no earlier than 60 days after publication of the notice of initiation of the investigation, but no later than five months subsequent to the expiration of the 60-day period. Consistent with *Canal Electric Company*,<sup>11</sup> we will establish the refund effective date at the earliest date possible in order to provide maximum protection to customers, *i.e.*, 60 days from the date notice of the initiation of the investigation in Docket No. EL05-102-000 is published in the *Federal Register*.

33. Section 206(b) also requires that if the Commission has not rendered a final decision by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, 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. To implement that requirement, we will direct the Presiding Judge to make a report to the Commission 15 days in advance of the refund effective date in the event the Presiding Judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an Initial Decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of an initial decision or certification of settlement.

34. To ensure continuity and efficiency, the Chief Administrative Law Judge is to designate the Presiding Judge in Docket No. ER03-713-000 to be the Presiding Judge in Docket No. EL05-102-000. The Presiding Judge is to hold a prehearing conference at

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<sup>11</sup> *Canal Electric Company*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

which the participants should address, among other things, how to preserve as evidence in Docket No. EL05-102-000 the testimony and exhibits submitted in Docket No. ER03-713-000, and the need to supplement that testimony and exhibits. All parties that were intervenors in Docket No. ER03-713 are granted party status in Docket No. EL05-102-000, and the Presiding Judge should rule on all motions to intervene in Docket EL05-102-000, including that of Coral Power (which was initially filed in Docket No. ER03-713-003).

35. We make no findings of fact or conclusions of law with respect to the allegations raised in Docket No. ER03-713-000; the Commission has not reached a position on any of these allegations. The participants have raised credible allegations that remain unresolved despite the withdrawals of the PPAs, and the Commission will consider the evidence submitted in this proceeding in the section 206 proceeding in Docket No. EL05-102-000. These allegations are that the relationship between Southern Power and other Southern Companies, including Southern Services and the inclusion of Southern Power in the IIC and Southern pool, as well as the conduct of several of the Southern Companies may have resulted in unduly preferential or unduly discriminatory conduct in violation of the FPA and/or in violations of Part 37 of the Commission's regulations, to the detriment of wholesale competition and customers in the southeast. It is appropriate to allow the participants to continue to investigate these allegations in a hearing. We are also concerned that the IIC (including how ratepayers are impacted by the sharing of costs and revenues under the IIC and whether native load wholesale customers are receiving a proper share of revenue credits from off-system sales) may not be just and reasonable, may allow Southern Power to enjoy an undue preference by virtue of its pool membership that adversely impacts wholesale competition and wholesale customers, and may lack sufficient clarity and transparency to ensure its justness and reasonableness. These issues should be addressed in the hearing.

36. The absence of a specific inter-affiliate transaction at market-based rates – as there was when the McIntosh PPAs were pending before us – does not obviate our concern that the structure of Southern Companies and the conduct of its affiliates (including conduct during competitive solicitations) may not satisfy the requirements of FPA sections 205 and 206. The allegations of misconduct and affiliate abuse made here warrant continued investigation.

37. We are particularly concerned that there be resolution of the allegations that Southern Power's inclusion in the IIC and the Southern pool creates undue preferences and unfair competitive advantages and whether Southern Power's current functions under the IIC are consistent with Southern's prior representations as to its functions. These allegations are not specific to the McIntosh PPAs, and thus are not resolved by the

withdrawal of the PPAs.<sup>12</sup> It is important that we resolve the allegations that an affiliated generator might be given undue preferences via its pool membership, to the exclusion of other, non-affiliated merchant generators that lack comparable access to backup power supplies and transmission paths.

38. We agree with Trial Staff and Calpine that the earlier acceptance of the amendments to the IIC, which occurred some four years ago and prior to Southern Power's emergence as a regional competitor, is not an obstacle to our now re-examining the effect of Southern Power's pool membership. Southern Power was then called "NewCo" and its addition to the IIC and the Southern pool was claimed to be "ministerial" and only for the sake of efficiency. It is appropriate for us to now re-examine the IIC and Southern Power's participation in the Southern pool to prevent possible future, affiliate abuse, and to ensure wholesale prices that are consistent with competitive outcomes.

39. As was the case in the July 9 Order,<sup>13</sup> it is not our intention to second-guess state decisions on the best way to supply retail load in general or the decision to authorize transfer of McIntosh Units 10 and 11 in particular. Rather, we are acting pursuant to our obligations under the FPA to ensure that wholesale rates remain just and reasonable and not unduly discriminatory or preferential.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 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 in Docket No. EL05-102-000, as discussed in the body of this order.

(B) The Chief Administrative Law Judge is to designate the Presiding Judge in Docket No. ER03-713-000 to be the Presiding Judge in Docket No. EL05-102-000 and that Presiding Judge shall convene a prehearing conference in Docket No. EL05-102-000 to be held within approximately fifteen (15) days after issuance of this order, in a hearing

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<sup>12</sup> Indeed, many of these same allegations have been raised by parties in Southern Companies' pending triennial filing for market-based rate authorization in Docket No. ER97-4166-018, *et al.*, and on which the Commission is acting contemporaneously in another order.

<sup>13</sup> July 9 Order, 104 FERC ¶ 61,041 at P 26.

room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of establishing a procedural schedule and to discuss the preservation and supplementation of the testimony and exhibits submitted to date in Docket No. ER03-713-000. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation under section 206 of the Federal Power Act in Docket No. EL05-102-000.

(D) The refund effective date in Docket No. EL05-102-000, established pursuant to section 206(b) of the Federal Power Act, shall be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

(E) In the event that 15 days prior to the refund effective date the Presiding Judge has not certified to the Commission: (1) a settlement which, if accepted, would dispose of the proceeding; or (2) an Initial Decision, then the Presiding Judge shall report to the Commission as to the status of this proceeding and provide a best estimate of when the Presiding Judge shall dispose of the proceeding.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.