135 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midland Cogeneration Venture Limited Partnership Docket No. ER11-3035-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 31, 2011)

1. In this order, we accept for filing Midland Cogeneration Venture Limited Partnership's (Midland) proposed rate schedule for Reactive Support and Voltage Control from Generation Sources Services (reactive power) to Midwest Independent Transmission System Operator, Inc. (MISO), and suspend it for a nominal period, to become effective June 1, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

## I. Background

2. Midland is a Michigan organized limited partnership and the owner/operator of a 1,560 MW natural gas-fired cogeneration facility located in Midland, Michigan (Facility). The Facility is a qualifying facility pursuant to the Commission's regulations[1] and Midland is authorized by the Commission to make wholesale sales of power and energy at market-based rates.[2] The majority of the Facility's energy output is

[1] *See CMS Midland, Inc.*, 38 FERC ¶ 61,244 (1987).

[2] *Midland Cogeneration Venture Ltd. P'ship*, 116 FERC ¶ 61,011 (2006). Consumers Energy Company (Consumers) and Dow Chemical Company (Dow Chemical), along with their affiliates, originally owned Midland. Since 2009, Midland has been owned by EQT Infrastructure, a Swedish private equity firm, and Fortistar, a United States energy investment group. *See Midland Cogeneration Venture Ltd. P'ship*, 127 FERC ¶ 62,045 (2009) (delegated letter order).

contractually committed to Consumers and Dow Chemical under long-term agreements.[3] The remaining unused energy and capacity is sold into energy markets operated by MISO at market-based rates. The transmission facilities to which the Facility is interconnected are owned by Michigan Electric Transmission Company, LLC (METC) and operated by MISO.[4]

3. In 1986, prior to the Facility commencing operations, Consumers, which then owned the transmission system now owned by METC, entered into a power purchase agreement (PPA) with Midland, establishing price, terms, and conditions for Midland's power sales to Consumers. In 1988, Consumers and Midland consummated the Facilities Agreement, which, among other things, required Midland to pay for and contribute to certain interconnection and transmission assets to connect its generating facility to the transmission grid.[5]

4. On April 1, 2001, in conjunction with Consumers' transfer of transmission assets to METC,[6] Consumers and METC entered into an Agency Agreement through which METC would carry out the terms and collect payments from Midland under the Facilities Agreement.

5. On July 19, 2010, MISO filed a partially executed Generator Interconnection Agreement (GIA) between MISO, METC and Midland, which the Commission conditionally accepted on September 17, 2010.[7] On August 8, 2010, Consumers submitted the Facilities Agreement between it and Midland to the Commission. On September 17, 2010, the Commission accepted the Facilities Agreement and required refunds of the time value of the revenues Consumers collected for the period it collected revenues without Commission authorization.[8]

---

[3] Consumers has the right to 1,240 MW of capacity and energy through 2025 and Dow Chemical has a right to 67.5 MW of capacity and energy through 2015 from the Facility. Additionally, Dow Chemical has the right to call up to an additional 20 MW.

[4] *See Trans-Elect, Inc.*, 99 FERC ¶ 61,068 (2002).

[5] Midland April 13, 2011 Response to Protests at 5.

[6] *Consumers Energy Co.*, 94 FERC ¶ 61,018 (2001).

[7] *Midwest Indep. Transmission Sys. Operator, Inc. & Consumers Energy Co.*, 132 FERC ¶ 61,241 (2010).

[8] *Id.*

## II. Description of Filing

6. On March 8, 2011, Midland filed a proposed rate schedule specifying its cost-based revenue requirement for providing reactive power from its Facility to MISO. Midland seeks compensation under Schedule 2 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

7. Midland proposes an annual revenue requirement of $7,928,205. According to Midland, this revenue requirement recovers the portion of the Facility's costs that are attributable to its capability to produce reactive power (Fixed Capability Component).[9] Midland states that it calculated the revenue requirement according to the methodology set forth in *American Electric Power Service Corp*.[10]

8. To develop this revenue requirement, Midland states that it first identified the generation plant used to produce reactive power, consisting of: (1) generators and exciters; (2) accessory electrical equipment supporting the operation of generator-exciters; and (3) remaining total production plant used to provide reactive power and operate the exciters. Midland states that the Facility is a topping-cycle cogeneration facility consisting of twelve gas-fired generators that are equipped with natural circulation heat recovery steam generators, two extraction/condensing turbine generators (Units 1 and 2) and a topping steam turbine. Unit 1 is the primary steam turbine generator while Unit 2 serves as its backup.[11] Midland states that Unit 1 has a nameplate rating of 670 MVA but has real power capability of 418.3 MW. Further, Unit 1 has a nominal lagging power factor of 0.72; thus, allowing it to provide 406 MVAR of reactive power.[12] Where manufacturer data was not available to make such an allocation, Midland conducted a study of similar turbine generators, which indicated that 22 percent of the cost of turbine generators was attributable to generator-exciters. Midland states that it conservatively used 20 percent.[13]

---

[9] Transmittal Letter at 2. Midland states that it is only seeking recovery of the Fixed Capability Component at this time but reserves the right to amend the rate schedule in a subsequent docket to seek compensation for any other reactive power revenue requirement component. *Id.* at 2 n.6.

[10] 88 FERC ¶ 61,141 (1999) (*AEP*).

[11] Reising Test., Ex. MCV-1 at 2.

[12] *Id.* at 6.

[13] Transmittal Letter at 3.

9. Midland states that it then allocated the costs of the Facility to real and reactive power production based on the capability of the facilities to produce reactive power. Midland also allocated the costs of operations and maintenance expenses (O&M), administrative and general expenses (A&G), property taxes, and depreciation expense to reactive power production. Midland indicates that it used the levelized gross plant methodology and a 35-year book life to calculate depreciation expense. Midland states that because it is a merchant generator, not subject to traditional rate regulation, it applied a 6.98 percent rate of return, based on the cost of capital that the Michigan Public Service Commission allowed for Consumers, to the rate base attributable to reactive power.[14]

10. Midland requests, consistent with Schedule 2 of MISO's Tariff, an effective date of June 1, 2011.[15]

## III. Notice of Filings and Responsive Pleadings

11. Notice of Midland's filing was published in the *Federal Register*, 76 Fed. Reg. 14,964 (2011), with interventions and protests due on or before March 29, 2011.

12. Consumers filed a timely motion to intervene and protest. On March 30, 2011, the Michigan Public Power Agency (MPPA) filed a motion to intervene out-of-time and protest. Midland filed a response to Consumers' and MPPA's protests.

13. Consumers acknowledges that the Facility is connected to transmission facilities that are owned by METC and operated by MISO; however, it states that Midland does not have in effect a MISO GIA for the Facility. Consumers states that Midland's GIA, currently on file with the Commission, does not go into effect until the earlier Facilities Agreement between Consumers and Midland is amended or terminated. Consumers argues that, without a GIA in effect, MISO has no authority to call upon the Facility for reactive power service and therefore the Facility is not eligible for compensation under Schedule 2 of MISO's Tariff.[16] Moreover, Consumers asserts that section 3.2.2 of the

---

[14] *Id.* at 3-4.

[15] Schedule 2 of the Tariff provides that "[q]ualified Generator status is effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month." MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1765, Schedule 2, § II.C.

[16] Consumers Protest at 3.

Facilities Agreement provides that Midland shall maintain voltage "at levels specified by Consumers."[17]

14. In addition to the threshold issue of eligibility, Consumers protests Midland's proposed revenue requirement. In particular, Consumers states that the overall result of the proposed revenue requirement calculations is excessive. It states that $7.9 million for a 1,586.7 MW plant roughly equates to $5,000 per MW of capacity, which is more than twice as much per MW as the revenue requirements accepted by the Commission for the proxy plants used by Midland to calculate its investment in generator-exciters.[18]

15. Consumers also questions the accuracy and appropriateness of various operating parameters and related allocation factors used by Midland to calculate its revenue requirement. Specifically, Consumers disagrees with Midland's assertion on the maximum net capacity of the Facility. Consumers states that the Facility currently is authorized to deliver only 1,240 MW to the MISO transmission grid and certain facility upgrades are required under the GIA before Midland's interconnection service can be raised to 1,575 MW. Accordingly, Consumers states that it is inappropriate to base Schedule 2 recovery on generating capacity that is not yet able to access the grid.[19]

16. In addition, Consumers states that it has the right to all 1,240 MW of capacity and energy for which Midland has authorized interconnection service and the Commission should consider the extent to which Midland is being compensated for reactive service associated with this 1,240 MW.[20] Consumers also argues that Midland failed to exclude from its proposed revenue requirement 67.5 MW of energy (and related reactive power) that is delivered directly to Dow Chemical without the use of METC's transmission system or the MISO grid. Consumers asserts that the portion of reactive power costs that are attributable to the service provided to Dow Chemical is not subject to the Tariff and therefore is not recoverable through MISO's Schedule 2.[21]

17. Consumers also challenges a portion of the turbine costs associated with Units 1 and 2 of the Facility that Midland seeks to recover under Schedule 2 of the Tariff. Consumers argues that the cost of the unused portion of Unit 1 should be excluded from the calculation of Midland's reactive power revenue requirement. Moreover, Consumers

---

[17] *Id.*

[18] *Id.* at 4 (citing Reising Test., Ex. MCV-4 at 2).

[19] *Id.* at 4-5.

[20] *Id.* at 5 & n.3.

[21] *Id.* 5.

argues that the exclusion factor for shared Unit1/Unit 2 facilities should be increased to approximately 75 percent to exclude not only Unit 2 costs, but also costs for the unused portion of Unit 1.[22]

18. Further, Consumers questions Midland's power factor of 0.72 for Unit 1 and claims that this figure is inflated due to Unit 1 being oversized. Consumers argues that there is an insufficient basis in the record for adopting Midland's proposed power factor of 0.72 and states that a more normal proxy power factor, such as 0.85, should be used instead.[23]

19. Consumers also takes issue with Midland's use of a proxy figure for allocating costs between turbines and generator-exciters. In developing the proposed 20 percent proxy allocator, Consumers states that other than limiting the sample of plants to generators over 350 MW, Midland gave no indication as to how the data was gathered and that there was no apparent attempt to choose units with any similarity to those at the Facility. Before a proxy allocator is approved, Consumers states, more information is needed about why an actual allocator was not obtainable from the manufacturer and about how the data used in arriving at the proxy were selected.[24]

20. In addition, Consumers states that the application includes no verification as to the accuracy or completeness of the cost data. Consumers also states that there is not enough information in the application to determine whether Midland's classification of A&G expenses as fixed is appropriate and there is no indication whether any allowance was made for salvage value. Finally, Consumers states that there is currently a dispute before the Commission regarding whether Midland must pay METC certain charges assessed over a several year period, which includes the 2009 test year. Consumers states that there is no clear indication whether or how these charges are included in the proposed revenue requirement. Consumers therefore requests that the Commission reject Midland's proposed revenue requirement or set for settlement and/or hearing.

21. MPPA supports the protest submitted by Consumers and states that the issues raised by Consumers cannot be answered based upon the record and indicate that the proposed revenue requirement may not be just and reasonable. Accordingly, MPPA

---

[22] *Id.* at 6-7.

[23] *Id.* at 7.

[24] *Id.* at 8.

requests that the Commission set the matter for further proceedings, subject to refund, if the Commission does not reject Midland's revenue requirement.[25]

22. In its response, Midland disagrees with Consumers' contention that the Facilities Agreement bars Midland's filing. It states that Article 6 of the Agency Agreement provides that METC "shall specify the voltage levels to [Midland] in accordance with the standards contained in section 3.2.2 of the Facilities Agreement." Midland thus concludes that Consumers' assertion that it possesses the authority to direct Midland to provide reactive power is incorrect.[26]

23. Midland also disagrees with Consumers' implication that Consumers is paying Midland for supplying reactive power. Midland states that the currently effective PPA provides for it to sell Consumers capacity and "commercial energy" as defined in the agreement. Further, Midland, not Consumers, schedules energy for delivery into the MISO market. Thus, Consumers lacks the right to dispatch the Facility or require delivery of physical energy to Consumers. Finally, Midland contends that unlike the original PPA, the current PPA is silent on the provision of reactive power. Based on Order No. 888, Midland concludes that the Commission interprets reactive power as a separate product from the energy and capacity used to produce it. Accordingly, even if Consumers had the authority to dispatch the Facility to make physical energy deliveries, Midland states that nothing in the current PPA gives Consumers the additional right to claim reactive power produced by the Facility.[27]

24. Midland also disputes Consumers' contention that Midland is not eligible to file its reactive power revenue requirement because it lacks a currently effective GIA. Midland points out that Schedule 2 of the MISO Tariff does not condition payment for providing reactive power to the transmission grid on having an effective GIA. Further, the Commission's comparability policy requires independent generators to be compensated for providing reactive power, when, as is the case in MISO, transmission owners are compensated for providing such service from their own generation.[28] Midland also argues that the Facilities Agreement contemplated that Consumers would require Midland to supply reactive power consistent with the standards Consumers applies to its own generation. According to Midland, Consumers has received compensation for costs related to reactive power from Consumers' generators. Midland states that the Agency

---

[25] MPPA March 30, 2011 Protest at 2-3.

[26] Midland April 13, 2011 Response to Protests at 5-6.

[27] *Id.* at 6-7.

[28] *Id.* at 8 (citing *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214 (2007)).

Agreement that Consumers entered into with METC does not alter the notion that Midland was to be treated the same as Consumers' generators with respect to reactive power.[29] Thus, Midland contends that it is contractually entitled to like compensation for reactive power. Midland also asserts that Consumers' argument that the GIA must be effective for Midland to receive compensation for reactive power is flawed because Consumers has refused to amend or terminate the Facilities Agreement so that the GIA can become effective.[30]

25. Midland contends that it has fully justified its revenue requirement and Consumers failed to meet its burden of demonstrating that Midland's revenue requirement does not comply with the *AEP* methodology. Midland also dismisses Consumers' contention that Midland's "roughly $5,000 per MW of capacity" is inconsistent with the revenue requirements of other generators on a per MW basis because such revenue requirements are based upon production of VARs and not real power.[31]

26. Midland disagrees with Consumers' contention that Unit 1 is oversized, producing an inflated power factor calculation, which should be replaced by a hypothetical "proxy" power factor. Midland also contends that Consumers has not explained why actual data should be replaced by a "more normal power factor, such as 0.85" or supported that suggested power factor.[32]

27. Midland disagrees with Consumers' argument that Midland's allocators are not legitimate because they were not approved by the Commission. Midland contends that the Commission has permitted such proxy allocators when actual data is unavailable. Midland further contends that Consumers has not challenged the reasonableness of the sample or Midland's proposed 20 percent allocator, which is less than the 22 percent allocator supported by the data.[33]

28. Midland further disagrees with Consumers that its reactive power revenue requirement should be limited by the 1,240 MW capacity sale to Consumers. Midland asserts that such an argument is inappropriately based on the PPA and not the plant's capacity or the maximum amount of real power that it can produce. Midland also

---

[29] *Id.* at 9 n.23.

[30] *Id.* at 7-10.

[31] *Id.* at 11-12.

[32] *Id.* at 12-14.

[33] *Id.* at 14.

contends that Consumers' argument is flawed because Midland and not Consumers dispatches the plant.[34]

29. Midland also disagrees with Consumers' argument that the reactive power revenue requirement should exclude the 67.5 MW power delivery obligation to Dow Chemical. Midland contends that compensation for reactive power under the *AEP* methodology is based on production capability as measured at generator terminals regardless of where the real power flows.[35]

30. Midland disagrees with Consumers' contention that Midland's filing lacks sufficient support and verification because, as a company that is not subject to traditional regulation, Midland is not required to maintain its books and records in accordance with the Commission's Uniform System of Accounts. Midland points out that the Commission has provided waivers of such regulations for such companies. Further, Consumers' failure to demonstrate flaws with Midland's data is notable, given its access to such information.[36]

31. With respect to Consumers' criticism of Midland's filing classifying all A&G costs as fixed, Midland explains that approximately 16 percent of total A&G was allocated to variable O&M and excluded from the revenue requirement calculation. Regarding Consumers' contention that the filing inappropriately lacks an allowance for salvage value, Midland argues that Consumers fails to show reactive power revenue requirements precedent requiring this. In addition, Midland states that including a salvage value allowance would have no impact on Midland's sinking fund depreciation rate in any event.[37] Further, such costs are likely offset by removal and decommissioning costs as well as the 35-year depreciation that Midland has used. In response to Consumers' concern about the filing's lack of specificity regarding certain charges assessed by METC to Midland, Midland clarifies that it included $235,909.77 in its property tax that METC has assessed Midland, despite Midland contesting this tax.[38] Further, Midland states that the impact on the reactive power revenue requirement would be *de minimis*.

---

[34] *Id.* at 14-15.

[35] *Id.* at 15.

[36] *Id*. at 16.

[37] *Id*. at 17.

[38] *Id.* at 17-18.

32. Finally, Midland argues that an evidentiary hearing is not appropriate because the intervenors have not offered an affirmative demonstration of factual material that calls into question a genuine issue of material fact, as required by the Commission. Midland argues that the intervenors have not provided credible arguments against its use of the *AEP* methodology or any factual information that calls the filing into question.[39]

## IV. Discussion

### A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), Consumers' timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2011), the Commission will grant MPPA's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midland's answer because it has provided information that assisted us in our decision-making process.

### B. Substantive Matters

34. We disagree with Consumers that Midland's Facility is not eligible for compensation under Schedule 2 of the Tariff. Independent generators under the control of the control area operator in MISO are eligible for reactive power compensation so long as nothing in the contractual arrangement between the generator and transmission owner precludes recovery.[40] In this case, we find that Midland is required to maintain voltage control at levels specified by METC, the control area operator, pursuant to the terms and conditions of the Facilities Agreement.

---

[39] *Id.* at 18-19.

[40] *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 416, *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), *aff'd sub nom., Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008); *Otter Tail Co.*, 99 FERC 61,019, at 61,046 (1999); *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214 at P 44-47.

35. Although Midland's GIA is not currently in effect, Schedule 2 of the Tariff does not establish an effective GIA as a precondition to receiving reactive power compensation. Rather, eligibility to receive compensation under Schedule 2 of the Tariff hinges on whether the Facility is under the control of the control area operator.[41] We find that the Facility is under the control of METC regarding the provision of reactive power services. METC is the owner of transmission facilities to which Midland's Facility is connected and METC's transmission facilities are operated by MISO. Under section 3.2.2 of the Facilities Agreement, Midland is required to "maintain the 345 kV bus voltage at the [Facility] Substation at levels specified by Consumers." Subsequent to Consumers and Midland executing the Facilities Agreement, Consumers transferred its transmission assets to METC and assigned its right to call on Midland's Facility to provide reactive power to METC through the Agency Agreement. Article 6 of the Agency Agreement provides that METC "shall specify the voltage levels to [Midland] in accordance with the standards contained in [s]ection 3.2.2 of the [Facilities Agreement]." Thus, METC, not Consumers, has the authority to direct Midland to provide reactive power from the Facility at levels it specifies. Furthermore, Consumers has made no showing that the Facilities Agreement precludes Midland from seeking compensation under Schedule 2 of the Tariff. Accordingly, Midland is entitled to recover reactive power compensation under Schedule 2 of the Tariff.

36. However, Midland's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

37. Our preliminary analysis indicates that Midland's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Midland's proposed rate schedule for filing, suspend it for a nominal period, make it effective June 1, 2011, subject to refund, and set it for hearing and settlement judge procedures.

38. 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.[42] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

---

[41] *See Otter Tail Co.*, 99 FERC at 61,046.

[42] 18 C.F.R. § 385.603 (2011).

otherwise, the Chief Judge will select a judge for this purpose.[43] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Midland's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2011, as requested, subject to refund, 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 Midland's proposed rate schedule for reactive power and voltage control services. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or

---

[43] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

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 judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.