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181 FERC ¶ 61,176

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

TransMontaigne Partners LLC and
TransMontaigne Operating Company LP
v.
Colonial Pipeline Company

Docket No. OR22-5-000

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued December 1, 2022)

1. On August 8, 2022, TransMontaigne Partners LLC and TransMontaigne Operating Company LP (together, TransMontaigne) filed a complaint against Colonial Pipeline Company (Colonial). TransMontaigne alleges that Colonial violates the Interstate Commerce Act (ICA)[1] and its tariff by denying TransMontaigne In-Transit Storage status at Collins, Mississippi and thereby charging lower transportation rates to shippers using storage at Baton Rouge, Louisiana, compared to shippers using storage at Collins. For the reasons discussed below, we set the issues raised in the Complaint for hearing and settlement judge procedures.

I. Background

2. Colonial provides interstate pipeline transportation of refined petroleum products from origins beginning in Houston, Texas, to destinations from the Gulf Coast to the Northeastern United States. Storage for petroleum products is available at various points along Colonial's system, including at Baton Rouge, Louisiana, and Collins, Mississippi. At Baton Rouge, Colonial leases storage capable of receiving several different petroleum products from its affiliates, Energy Logistics Solutions, LLC and Bengal Pipeline. At Collins, TransMontaigne Partners LLC owns and operates storage facilities (the Collins

[1] 49 U.S.C. App. § 1 *et seq.* (1988).

facilities).[2] Its wholly owned subsidiary, TransMontaigne Operating Company LP, ships on Colonial's system and seeks to use In-Transit Storage service at the Collins facilities.[3]

3. When a pipeline charges one through rate for transportation service between an origin and destination notwithstanding the use of an intermediate service, that intermediate service is referred to as an in-transit service. In-transit storage is one example of in-transit service. Colonial permits location-specific In-Transit treatment for storage at Baton Rouge, but not at Collins.[4] As a result, Colonial charges shippers using Colonial's non-jurisdictional storage at Baton Rouge the through rate from the origin where product is first placed on the pipeline (e.g., Houston) to the final destination (e.g., Charlotte) notwithstanding the use of intermediate storage at Baton Rouge. In contrast, for shippers using non-jurisdictional storage at Collins, Colonial charges the sum of two local rates, first for transportation from the origin (e.g., Houston) to Collins and second for transportation from Collins to the final destination (e.g., Charlotte).[5]

4. Whether or not a storage service receives In-Transit treatment affects the transportation rate paid by shippers using that storage service. For example, if a shipper moving product from Houston to Charlotte uses intermediate storage at Baton Rouge, that shipper pays a through transportation rate of 156.53 cents per barrel.[6] In contrast, if a shipper makes the same movement from Houston to Charlotte but places product in storage at Collins instead of Baton Rouge, that shipper pays two local transportation rates (one from Houston to Collins and another from Collins to Charlotte) for a total of 226.34 cents per barrel.[7] Thus, in this example, the shipper using storage at Collins incurs a transportation rate that is approximately 45% higher than the shipper using

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[2] Complaint ¶ 10.

[3] *Id.* ¶ 12.

[4] Colonial provides two types of long-term, in-transit storage: In-Transit Storage that is location specific and System Storage whereby a shipper's product may be held at any point on Colonial's system and relocated by Colonial at any time. Colonial Answer at 37; *see also* Colonial Pipeline Co., Product Pipeline Tariffs, FERC Tariff 98.56.0 (98.56.0), Items 41, 115. Only In-Transit Storage is at issue here. Complaint ¶ 1.

[5] Complaint ¶ 100.

[6] Colonial Pipeline Co., Product Pipeline Tariffs, FERC Tariff 99.79.0 (99.79.0), Item 170.

[7] The local rate from Houston to Collins is 112.64 cents/bbl. *Id.* at Item 60. The local rate from Collins to Charlotte is 113.70 cents/bbl. *Id.* at Item 230.

storage at Baton Rouge for the same ultimate movement. As TransMontaigne asserts, similar disparities exist at other origin and destination points on Colonial's system.[8]

5. Although Colonial permitted In-Transit treatment for storage at Collins between 2000 and 2016, the parties agree that Colonial no longer assigns In-Transit treatment to the storage facilities at Collins.[9]

6. In July 2020, the Commission addressed the May 1, 2019 complaint that TransMontaigne and Metroplex Energy, Inc. filed against Colonial in Docket No. OR19-23-000 (the 2019 Complaint).[10] The Commission denied their claims that Colonial violated the prohibition against undue preference in section 3(1) of the ICA by charging shippers using In-Transit Storage a through rate at Baton Rouge, while imposing a higher combination of local rates to shippers using storage at Collins. In particular, the Commission found that allowing In-Transit Storage service at Collins would exacerbate existing flow rate disruptions and capacity constraints on Colonial's system.[11] The Commission also found that, because withdrawing product from the pipeline reduces its pressure, encouraging withdrawals from Colonial's system into storage at Collins would "further reduc[e] Colonial's flow rate and its ability to make downstream deliveries."[12] The Commission did not find similar adverse operational impacts likely to result from In-Transit treatment of storage at Baton Rouge.[13] The Commission also found it relevant that shippers using storage at Collins had not made the same commitments to continue transportation on Colonial as shippers using storage at Baton Rouge.[14] However, the Commission granted the complaint insofar as it alleged that Colonial violated sections 6(1) and 6(7) of the ICA because Colonial's tariff did not specify when Colonial

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[8] Complaint ¶ 103.

[9] Between 2000 and 2016, Colonial offered In-Transit treatment for certain storage facilities at Collins while Colonial leased capacity at that location. However, once Colonial's lease expired, Colonial began denying requests for In-Transit treatment for the storage at Collins. Complaint, Ex. 1 (Ruddell Aff.) ¶¶ 25-31; Colonial Answer at 44.

[10] TransMontaigne Partners LLC is the successor in interest to TransMontaigne Partners L.P., which joined the complaint in Docket No. OR19-23-000.

[11] *TransMontaigne Partners L.P. v. Colonial Pipeline Co.*, 172 FERC ¶ 61,015, at PP 21-23 (2020) (July 2020 Order).

[12] *Id.* P 21.

[13] *Id.* P 23.

[14] *Id.* PP 25-27.

will assess different transportation rates to shippers due to the availability of In-Transit Storage along its system.[15]

7. Accordingly, the Commission directed Colonial to identify: (1) the locations/facilities where Colonial grants In-Transit treatment of a storage service; nand (2) for those locations/facilities where In-Transit treatment of storage is not currently offered, the general criteria that will determine whether a location/facility will become eligible for In-Transit treatment of storage services.[16] The Commission further explained that, when modifying its tariff, Colonial may impose reasonable criteria for when storage service at a certain facility is eligible for In-Transit treatment. By way of example, the Commission stated:

> Colonial's tariff may preclude in-transit storage where the in-transit storage service affects system operations, such as reducing the flow rate. Also[,] as a condition of granting in-transit treatment of a particular storage facility, Colonial may require that when the product is removed from a storage facility receiving in-transit treatment, the shipper must return the product to Colonial for further downstream movement. Colonial may also require that any storage tank receiving in-transit storage treatment be wholly dedicated to movements on Colonial. Colonial may also require the shipper and the third-party storage facility to provide information verifying compliance with these commitments.[17]

8. On September 8, 2020, Colonial filed a revised tariff in Docket No. IS20-806-000, which the Commission accepted effective October 9, 2020.[18] While the Commission approved Colonial's In-Transit Storage eligibility criteria as proposed, the Commission also stressed that Colonial must "administer its tariff, including the in-transit service provisions, in a just and reasonable and non-discriminatory manner."[19] On February 18,

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[15] *Id.* P 28.

[16] *Id.* P 30.

[17] *Id.* P 31 (notes and citations omitted).

[18] *Colonial Pipeline Co.*, 173 FERC ¶ 61,023, at P 1 (2020).

[19] *Id.* P 22.

2021, in Docket No. OR19-23-001, the Commission rejected TransMontaigne's request for rehearing and dismissed its request for clarification.[20]

9. Colonial's current tariff specifies that the only location where Colonial currently offers In-Transit treatment of storage service is Baton Rouge.[21] Item 115(e) lists criteria for a location or facility to qualify for In-Transit Storage rate treatment. These include requirements that "In-Transit Storage shall not be available where [Colonial] determines such storage would negatively impact [its] system operations" (e.g., via "disruptions to [Colonial's] system flow rates") and that tankage used for In-Transit Storage be "wholly dedicated" to movements on Colonial's system.[22] That is to say, volumes delivered to storage must be subsequently delivered back to Colonial's system. Item 115 further provides that In-Transit Storage treatment is limited to fungible gasoline product sales and to locations on Colonial's mainlines that are both an origin and a destination point.[23]

II. Complaint

10. TransMontaigne challenges the lawfulness of Colonial's continued denial of In-Transit Storage status at TransMontaigne's Collins facilities.[24] TransMontaigne alleges that Colonial's actions are arbitrary and discriminatory and violate the terms of Colonial's tariff as well as ICA sections 1(4), 1(6), 3(1), and 6.[25] Although the Commission rejected similar allegations in the 2019 Complaint, TransMontaigne asserts that new evidence and changed circumstances support granting this Complaint.[26]

11. Specifically, TransMontaigne alleges that Colonial's operational concerns with allowing In-Transit Storage at Collins have been resolved in two ways. First, TransMontaigne states that, in association with Colonial, it has since completed an

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[20] *TransMontaigne Partners L.P. v. Colonial Pipeline Co.*, 174 FERC ¶ 61,121, at P 1 (2021) (Rehearing Order).

[21] Colonial Pipeline Co., Product Pipeline Tariffs, FERC Tariff 98.56.0 (98.56.0), Item 115.

[22] *Id.*

[23] *Id.*

[24] Complaint ¶ 1.

[25] *Id.* ¶¶ 1, 8.

[26] *Id.* ¶ 4; *see also id.* ¶ 49 ("TransMontaigne presents both new evidence and changed circumstances . . . .").

"Upgrade Project" at Collins that was built to enhance its delivery and operating efficiencies with Colonial's system including by meeting Colonial's flow rate and pressure rate requirements for receiving and delivering gasoline.[27] TransMontaigne claims that the upgraded facilities should alleviate any negative impacts on Colonial's system operations from the provision of In-Transit Storage service at Collins, whether or not the system is allocated.[28] Second, TransMontaigne alleges that Colonial's Line 1, which carries gasoline, is no longer in a "constant state of allocation," nor does Colonial expect it to be in the future.[29] TransMontaigne also alleges that a reduction in flow rate and any resulting loss of capacity is generally not a concern for Colonial when its system is not in a state of allocation.[30] TransMontaigne claims that flow or pressure rates are thus not a significant concern for Colonial's operations as it relates to In-Transit Storage service at Collins.[31]

12. TransMontaigne asserts that it has complied with all of Colonial's tariff requirements for obtaining In-Transit Storage treatment at Collins, including agreeing that tankage used for In-Transit Storage will be dedicated to movements on Colonial's system.[32] TransMontaigne states that, as a result, it made formal requests to Colonial in 2020 and 2021 for authority to provide In-Transit Storage service at Collins in times of non-proration and in times of proration.[33] TransMontaigne claims that Colonial denied each request.[34] TransMontaigne alleges that, given the foregoing, it believes Colonial denied these requests to benefit Colonial's affiliated storage operations to the exclusion

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[27] *Id.* ¶¶ 43, 73, 84; *see also* Complaint, Ex. 1 (Ruddell Aff.) ¶¶ 38-40.

[28] Complaint ¶ 43.

[29] *Id.* ¶¶ 6, 87. TransMontaigne also alleges that Colonial's claims of consistent allocation in the prior complaint proceeding were inaccurate based on Colonial's sworn statements in unrelated Commission proceedings. *Id.* ¶¶ 87-94. TransMontaigne claims that these "subsequent statements constitute new evidence and/or reflect changed circumstances (*i.e.,* Donald Gardner learned between May 2019 and January 2020 that Colonial had not been capacity constrained for years)." *Id.* ¶ 90.

[30] *Id.* ¶ 6 (citing Complaint, Ex. 5 (May 30, 2019 Affidavit of Donald C. Gardner filed in Docket No. OR19-23-000) ¶¶ 32-33).

[31] Complaint ¶ 6.

[32] *Id.* ¶¶ 77-84.

[33] *Id.* ¶¶ 7, 68-76.

[34] *Id.* ¶¶ 68-76.

of other providers.[35] TransMontaigne further alleges that it suffers economically from lost business from existing and potential customers every month that Colonial is allowed to grant its affiliated storage facilities In-Transit Storage status while denying TransMontaigne the same at Collins.[36]

13. TransMontaigne asks the Commission to direct Colonial to provide In-Transit Storage status at Collins along with the corresponding rate benefits.[37] Alternatively, TransMontaigne asks the Commission to set the Complaint for hearing "to determine whether TransMontaigne's Collins facilities have met Colonial's tariff requirements and is similarly situated to other Colonial affiliated storage facilities providing In-Transit or similar storage services."[38] TransMontaigne also seeks damages.[39]

III. Notice, Interventions, and Responsive Pleadings

14. Notice of the Complaint was issued on August 9, 2022, providing for answers, protests, and interventions to be filed on or before September 7, 2022. No motions to intervene were filed. Colonial filed an Answer to the Complaint on September 7, 2022 as permitted by Commission regulations. On September 22, 2022, TransMontaigne submitted an answer responding to Colonial's Answer. On October 6, 2022, Colonial responded to TransMontaigne's answer.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority.[40] We are not persuaded to accept TransMontaigne's September 22, 2022 answer or Colonial's October 6, 2022 answer and, therefore, reject them.

16. In its September 7, 2022 Answer, Colonial argues that the Complaint should be dismissed as it fails to establish any changed circumstances from those underlying the

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[35] *Id.* ¶ 76.

[36] *Id.* ¶ 105.

[37] *Id.* ¶ 106.

[38] *Id.*

[39] TransMontaigne asks the Commission to "determine the damages owed *Metroplex* as a result of Colonial's discriminatory conduct." *Id.* ¶ 118 (emphasis added). However, we understand that TransMontaigne is itself seeking damages given its claims of economic harm elsewhere in the Complaint. *See id.* ¶¶ 100-105, 109.

[40] 18 C.F.R. § 385.213(a)(2) (2021).

allegations of undue discrimination that the Commission previously dismissed.[41] First, Colonial emphasizes that its system is routinely allocated downstream of Collins. Colonial states that Line 1 has been consistently allocated since 2015, aside from a dip in demand related to the COVID-19 pandemic,[42] and has been allocated "in 49 out of 52 cycles scheduled or transported to date" in 2022.[43] Colonial denies that it has made contrary statements to the Commission.[44]

17. Second, Colonial argues that the Upgrade Project is not a new circumstance, as it was planned at the time of the 2019 Complaint and does not resolve the operational issues downstream of Collins that caused Colonial to deny In-Transit Storage status at Collins.[45] Colonial admits that, after the Upgrade Project, the Collins facilities meet the flow rate and pressure requirements of Colonial but contends that this was already true before the Upgrade Project.[46] Colonial also agrees that the Collins facilities are capable of simultaneous receipt and delivery of multiple products.[47] Notwithstanding the Upgrade Project, Colonial asserts that removing product from Colonial's mainline into storage at Collins will reduce the pipeline's pressure and thus reduce the flow rate downstream from Collins.[48] Colonial also refutes any suggestion by TransMontaigne that the Upgrade Project was built to allow Collins to qualify for In-Transit Storage treatment.[49] Rather, Colonial argues that the volume patterns at Collins and capacity reductions experienced downstream of Collins continue to differentiate it from Baton Rouge for purposes of granting In-Transit Storage treatment.[50]

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[41] Colonial Answer at 21-34.

[42] *Id.* at 28.

[43] *Id.* at 25.

[44] *Id.* at 25-29.

[45] *Id.* at 29-32.

[46] *Id.* at 31, 47-48.

[47] *Id.* at 47-48.

[48] *Id.* at 31-32.

[49] *Id.* at 30-31.

[50] *Id.* at 16.

18. In addition, Colonial asserts that the Commission should reject TransMontaigne's claims for damages and/or reparations, to the extent they are sought, as unsubstantiated.[51] Colonial also submits that the Complaint should be dismissed because TransMontaigne has not made a "good faith" attempt to quantify the financial impact of Colonial's denial of In-Transit Storage status at Collins as required by Rule 206(b)(4) of the Commission's Rules of Practice and Procedure.[52]

IV. Discussion

19. As discussed below, we find that TransMontaigne raises issues of material fact as to whether Colonial's denial of In-Transit Storage treatment at Collins may violate Colonial's tariff and ICA sections 1(4), 1(6), 3(1), and 6 and we set those issues for hearing. We also find that TransMontaigne has presented new evidence and changed circumstances since the Commission's denial of the 2019 Complaint.[53]

20. First, TransMontaigne challenges the application of Item 115 in Colonial's tariff, a provision that did not exist when the 2019 Complaint was filed.[54] Second, TransMontaigne presents evidence that since the 2019 Complaint was denied it has committed to requiring its shippers to return all product to Colonial's system following storage at Collins.[55] Third, TransMontaigne describes changed circumstances that suggest, contrary to our finding in the 2019 Complaint proceeding, that granting In-Transit Storage status at Collins may not have negative operational impacts on Colonial's system.

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[51] *Id.* at 39-41.

[52] *Id.* at 41 (citing 18 C.F.R. § 385.206(b)(4) (2021)).

[53] Complainants ordinarily have the burden of proof to establish a *prima facie* case. *BP W. Coast Prods. LLC v. SFPP, Inc.*, 121 FERC ¶ 61,239, at P 35 (2007). When challenging an issue previously addressed by the Commission, complainants have an added burden to show "new evidence or changed circumstances." *See BP Pipelines (Alaska) Inc.*, 147 FERC ¶ 63,008, at P 44 (2014) ("either changed circumstances or new evidence may provide an adequate basis on which to find the QB formula for valuing Resid has become unjust/unreasonable"); *id.* P 46 ("the circumstance(s)/evidence must be 'new in relation to what was before the Commission in its earlier determinations and sufficiently compelling to require reconsideration of the earlier resolution'" (quoting *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1288 (D.C. Cir. 2000)).

[54] *Colonial Pipeline Co.*, 173 FERC ¶ 61,023 at PP 6-7 (describing Colonial's revised tariff filing featuring "new Item 115 – In-Transit Storage").

[55] Complaint ¶ 78; *id.* ¶ 68 (quoting Complaint, Ex. 20 (Fall 2020 emails) at 3).

21. Specifically, TransMontaigne claims that the Upgrade Project at the Collins facilities, completed in conjunction with Colonial in 2021,[56] "focused on enhancing its connectivity to Colonial from a flow rate and pressure perspective."[57] Among other physical changes, TransMontaigne states that the Upgrade Project includes "two 36[-inch] lines that are dedicated to gasoline service," whereas the previous connection structure had only two 36-inch multi-product lines.[58] TransMontaigne also asserts that the Upgrade Project "allows for simultaneous movements of gasoline from Colonial's system into and out of storage" at Collins "at pressure and volume ranges negotiated and agreed to by Colonial."[59] As a result, TransMontaigne claims "that even when the Colonial system is in allocation, no negative impact on system flow rates can be expected to occur."[60] In support, TransMontaigne produced an agreement between the parties that details the Upgrade Project's performance specifications[61] and an affidavit from an operations employee who is familiar with the Upgrade Project.[62] Colonial counters that the Collins facilities met Colonial's pressure and flow rate requirements pre-Upgrade Project and, in any case, the ability to accept or inject product at full pressure and flow rates does not negate the Commission's prior finding that removing product from Colonial's mainline into storage will reduce the pipeline's pressure and consequently the flow rate downstream from Collins.[63] Colonial further asserts that the Upgrade Project was not meant to ensure that Collins would qualify for In-Transit Storage treatment.[64] However, Colonial also states that the Upgrade Project "has provided certain operational

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[56] *Id.* ¶¶ 11, 73. Although TransMontaigne raised the then-proposed Upgrade Project in its request for rehearing of the July 2020 order, the Commission found that it was premature to consider its impact. Rehearing Order, 174 FERC ¶ 61,121 at P 19. Thus, the completed Upgrade Project constitutes a changed circumstance.

[57] Complaint, Ex. 1 (Ruddell Aff.) ¶ 38.

[58] Complaint ¶ 11.

[59] *Id.*

[60] *Id.* ¶ 86.

[61] Complaint, Ex. 18 at 13-14.

[62] *See* Complaint, Ex. 1 (Ruddell Aff.) ¶¶ 38-40, 46-47.

[63] Colonial Answer at 31-32 (citing Rehearing Order, 174 FERC ¶ 61,121 at P 19).

[64] *Id.* at 30-31.

benefits to both parties."[65] Colonial provided an employee affidavit in support of its position.[66] Accordingly, there are material issues of fact related to how the Upgrade Project impacts Colonial's system operations and the potential effects of the requested In-Transit Storage treatment at Collins.

22. In addition, TransMontaigne claims that granting In-Transit Storage status at Collins would not have negative operational impacts on Colonial's system at all times because Colonial's system has not been in a constant state of allocation.[67] Although Colonial states that its Line 1 has been allocated for most of 2022,[68] TransMontaigne alleges that Line 1 was not allocated for significant periods since the 2019 Complaint was filed.[69] Those periods appear to include times when TransMontaigne was negotiating with Colonial for In-Transit Storage treatment at Collins.[70] These competing claims also raise issues of material fact.

23. These issues cannot be readily resolved based on the record before us and are more appropriately addressed at hearing. Accordingly, we establish hearing and settlement procedures to explore the issues raised in the Complaint, including but not limited to those issues discussed above.

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[65] *Id.* at 5.

[66] *See* Colonial Answer, Ex. A (Gardner Aff.).

[67] Complaint ¶¶ 87-94.

[68] Colonial Answer, Ex. A (Gardner Aff.) ¶ 17 ("Colonial has had to allocate 49 of the 52 cycles that have been transported on Line 1 during 2022; in other words, Colonial's Line 1 has been allocated more than 94 percent of the time in 2022 to date."); *see also* Colonial Answer, Ex. C (containing Colonial Line 1 allocation data for 2021 and 2022).

[69] Complaint ¶ 87; *see also* Complaint, Ex. 24 at 3-4 (indicating a reduction in allocation of Colonial's Line 1 after roughly the first quarter of 2020 through the third quarter of 2021).

[70] *See* Complaint ¶¶ 68-76 (describing negotiations between TransMontaigne and Colonial from October 2020 to November 2021).

24. While we are setting these matters for a trial-type evidentiary hearing,[71] we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we 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.[72] If parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.[73] The settlement judge shall report to the Chief Judge and the Commission within 60 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 additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Pursuant to the authority conferred on the Commission by the ICA and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the ICA, a public hearing shall be held for the purpose of examining the issues raised in the Complaint and discussed in this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the ordering paragraphs below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Judge is hereby directed to appoint a settlement judge in these proceedings within 45 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 days of the date of this order.

(C) Within 60 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

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[71] Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2021).

[72] 18 C.F.R. § 385.603 (2021).

[73] If 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. (https://cms.ferc.gov/office-administrative-law-judges-oalj).

settlement discussions. Based on this report, the Chief Judge shall provide participants 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 60 days thereafter, informing the Commission and the Chief Judge of participants' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 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, or remotely (by telephone or electronically), as appropriate. 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.

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