



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. FA21-5-000]

#### **Commonwealth Edison Company; Order Establishing Paper Hearing Procedures and Establishing Trial-Type Hearing and Settlement Judge Procedures**

1. On August 28, 2023, pursuant to § 41.2 of the Commission's regulations,<sup>1</sup> Commonwealth Edison Company (ComEd) filed a request for Commission review of certain findings and recommendations in the July 27, 2023 order<sup>2</sup> and accompanying audit report<sup>3</sup> issued in this docket by the Director of the Office of Enforcement (Enforcement) under authority delegated to the Director by § 375.311 of the Commission regulations.<sup>4</sup> In accordance with § 41.2 of the Commission's regulations,<sup>5</sup> ComEd notified the Commission that it requested review of two contested issues by means of a shortened paper hearing procedure and one contested issue by means of a trial-type

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<sup>1</sup> 18 CFR 41.2 (2022).

<sup>2</sup> *Commonwealth Edison Co.*, Docket No. FA21-5-000 (July 27, 2023) (delegated order) (hereafter, Delegated Order).

<sup>3</sup> *Audit of Commonwealth Edison Company's compliance with its approved terms, rates, and conditions of its wholesale transmission formula rate; accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 CFR Part 101; reporting requirements of the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, under 18 CFR § 141.1; and, requirements in Preservation of Records of Public Utilities and Licensees under 18 CFR Part 125, Commission Office of Enforcement Division of Audits and Accounting (July 27, 2023) (Audit Report).*

<sup>4</sup> 18 CFR 375.311 (2022).

<sup>5</sup> 18 CFR 41.2.

hearing. ComEd also requested settlement judge procedures concerning the one contested issue for which it requested a trial-type hearing.

2. In this order, pursuant to § 41.3 of the Commission's regulations,<sup>6</sup> we direct the commencement of a paper hearing and establish paper hearing procedures for two contested issues, as requested. Pursuant to § 41.7 of the Commission's regulations,<sup>7</sup> we direct the commencement of a trial-type hearing and establish trial-type hearing procedures for one contested issue, as requested. Pursuant to § 385.601 of the Commission's regulations,<sup>8</sup> we also establish settlement judge procedures for the one contested issue set for trial-type hearing, as requested.

## **I. Audit Report**

3. The Audit Report summarizes the review by Enforcement's Division of Audits and Accounting (DAA), first announced in this docket on April 21, 2021, of ComEd's compliance with: (1) the approved terms, rates, and conditions of its transmission formula rate mechanism as provided in Attachment H-13A of the PJM Interconnection, L.L.C. Open Access Transmission Tariff; (2) the accounting requirements of the Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 CFR part 101 (2022) ; (3) the reporting requirements of the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, under 18 CFR 141.1 (2022); and (4) the requirements in Preservation of Records of Public Utilities and

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<sup>6</sup> 18 CFR 41.3 (2022).

<sup>7</sup> 18 CFR 41.7 (2022).

<sup>8</sup> 18 CFR 385.601 (2022).

Licensees under 18 CFR part 125 (2022).<sup>9</sup> The Audit Report contained 11 findings and 61 recommendations that require ComEd to take corrective action. The audit covered the period January 1, 2017 through August 31, 2022.

4. As described in the Delegated Order accompanying the Audit Report, ComEd notified DAA on June 29, 2023 that ComEd disagreed with and expected to contest DAA's findings and recommendations pertaining to: (1) the asset retirement obligations (ARO) to the extent that the ARO finding and recommendations are not held in abeyance; (2) the accounting misclassifications related to internal labor costs for remediation at manufactured gas plant (MGP) sites; and (3) the allocation of overhead costs to construction work in progress (CWIP).<sup>10</sup> In the Delegated Order, the Director of Enforcement denied the requested abeyance for the ARO finding and recommendations.<sup>11</sup>

5. The Delegated Order stated that it served as notice, pursuant to part 41 of the Commission's regulations,<sup>12</sup> that ComEd may notify the Commission in writing, within 30 days of the issuance of the Delegated Order, as to whether it requests Commission review of the contested issues by a shortened paper hearing procedure or a trial-type

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<sup>9</sup> Delegated Order at P 2.

<sup>10</sup> *Id.* P 3.

<sup>11</sup> *Id.*; *see also* Audit Report, attach. A, ComEd Responses to Findings and Recommendations, at p.3 (requesting that Audit Staff Finding 3 and related recommendations related to ARO be held in abeyance pending ComEd submitting, and the Commission acting on, a single-issue filing under section 205 of the Federal Power Act).

<sup>12</sup> 18 CFR part 41 (2022).

hearing if ComEd contends that there are material facts in dispute that require cross-examination.<sup>13</sup>

6. As described below, on August 28, 2023, ComEd timely filed a response to the Delegated Order. On September 8, 2023, Enforcement staff filed an answer to ComEd's response. On September 15, 2023, ComEd filed an answer to Enforcement staff's answer.

## **II. ComEd Response and Election of Process**

7. In its response to the Delegated Order, ComEd elected Commission review by means of the shortened paper hearing procedures for two issues: (1) the accounting treatment of AROs (Audit Report Issue 3 and Recommendations 8-12); and (2) the accounting treatment of MGP site remediation costs (Audit Report Issue 7 and Recommendations 34-43).<sup>14</sup> ComEd states that, for these two issues, it elected shortened paper hearing procedures because there are no material facts in dispute. ComEd also elected Commission review by means of a trial-type hearing for one issue, the allocation of overhead costs to CWIP (Audit Report Issue 4 and Recommendations 12-21). ComEd

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<sup>13</sup> Delegated Order at P 5.

<sup>14</sup> ComEd Response at 1-2. ComEd states that, notwithstanding its challenge of the ARO issue, it agrees to revise its treatment of Account 108 ARO Depreciation Removals as recommended in the Audit Report. *Id.* at 1 n.2. Further, ComEd clarifies that it does not challenge the findings in Audit Report Issue 7 related to items other than MGP site remediation costs and it will take the requested corrective actions as to those other items. *Id.* at 1 n.3.

states that, for this issue, it elected Commission review by a trial-type hearing because there are material facts in dispute that require cross-examination.<sup>15</sup>

8. First, ComEd asserts that the Audit Report raises disputed issues of material fact concerning the allocation of overhead costs to CWIP because the Audit Report contends that ComEd's "processes and procedures for allocating labor and related overhead costs to construction were not consistent with Commission accounting regulations," and "may have led to overstated construction costs."<sup>16</sup> ComEd asserts that these Enforcement staff findings raise several disputed issues of material fact, including: (1) What were ComEd's processes and procedures, and were they appropriately designed and conducted in light of the Commission's accounting rules and applicable precedent? (2) Did those processes and procedures properly determine the amounts of such overheads reasonably applicable to construction? and (3) Do those processes and procedures comply with the relevant requirements?

9. Second, ComEd asserts that there also are disputed issues of material fact concerning the data on which the Audit Report relies. ComEd explains that the Audit Report contends that its analysis was based on "interviews of a randomized sample of ComEd's employees whose labor costs were allocated to construction projects during the audit period and a review of a sample of timesheets associated with the employees."<sup>17</sup> ComEd contends that this statement raises disputed issues of material fact, including:

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<sup>15</sup> *Id.* at 1 (citing 18 CFR 41.2).

<sup>16</sup> *Id.* at 8 (quoting Audit Report at 48).

<sup>17</sup> *Id.* at 8-9 (quoting Audit Report at 26).

- (1) Who was interviewed, how were they selected, and what were they asked?
- (2) What timesheets were reviewed and what did they reveal? and (3) Did the material reviewed support or contradict the Audit Report's conclusions?

10. Third, ComEd asserts that the Audit Report's recommendation to remedy this issue – to retain an independent third-party entity to conduct a representative labor-time study for allocation of overhead costs incurred in 2023 – raises disputed issues of material fact.<sup>18</sup> ComEd contends that the disputed issues include: (1) How would the new study be implemented in practice? (2) Would that approach be appropriately designed and conducted in light of the Commission's accounting rules and applicable precedent? (3) Would that approach properly determine the amounts of such overheads reasonably applicable to construction? and (4) Would that approach comply with the relevant requirements?

11. Finally, ComEd asserts that the Audit Report's remedy – to remediate the allocation of overhead costs to accounts dating back to 2017 – raises disputed issues of material fact.<sup>19</sup> ComEd contends that the disputed issues include: (1) Were ComEd's overheads allocations going back to 2017 reasonable? (2) Did the work done by the relevant personnel change from year to year? (3) If so, how could one appropriately restate the allocations for past years? (4) Is the "estimate" proposed by the Audit Report a reasonable and non-arbitrary way of reallocating overheads in years remote from the year in which the study was conducted? and (5) Would restating amounts for such prior years

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<sup>18</sup> *Id.* at 9-10 (citing Audit Report at 48).

<sup>19</sup> *Id.* at 10 (citing Audit Report at 48-49).

allow ComEd to properly recover its prudently incurred and reasonable costs? With respect to the fourth question, ComEd asserts that there are strong reasons to doubt that a labor-time study performed in 2023 will be a more accurate method of allocating overhead labor costs than the approach that ComEd used in the past to allocate overhead labor costs that were incurred several years earlier.<sup>20</sup> ComEd states, for example, that in prior years, many ComEd employees were working on the Grand Prairie Gateway 345kV transmission project. ComEd asserts that, because that project was completed in 2017, a labor-time study done in 2023 will not capture the considerable time that ComEd employees spent on that project.

12. ComEd suggests that it could be beneficial to employ a settlement judge procedure prior to the trial-type hearing with the hope that a negotiated resolution of the overhead costs issue might be achievable.<sup>21</sup>

### **III. Enforcement Staff Answer**

13. Enforcement staff filed an answer asserting that ComEd's response fails to identify any disputed issue of material fact and, if such an issue had been identified, fails to meet the additional requirement of showing why a trial-type hearing with cross-examination of witnesses would be necessary to resolve the issue, rather than a paper hearing.<sup>22</sup>

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<sup>20</sup> *Id.* at 10 n.31.

<sup>21</sup> *Id.* at 11.

<sup>22</sup> Enforcement Staff Answer at 1-3 (arguing that ComEd has the additional burden to show why live witness testimony and testing the credibility of witnesses on the stand is required to resolve the factual dispute).

14. Enforcement staff contends that there are no disputed issues of material fact because Enforcement staff and ComEd agree as to what ComEd did and did not do to allocate overhead costs.<sup>23</sup> Enforcement staff explains that ComEd's overhead costs were accumulated into overhead pools and were allocated between construction and operating and maintenance projects using an allocation methodology. Enforcement staff states that ComEd categorized the overhead costs into two indirect cost overhead pools – Administrative and General (A&G) and General and Administrative (G&A). Enforcement staff states that the A&G overhead pool was used to accumulate costs such as information technology, legal, fixed assets, human resources, real estate, and Exelon<sup>24</sup> Business Service Company costs. Enforcement staff states that, to allocate A&G overhead pool costs, ComEd first reviewed each cost within its operating and maintenance budget to determine whether the cost was eligible for capitalization. Enforcement staff states that ComEd then allocated the eligible A&G overhead cost based on the ratio of capitalized labor cost over total labor cost. Enforcement staff states that the G&A overhead pool was used to accumulate overhead costs from ComEd departments that provided back-office support to capital-intensive departments.<sup>25</sup> Enforcement staff states that, to allocate G&A overhead pool costs to construction, ComEd applied the weighted average overhead capitalization rate of the capital-intensive departments to the costs accumulated in the G&A overhead pool. Enforcement staff also asserts that the facts are clear as to what ComEd did not do to allocate its overhead costs:

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> Exelon Corporation (Exelon) is the parent company of ComEd.

<sup>25</sup> Enforcement Staff Answer at 5.

specifically, it did not base its allocation on actual time (through timecard distributions), or on a study of actual employee time spent on work relating to construction projects, as required by the Commission's accounting regulation.<sup>26</sup>

15. Enforcement staff further contends that ComEd's purported questions are general and abstract, with no identification of a factual issue that ComEd contends is disputed, no attempt to show that any such disputed fact is "material" to a matter presently before the Commission to be decided, and no explanation of why such an issue requires live witness testimony as opposed to resolution through a paper hearing.<sup>27</sup>

16. Enforcement staff asserts that, given there are no material issues of fact to resolve regarding ComEd's allocation of overhead costs, the Commission is left to resolve only a question of law: Did ComEd's allocation of overhead costs comply with the Commission's accounting regulations? Enforcement staff asserts that it does not believe that ComEd complied with the Commission's regulations because it did not allocate overhead costs based on actual time or a study of actual employee time.<sup>28</sup> Enforcement staff therefore asserts that the Commission should deny ComEd's request for a trial-type hearing and set the question of law – the interpretation of the Commission's accounting regulations for overhead construction costs – for paper hearing.<sup>29</sup>

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<sup>26</sup> *Id.* at 6; Audit Report at 45 (citing 18 CFR part 101, General Instruction No. 9, Distribution of Pay and Expenses of Employees).

<sup>27</sup> Enforcement Staff Answer at 6.

<sup>28</sup> *Id.* at 6-7.

<sup>29</sup> *Id.* at 7-8.

17. With respect to ComEd’s request that the Commission employ settlement judge procedures, Enforcement staff notes that it has engaged in lengthy discussions with ComEd over a nine-month period to attempt to resolve all issues in this audit proceeding without success.<sup>30</sup>

#### **IV. ComEd Answer**

ComEd asserts that, under the Commission’s regulations, the issue is whether ComEd’s method of allocating overhead construction costs “reasonably appli[ed]” those costs to “particular jobs or units,” so that “each job or unit shall bear its equitable proportion of such costs.”<sup>31</sup> ComEd states that, to apply this guidance and determine which costs are properly recorded as overhead construction costs, ComEd conducts an annual study of personnel in various back-office departments and assigns their costs based on the results of that study.<sup>32</sup> In response to Enforcement staff’s assertion that there is agreement between Enforcement staff and ComEd about ComEd’s cost allocation methodology, ComEd responds that it is unsure that there is any such agreement, but even if there was agreement, the key question is not what method ComEd used, but whether ComEd’s method was reasonable, which is inherently a factual one.<sup>33</sup>

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<sup>30</sup> *Id.* at 8 n.14 (citing ComEd Response at 11).

<sup>31</sup> ComEd Answer at 2-3 (quoting 18 CFR part 101, Electric Plant Instruction No. 4(A), Overhead Construction Costs).

<sup>32</sup> *Id.* at 3-4.

<sup>33</sup> *Id.* at 2, 4, 5 (arguing that it is also a factual question whether a time study conducted in 2024 is a reasonable proxy for the allocation of costs spent up to eight years earlier).

18. ComEd asserts that the Audit Report is premised on factual conclusions based on Enforcement staff's interviews.<sup>34</sup> In particular, ComEd states that Enforcement staff's evaluation of the reasonableness of ComEd's method was based on "interviews of a randomized sample of ComEd's employees whose labor costs were allocated to construction projects during the audit period and a review of a sample of timesheets associated with the employees."<sup>35</sup> ComEd states that the Audit Report does not disclose anything about the substance of those interviews or the methods used to analyze the results, which makes it impossible for either ComEd or the Commission to assess the Audit Report's findings and recommendations on overhead construction costs.<sup>36</sup>

19. ComEd states that it continues to think that settlement judge procedures could be beneficial because a mediator can sometimes help adverse parties find a resolution.<sup>37</sup>

## V. Discussion

### A. Procedural Matters

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2022), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept ComEd's answer<sup>38</sup> because it has provided information that assisted us in our decision-making process.

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<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.* (quoting Audit Report at 26).

<sup>36</sup> *Id.* at 4-5.

<sup>37</sup> *Id.* at 6.

<sup>38</sup> We note that Enforcement staff's answer to ComEd's response was

## **B. Substantive Matters**

21. In Order No. 675, the Commission amended its Part 41 regulations to expand due process by allowing an audited person who disputes findings or proposed remedies contained in an audit report to elect a shortened paper hearing procedure or a trial-type hearing to challenge disputed audit matters.<sup>39</sup> The Commission stated that it would honor the audited person's timely election unless a trial-type hearing is chosen and there are, in the Commission's judgment, no disputed issues of material fact that require a trial-type hearing.<sup>40</sup> In response to ComEd's timely election, we establish a shortened paper hearing procedure for two contested issues, and we establish a trial-type hearing and settlement judge procedures for one contested issue, as set forth below.

### **1. Shortened Paper Hearing Procedure**

22. Pursuant to § 41.3 of the Commission's regulations,<sup>41</sup> we direct the commencement of a paper hearing and establish paper hearing procedures concerning two contested issues, as requested by ComEd: (1) the accounting treatment of AROs (Issue 3 in the Audit Report and Recommendations 8-12); and (2) the accounting treatment of MGP site remediation costs (Issue 7 in the Audit Report and

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appropriately filed pursuant to Rule 213(a)(3) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(3).

<sup>39</sup> *Procs. for Disposition of Contested Audit Matters*, Order No. 675, 114 FERC ¶ 61,178, at P 37, *order on reh'g & clarification*, Order No. 675-A, 115 FERC ¶ 61,189 (2006).

<sup>40</sup> *Id.*; *see also* 18 CFR 41.7.

<sup>41</sup> 18 CFR 41.3.

Recommendations 34-43).<sup>42</sup> The scope of the paper hearing is limited to these challenged findings and recommendations.

23. In accordance with § 41.3, ComEd and any other interested entity, including Enforcement staff, shall file, within 45 days of this order, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue.<sup>43</sup> Reply memoranda may be filed by participants who filed initial memoranda. Reply memoranda must be filed within 20 days of the due date for initial memoranda. Pursuant to § 41.3, subpart T of part 385 of the Commission's regulations shall apply to all filings. Further, pursuant to § 41.4, each entity's memorandum should set out the facts and arguments as prescribed for briefs in Rule 706 of the Commission's Rules of Practice and Procedure.<sup>44</sup> Section 41.5 also requires that

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<sup>42</sup> Consistent with ComEd's election, we do not set for hearing the findings in Issue 7 that relate to items other than MGP site remediation costs, as those findings are uncontested and ComEd has agreed to take the corrective actions directed by Enforcement staff. *See* ComEd Response at 1 n.3.

<sup>43</sup> In Order No. 675, the Commission stated that it will use the same standard for permitting interested entities to file memoranda in the shortened paper hearing procedures as it uses to permit interventions in other proceedings. In addition, the Commission stated that an interested entity may include in its initial memorandum filed pursuant to the shortened paper hearing procedures a motion to intervene in the proceeding. Order No. 675, 114 FERC ¶ 61,178 at P 11 (citing 18 CFR 385.214(b) (2022)); *see FirstEnergy Corp.*, 185 FERC ¶ 61,099, at P 21 & n.61 (2023) (stating that interventions are permitted in a contested audit proceeding in which the audited person elects to contest one or more audit findings or remedies in a shortened paper hearing procedure).

<sup>44</sup> 18 CFR 41.4 (citing 18 CFR 385.706 (2022)).

the facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit.<sup>45</sup>

24. eFiling is encouraged. More detailed information relating to filing requirements, interventions, and service can be found at: <https://www.ferc.gov/media/5339>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

## 2. **Trial-Type Hearing and Settlement Judge Procedures**

25. With respect to the contested issue concerning the allocation of overhead costs to CWIP (Issue 4 in the Audit Report and Recommendations 13-21), we find that ComEd has raised issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in a trial-type hearing. Therefore, pursuant to § 41.7 of the Commission's regulations,<sup>46</sup> we direct the commencement of a trial-type hearing and establish trial-type hearing procedures concerning the allocation of overhead costs to CWIP, as requested by ComEd. The scope of the trial-type hearing is limited to these challenged findings and recommendations. Pursuant to Rule 601 of the Commission's Rules of Practice and Procedure,<sup>47</sup> we also establish settlement judge procedures for this contested issue, as requested by ComEd.<sup>48</sup>

26. Any interested entity seeking to participate in this trial-type hearing shall file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and

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<sup>45</sup> *Id.* § 41.5.

<sup>46</sup> *Id.* § 41.7.

<sup>47</sup> *Id.* § 385.601.

<sup>48</sup> ComEd Response at 11; ComEd Answer at 6.

Procedure<sup>49</sup> no later than 15 days after the date of publication of this order in the *Federal Register*.

27. While we are setting the allocation of overhead costs to CWIP for a trial-type evidentiary hearing,<sup>50</sup> we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the trial-type hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>51</sup> 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.<sup>52</sup> 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 the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

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<sup>49</sup> 18 CFR 385.214; *see FirstEnergy Corp.*, 185 FERC ¶ 61,099 at P 21 & n.61 (stating that interventions are permitted in a contested audit proceeding in which the audited person elects to contest one or more audit findings or remedies in a trial-type hearing).

<sup>50</sup> Enforcement staff is a participant in the trial-type hearing and settlement judge procedures. *See* 18 CFR 385.102(b), (c) (2022).

<sup>51</sup> 18 CFR 385.603.

<sup>52</sup> 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 (<https://www.ferc.gov/available-settlement-judges>).

The Commission orders:

(A) A paper hearing and related procedures are hereby established concerning two contested issues, the accounting treatment of AROs and MGP site remediation costs, as set forth in the body of this order.

(B) A trial-type hearing and related procedures, and settlement procedures are hereby established concerning one contested issue, the allocation of overhead costs to CWIP, as set forth in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act (FPA), particularly § 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 CFR chapter I), a public hearing shall be held concerning the allocation of overhead costs to CWIP, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603, the Chief Judge is hereby directed to appoint a settlement judge in this proceeding 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 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.

(E) 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 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.

(F) 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. Commissioner Danly is not participating.

Issued: Issued December 8, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

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