

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. EL21-91-003

ORDER CONDITIONALLY CONCURRING IN THE
APPOINTMENT OF A SETTLEMENT JUDGE

(Issued May 15, 2024)

1. On April 29, 2024, a group of participants labelled the Settling Parties¹ filed a Motion.² The Settling Parties addressed their motion to the Chief Administrative Law Judge (Chief Judge) and to me as the Presiding Administrative Law Judge (Presiding Judge) in Docket Nos. EL21-91-003 and ER21-1635-000. The Settling Parties include three requests in their Motion: (1) reestablishment of settlement judge procedures, (2) my concurrence in the appointment of a settlement judge under Rule 603(e) (18 C.F.R. § 385.603(e) (2023)); and (3) a shortened five-business-day period by which participants may answer the Motion “in accordance with Rule 213(d)(1)” (18 C.F.R. §385.213(d)(1)). By this Order, I respond to the second request by concurring in the appointment of a settlement Judge. My concurrence is subject to conditions as discussed in detail below.

I. Procedural Background

2. In considering the portion of the Motion seeking my concurrence in the appointment of a settlement judge, we need to review how we got here because context is important.

¹ The Settling Parties include American Municipal Power, Inc. (AMP), Dynegy Marketing and Trade, LLC (Dynegy), Hazleton Generation LLC (Hazleton), J-POWER USA Development Co., Ltd. (J-POWER), LS Power Development, LLC (LS Power), Old Dominion Electric Cooperative (ODEC), PJM Interconnection, L.L.C. (PJM), PJM Industrial Customer Coalition (PJM Industrials), and Vistra Corp. (Vistra).

² Motion for Reestablishment of Settlement Judge Procedures and Shortened Time Period to Answer, and Request for Presiding Judge Concurrence, Docket Nos. ER21-1635-000 and EL21-91-003 (Apr. 29, 2024) (Motion).

3. On March 31, 2023, the Chief Judge designated Judge Patricia E. Hurt as the Settlement Administrative Law Judge (Settlement Judge) in Docket No. EL21-91-000.³ After three settlement conferences, Judge Hurt declared an impasse and recommended that the Chief Judge terminate settlement judge procedures, noting that while “[t]he participants made some efforts to find a path to settlement,” they seemed “unwilling to engage in any meaningful compromise.”⁴
4. On August 25, 2023, the Chief Judge terminated settlement judge procedures, designated me as the Presiding Judge in this proceeding, and established Track III procedural time standards for the hearing.⁵
5. On September 1, 2023, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), ODEC, the PJM Industrials, the Delaware Division of the Public Advocate, and AMP, moved for the establishment of paper hearing procedures, or, in the alternative, adoption of Track I hearing procedures in this proceeding.⁶ On September 13, 2023, Hazelton, Vistra, Dynegy, J-POWER, LS Power, and Dominion Energy Services, Inc. submitted an answer in opposition to the Paper Hearing Motion.⁷
6. On September 22, 2023, observing that a paper hearing “offers more streamlined procedures for cases that primarily involve policy arguments and policy determinations,”

³ Order of Chief Judge Designating Settlement Judge, Docket No. EL21-91-000 (Mar. 31, 2023) (Satten, C.J.).

⁴ Order Declaring Impasse, Docket No. EL21-91-000 (Aug. 23, 2023) (Hurt, J.) (Impasse Order).

⁵ Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, and Establishing Track III Procedural Time Standards, Docket Nos. EL21-91-000 and EL21-91-003 (Aug. 25, 2023) (Satten, C.J.) (Designation Order).

⁶ Motion for Paper Hearing or, in the Alternative, Revised Time Standards for Hearing, and Request for Expedited Ruling of the Indicated Parties, Docket Nos. EL21-91-000 and EL21-91-003 (Sept. 1, 2023) (Paper Hearing Motion).

⁷ Answer of the Black Start Providers in Opposition to Motion for Paper Hearing or, in the Alternative, Revised Time Standards for Hearing, and Request for Expedited Ruling of the Indicated Parties, Docket Nos. EL21-91-000 and EL21-91-003 (Sept. 13, 2023) (Answer to Paper Hearing Motion).

the Chief Judge denied the Paper Hearing Motion's request for a paper hearing.⁸ The Chief Judge also denied the Paper Hearing Motion's request in the alternative to modify the Track III procedural time standards for this hearing, stating that "the shorter track durations advocated by the [Paper Hearing Motion] are foreclosed by the evidentiarily inconclusive and intricate nexus between 1) the tax rate matter, and 2) the Capital Recovery Factor values in the Capital Cost Recovery Rate for Black Start Service."⁹

7. On January 10, 2024, Commission Trial Staff (Trial Staff) filed a motion to suspend the procedural schedule, stating that it "and other active participants have reached a settlement in principle that would fully resolve all matters set for hearing in this proceeding."¹⁰

8. On January 11, 2024, the IMM filed an answer opposing the suspension of the procedural schedule arguing that the "proposed settlement cannot and does not resolve the issue set for hearing," therefore, "[t]here is no reason to delay the filing of testimony, briefing and resolution of the factual issue set for hearing."¹¹ On January 12, 2024, Vistra, Dynegy, J-POWER, LS Power, and Hazelton filed an answer in support of the Suspension Motion and a motion for leave to answer and an answer to the IMM Suspension Answer.¹²

9. On January 16, 2024, the Chief Judge accepted the Black Start Providers Suspension Answer and granted the Suspension Motion.¹³ The Chief Judge found good cause to grant the Suspension Motion to permit the settling participants to prioritize

⁸ Order of Chief Judge Denying Motion for Paper Hearing and Denying Motion in the Alternative for Revised Procedural Time Standards, at PP 7-12 (Sept. 22, 2023) (Satten, C.J.) (Order Denying Paper Hearing).

⁹ Order Denying Paper Hearing at PP 13-15 (first citing *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194, at P 32 (2023)).

¹⁰ Motion of Commission Trial Staff to Suspend Procedural Schedule and Shorten Answer Period (Jan. 10, 2024) (Suspension Motion).

¹¹ Answer of the Independent Market Monitor for PJM (Jan. 11, 2024) (IMM Suspension Answer).

¹² Answer of Black Start Providers in Support of Commission Trial Staff and Motion for Leave to Answer and Answer to the Answer of the Independent Market Monitor for PJM (Jan. 12, 2024) (Black Start Providers Suspension Answer).

¹³ Order of Chief Judge Suspending Procedural Schedule (Jan. 16, 2024) (Satten, C.J.) (Suspension Order).

preparing the relevant settlement documents for filing while not prejudging “whether any filed offer of settlement will be certified by the Presiding Judge and ultimately approved by the Commission.”¹⁴

10. On January 31, 2024, PJM, on behalf of the Settling Parties, filed an Offer of Settlement and Settlement Agreement (Settlement) in Docket Nos. ER21-91-003 and ER21-1635-005.

11. On February 20, 2024, IMM filed initial comments opposing the Settlement, attaching the affidavit of Dr. Joseph E. Bowring and 13 other exhibits, and seeking summary disposition in the IMM’s favor. Trial Staff filed initial comments supporting the Settlement as fair, reasonable, and in the public interest, but including no evidence.

12. On March 1, 2024, Trial Staff, Indicated Suppliers (consisting of Dynegy, Hazleton, J-POWER, LS Power, and Vistra), Settling Customers (consisting of AMP, ODEC, and the PJM Industrials), and PJM each filed reply comments attaching no evidence in supporting the Settlement, but urging me to certify the Settlement and arguing that the IMM had not raised any genuine issue of material fact.

13. On March 13, 2024, I issued an order denying the request to certify the Settlement to the Commission under Rule 602(h)(2), finding that there exist several genuine issues of material fact, that the Settling Parties failed to request the omission of the initial decision, and that the record does not contain substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.¹⁵ I issued the Denial Order without prejudice to the Settling Parties “re-submitting the Settlement with the additional substantial evidence needed to support my decision to certify the Settlement and a reasoned Commission decision to approve the Settlement under an appropriate Trailblazer approach.”¹⁶

14. On March 28, 2024, the IMM filed a motion pursuant to Rules 212 and 715(b)¹⁷ requesting that I permit its interlocutory appeal of the Denial Order to the Commission.¹⁸

¹⁴ Suspension Order at P 4.

¹⁵ *PJM Interconnection, L.L.C.*, 186 FERC ¶ 63,019, at PP 4-6, 128 (2024) (deJesus, J.) (Denial Order).

¹⁶ Denial Order, 186 FERC ¶ 63,019 at P 135.

¹⁷ 18 C.F.R. §§ 385.212 and 385.715(b).

¹⁸ Motion to Permit Interlocutory Appeal of the Independent Market Monitor for PJM, Docket Nos. EL21-91-003 and ER21-1635-005, at 2, 4 (Mar. 28, 2024) (First IMM

That same day the Settling Parties filed a joint motion for reconsideration of the Denial Order or, in the alternative, to permit an interlocutory appeal of the Denial Order to the Commission pursuant to Rules 212 and 715(b).¹⁹

15. On March 29, 2024, I issued an order denying both the First IMM Appeal and the First Settling Parties Appeal.²⁰ In the Order Denying Appeal, I found that the IMM's and the Settling Parties' repeated arguments made in comments that neither convinced me to reconsider my decision in the Denial Order nor constituted "extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to any person."²¹ I noted that neither the IMM nor the Settling Parties had demonstrated through substantial evidence in the record that the black start rates they advocated were just and reasonable.²²

16. On April 1, 2024, and April 5, 2024, the IMM and the Settling Parties, respectively, filed motions with the Motions Commissioner to permit interlocutory appeal of the Denial Order to the Commission, both of which, on April 8, 2024, and April 12, 2024, respectively, the Motions Commissioner declined to refer these interlocutory appeals to the full Commission.²³ The Motions Commissioner found that the IMM and the Settling Parties each "failed to demonstrate extraordinary circumstances in accordance with Rule 715(c)(5) ..., that would make prompt Commission review of the

Appeal).

¹⁹ Joint Motion for Reconsideration or Interlocutory Appeal, Docket Nos. EL21-91-003 and ER21-1635-005, at 1 (Mar. 28, 2024) (First Settling Parties Appeal); 18 C.F.R. §§ 385.212 and 385.715(b).

²⁰ Order Denying Reconsideration and Denying Permission for Interlocutory Appeals, Docket Nos. EL21-91-003 and ER21-1635-005 (Mar. 29, 2024) (deJesus, J.) (Order Denying Appeal).

²¹ 18 C.F.R. § 385.715(a).

²² Order Denying Appeal at PP 3 and 5.

²³ Motion to Permit Interlocutory Appeal of the Independent Market Monitor for PJM, Docket Nos. EL21-91-003 and ER21-1635-005 (Apr. 1, 2024) (Second IMM Appeal); The Settling Parties' Interlocutory Appeal, Docket Nos. EL21-91-003 and ER21-1635-005 (Apr. 5, 2024); Notice of Determination by the Chairman, Docket Nos. ER21-1635-005 and EL21-91-003 (Apr. 8, 2024) (Denial of IMM Appeal); Notice of Determination by the Chairman, Docket Nos. ER21 1635-005 and EL21-91-003 (Apr. 12, 2024) (Denial of Settling Parties Appeal).

contested rulings necessary to prevent detriment to the public interest or irreparable harm to any person.”²⁴

17. On April 16, 2024, the Chief Judge terminated the previously ordered suspension of the procedural schedule, finding that the good cause necessitating the suspension no longer existed²⁵ and reestablished the previously ordered track schedule²⁶ but adjusted it to accommodate for the suspension period and other scheduling considerations.²⁷

18. On April 24, 2024, I held a prehearing conference to discuss a revised procedural schedule as well as other issues to resume the evidentiary hearing.²⁸ At the prehearing conference, the participants expressed a desire to try to settle the case again.²⁹ I made clear, as I stated in the Denial Order, that my decision to not certify the Settlement was not because I thought the only way to dispose of this case was through a fully-litigated evidentiary hearing, and that I would consider certifying a new settlement, provided it was adequately supported.³⁰ At the prehearing conference, counsel for one of the Settling Parties also expressed a desire to appoint a settlement judge, which the IMM opposed.³¹ I encouraged the participants to send in their motion and answers.³²

19. On April 29, 2024, the Settling Parties filed the Motion and made three requests: (1) reestablishment of settlement judge procedures, (2) my concurrence in the appointment of a settlement judge under Rule 603(e) (18 C.F.R. § 385.603(e) (2023));

²⁴ Denial of IMM Appeal; Denial of Settling Parties Appeal; *see also* 18 C.F.R. § 385.715(c)(5).

²⁵ Suspension Order at P 4.

²⁶ *See* Designation Order.

²⁷ Order of Chief Judge Terminating Suspension and Establishing Procedural Time Standards (Apr. 16, 2024) (Satten, C.J.). The Chief Judge adjusted the track schedule by the four months it took to consider an ultimately uncertifiable Settlement.

²⁸ Order Scheduling Prehearing Conference (Apr. 17, 2024) (deJesus, J.).

²⁹ Tr. 176:8-21 (Mallen); Tr. 201:18-21 (Mayes).

³⁰ Tr. 177:2-180:19 (Presiding Judge); *see also* Denial Order, 186 FERC ¶ 63,019 at P 135.

³¹ Tr. 192:14-18 (Mallen); Tr. 201:3-8 (Mayes).

³² Tr. 202:2-4 (Presiding Judge).

and (3) a shortened five-business-day period by which participants may answer the Motion “in accordance with Rule 213(d)(1)” (18 C.F.R. §385.213(d)(1)).³³

20. On May 1, 2024, I issued an order denying the Motion’s third request for a shortened answer period and directed participants to file any answers to the Motion by May 14, 2024.³⁴

21. On May 3, 2024, the IMM filed an answer opposing the Motion.³⁵

22. On May 14, 2024, Trial Staff filed an answer supporting the Motion.³⁶

II. Participant Positions

23. In the Motion, the Settling Parties request the appointment of a settlement judge to help resolve this proceeding through settlement. The Settling Parties believe that the initiation of formal settlement judge procedures will provide additional opportunities to reach either an uncontested settlement or a adequately supported contested settlement.³⁷ The Settling Parties argue that there is a strong interest and momentum in favor of reaching a settlement, which would “achieve immediate benefits, including rate reduction, rate certainty, and the preservation of the parties’, the Commission’s, and the court’s resources by avoiding the distraction and costs of litigation, and preventing further diversion of resources and attention away from other pressing market concerns.”³⁸

³³ Motion at 1-3, 5.

³⁴ Order Denying Request for Shortened Answer Period and Establishing Answer Period (May 1, 2024) (deJesus, J.).

³⁵ Answer of the Independent Market Monitor for PJM, Docket Nos. ER21-91-003 and ER21-1635-000 (May 3, 2024) (IMM Answer). Although the IMM did not take advantage of the entire answer period I provided, I take the IMM Answer as a complete exposition of the IMM’s position on the Motion.

³⁶ Answer of Commission Trial Staff in Support of Motion for Reestablishment of Settlement Judge Procedures (May 14, 2024) (Trial Staff Answer).

³⁷ Motion at 2, 5-6 (“Through appointment of a settlement judge, the parties will be able to engage in off-the-record communications unavailable to the Presiding Judge that may be useful to further settlement ... Crucially, a settlement judge will be able to ‘identify what the matters at issue may be...in a manner that is understandable and useful.’”). Motion at 5 (footnotes omitted).

³⁸ Motion at 1-2.

Aside from the IMM's opposition, the Settling Parties represent that no other party opposes the Motion. Despite the IMM's opposition, the Settling Parties request a shortening of the Motion's answer period to expedite the Chief Judge's ruling so that parties can resume settlement judge procedures in advance of looming hearing deadlines.³⁹

24. In the IMM Answer, the IMM argues that the Settling Parties are unhappy with my evaluation of the Settlement and hope to have a settlement judge approve the same or substantially similar settlement over the IMM's objections.⁴⁰ The IMM thus accuses the Settling Parties of forum shopping.⁴¹ The IMM states that it is unaware of any change of position of the Settling Parties and argues that it does not need a settlement judge "to attempt to persuade it to accept settlement at a level that is unjust and unreasonable, excessive, inaccurate based on objective, publicly available metrics, and contrary to the public interest."⁴² Thus, the IMM argues, "renewed settlement judge proceedings would be a waste of time and resources," and that hearing procedures are the only means to obtain resolution in this proceeding.⁴³

25. Although it is unclear from the Motion whether Trial Staff supported or opposed it,⁴⁴ Trial Staff makes clear in the Trial Staff Answer that it supports the Motion because it "would allow the participants to obtain the advice of the designated settlement judge in preparing a settlement that meets the applicable evidentiary standards and otherwise addresses the concerns raised by the Presiding Judge with respect to the previously submitted settlement" and because it would provide a basis "to seek authority to continue

³⁹ Motion at 2-3.

⁴⁰ IMM Answer at 2.

⁴¹ IMM Answer at 2-3.

⁴² IMM Answer at 3.

⁴³ IMM Answer at 4.

⁴⁴ The Motion merely states that "[p]rior to filing this motion, the Settling Parties contacted all persons on the service list on April 26, 2024, in accordance with the Duty to Confer found in Section 3 of the Commission's Uniform Hearing Rules. ... As of the date of this filing, no other party has indicated that they oppose this Motion or the appointment of a settlement judge." Motion at 2-3. While the official service list includes representatives from Trial Staff, the Commission's Rules of Practice and Procedure do not define Trial Staff as a "party." 18 C.F.R. § 385.102(b), (c). Accordingly, the Motion does not clearly articulate a Trial Staff position on the Motion.

the use of the previously filed settlement rates on an interim basis.”⁴⁵ Apparently in response to forum shopping concerns raised by the IMM, Trial Staff confirms at the outset that any newly filed settlement will be transmitted to me as the Presiding Judge.⁴⁶

III. Conditional Concurrence

26. As indicated above and discussed in detail below, I concur in the appointment of a settlement judge pursuant to Rules 603(c)(1) and (e), but my concurrence is subject to two conditions. The first is that I maintain my role as Presiding Judge, including the obligation to certify to the Commission any uncontested offer of settlement under Rule 602(g) and the responsibility to determine whether to certify to the Commission a contested offer of settlement under Rule 602(h)(2). The second condition is that the appointment of a settlement judge, in and of itself, does not delay the start of an evidentiary hearing.

27. I do not subscribe to the IMM’s allegation that the Motion was motivated out of a desire by the Settling Parties to engage in forum shopping,⁴⁷ an allegation that the counsel for one of the Settling Parties vehemently denied.⁴⁸ Still, I question what value the appointment of a settlement judge could provide at this stage. While the Settling Parties are certainly correct that they would be able “to engage in off-the-record communications unavailable to the Presiding Judge,” it is unclear how that would enhance the likelihood that they could achieve a certifiable settlement. The participants’ positions seem as entrenched now as they were when Judge Hurt originally declared an impasse,⁴⁹ and it is difficult to see what more a settlement judge could do to mediate these positions to an uncontested settlement. Moreover, while a settlement judge might be able to advise the participants on what sorts of arguments and evidence would be needed to support a contested settlement, my Denial Order already sets out the standards by which I will assess whether I should or could certify any settlement presented to me.

⁴⁵ Trial Staff Answer at 1-2.

⁴⁶ Trial Staff Answer at 1.

⁴⁷ IMM Answer at 2-3.

⁴⁸ Tr. 201:14-202:10. (Mallen, Mayes, Presiding Judge).

⁴⁹ See Impasse Order at P 3 (“The participants made some efforts to find a path to settlement, but seem unwilling to engage in any meaningful compromise.”); IMM Answer at 3 (“After the decision not to certify the settlement on March 29, 2024, the Market Monitor prepared a statement of its position on an acceptable settlement and that statement was circulated among Staff and the Settling Parties. The Market Monitor is not aware of any change in the position of the Settling Parties.”).

Contrary to the suggestion of Trial Staff that the participants would benefit from the advice of a settlement judge in preparing a settlement that addresses the concerns that I raised about the previous Settlement,⁵⁰ I doubt that a settlement judge could elaborate for the participants how I would apply those standards to any new offer of settlement filing. Appointing a settlement judge at this stage would, at best, simply repeat my rulings in the Denial Order or could, at worst, yield advice that contradicts those rulings.

28. Nevertheless, to the extent that the Settling Parties see value in having off-the-record communications with a settlement judge in preparing a new offer of settlement and the necessary support for such an offer, I will not allow my doubts to interfere with such communications. To ensure clarity and avoid any unnecessary delays in the hearing process, however, my concurrence in the appointment of a settlement judge is subject to the two conditions described above.

29. The first condition – preserving my role and authority as Presiding Judge, including the explicit obligation to certify uncontested settlements under Rule 602(g) and authority to determine whether to certify contested settlements under Rule 603(h)(2) – should assuage any concerns the IMM may have about forum shopping. As the Trial Staff makes clear, “any newly filed settlement in this proceeding would be transmitted to the Presiding Judge.”⁵¹ Although the Commission has delegated to settlement judges the authority to certify to the Commission uncontested offers of settlement,⁵² I do not read that as displacing the obligation of a concurrently appointed presiding judge as a presiding officer under Rule 602(g) to make a finding that an offer of settlement is uncontested and to certify uncontested offers to the Commission.⁵³ Likewise, while settlement judges have interpreted their limited authority to issue settlement status reports to include the ability to report a contested settlement to the Commission,⁵⁴ I do not view that procedure as displacing the explicit obligation of a concurrently appointed presiding

⁵⁰ Trial Staff Answer at 1-2.

⁵¹ Trial Staff Answer at 1 (citing 18 C.F.R. § 385.602(b)(2)(i)).

⁵² 18 C.F.R. § 375.304(c).

⁵³ See 18 C.F.R. §§ 385.102(e) and 385.602(g).

⁵⁴ See 18 C.F.R. § 385.603(g); see also *Cities of Anaheim, Azusa, Banning, Colton & Riverside, Cal.*, 101 FERC ¶ 61,392, at P 12 (2002) (“Where a contested settlement is filed in a case that is pending solely before a settlement judge, the contested settlement is already before the Commission itself. (We add that, insofar as the settlement judge is to report to the Chief Judge and/or the Commission, in the future when a settlement is contested the settlement judge should report the fact that a filed settlement has been contested, and identify what the matters at issue may be.)”) (footnotes omitted).

judge as presiding officer to determine whether a contested settlement may be certified to the Commission under Rule 602(h)(2).⁵⁵

30. Similarly, the second condition – preserving the existing procedural schedule for the evidentiary hearing – is intended to allow me to continue to fulfill my primary responsibility as Presiding Judge to ensure an adequate record in this proceeding. While the participants all argued the need for expeditious resolution of this proceeding,⁵⁶ their pursuit of the original Settlement has led to a four-month delay in the start of the evidentiary hearing. I would not concur in the appointment of a settlement judge if such an appointment would lead to further unnecessary delays in the start of the hearing or otherwise inhibit the development of the evidentiary record. Based on representations by counsel of one of the Settling Parties, I believe the Settling Parties intend to pursue settlement discussions in parallel to the hearing process,⁵⁷ and my condition merely holds the participants to that plan.⁵⁸

⁵⁵ See 18 C.F.R. §§ 385.102(e) and 385.602(h)(2). At the prehearing conference, I had a colloquy with counsel for one of the Settling Parties about the possibility that a newly appointed settlement judge might report a contested offer of settlement to the Commission without me deciding whether I could certify it to the Commission under Rule 602(h)(2). Tr. 193:2-194:10 (Mallen and Presiding Judge). To be absolutely clear, I do not concur in the appointment of a settlement judge to the extent the participants seek to have that settlement judge bypass my responsibility to determine whether I can certify a contested settlement to the Commission under Rule 602(h)(2). Otherwise, the appointment of a settlement judge would give rise to the very forum shopping that the IMM alleges and that the Settling Parties deny.

⁵⁶ First IMM Appeal at 2-3; First Settling Parties Appeal at 20-22; Second IMM Appeal at 2-3.

⁵⁷ Tr. 176:11-21 (Mallen) (“[W]e weren’t planning to seek another abeyance at this point in time, so we think these two tracks can happen in parallel.”).

⁵⁸ I note that the Motion appears to alternate between seeking the appointment of a settlement judge and reestablishment of “settlement judge procedures.” Compare, e.g., Motion at 2 (“With the initiation of formal settlement judge procedures, the Settling Parties are confident that the participants either will be able to achieve an uncontested settlement or will have a more fulsome opportunity to advance arguments and develop evidentiary support that would allow the Commission to approve a contested settlement.”) with Motion at 5 (“In accordance with Rule 603(c)(1), the Settling Parties request the appointment of a settlement judge in order to provide additional opportunities to reach a negotiated settlement.”); see also Trial Staff Answer at 1 (describing the Motion as seeking “reestablishment of settlement judge procedures.”). I am unsure whether there is a difference between these two requests, but I will note that Rule 603(e)

31. Accordingly, as discussed in detail above, I CONCUR in the appointment of a settlement judge SUBJECT TO CONDITIONS necessary to preserve my role and obligations as Presiding Judge.

SO ORDERED.

Joel deJesus
Presiding Administrative Law Judge

governs only my concurrence in and the Chief Judge's granting of the appointment of a settlement judge. If the request to establish formal settlement judge procedures entails anything more than the appointment of a settlement judge, I do not concur in such request – particularly if it interferes with my role and obligations as Presiding Judge or otherwise unnecessarily delays the hearing.