190 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
Willie L. Phillips, David Rosner,
Lindsay S. See, and Judy W. Chang.

Salsa Solar Energy, LLC
Towner Wind Energy III LLC

Docket No. EL24-50-000

v.

Public Service Company of Colorado

ORDER DENYING COMPLAINT

(Issued February 20, 2025)

1. On December 22, 2023, pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] Salsa Solar Energy, LLC and Towner Wind Energy III LLC (together, Complainants) filed a complaint (Complaint) against Public Service Company of Colorado (PSCo). Complainants state that, in August 2023, they submitted requests for provisional interconnection service for three generation projects that have pending interconnection requests in PSCo's generator interconnection queue (Projects). According to Complainants, PSCo is improperly conducting the Projects' provisional interconnection studies by setting aside transmission capacity—and thereby network injection capacity—for PSCo's own, unqueued generation resources, rendering that capacity unavailable for Complainants' higher-queued Projects. Complainants claim that this action violates PSCo's Open Access Transmission Tariff (Tariff) and the Commission's open access policies (Claim No. 1). Complainants also allege that PSCo violated its Tariff and Business Practice Manuals by failing to specify study assumptions to be used in the Projects' provisional interconnection studies (Claim No. 2).[3]

[1] 16 U.S.C. §§ 824e, 825e.

[2] 18 C.F.R. § 385.206 (2024).

[3] Complaint at 1-6, 18-20, 36.

2. Complainants request that the Commission direct PSCo to conduct the Projects' provisional interconnection studies "on the basis of proper study assumptions."[4] Complainants further request that the Commission direct PSCo to provide "detailed information regarding the study assumptions" used to conduct the Projects' provisional interconnection studies.[5] In this order, we deny the Complaint, as discussed below.

I. Background

A. Relevant Tariff Provisions

3. PSCo, a wholly owned subsidiary of Xcel Energy, Inc., is a public utility engaged in the generation, transmission, and distribution of electric power and energy in Colorado.[6] Pursuant to PSCo's Large Generator Interconnection Procedures (LGIP), PSCo studies generator interconnection requests in clusters. PSCo's generator interconnection study process consists of a Definitive Interconnection System Impact Study (DISIS) Cluster, divided into several phases, that is followed by individual interconnection facilities studies.[7] To be included in a DISIS Cluster, interconnection customers must submit an interconnection request within an annual 45-day DISIS request window.[8]

4. PSCo's LGIP also allows a Resource Planning Entity—i.e., "any entity required to develop a Resource Plan or conduct a Resource Solicitation Process"—to initiate a Resource Solicitation Cluster,[9] which is a cluster study that is separate from the clusters

[4] *Id.* at 34.

[5] *Id.*

[6] *Id.* at 8.

[7] PSCo, Transmission and Service Agreements Tariff, attach. N (Standard Large Generator Interconnection Procedures) (0.10.1) § 7.4 Definitive Interconnection System Impact Study Procedures. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

[8] *Id.* § 4.2.1 (Initiation of a Definitive Interconnection System Impact Study Cluster).

[9] *Id.* § 1 (Definitions). The terms "Resource Plan" and "Resource Solicitation Process," in turn, are defined as "any process authorized or required by Applicable Laws and Regulations for, *inter alia*, the selection of Generating Facilities" and "any process authorized or required by Applicable Laws and Regulations for the acquisition of Network Resources," respectively. *Id.*

initiated during DISIS request windows. A Resource Planning Entity may request that PSCo initiate a Resource Solicitation Cluster at any time. Resource Solicitation Clusters, however, are studied in accordance with their relative queue position (i.e., are studied based on having a higher or lower queue position than other clusters).[10]

5. PSCo's LGIP also provides an option for provisional interconnection service,[11] which allows limited operation of a generating facility prior to completion of the full interconnection study process.[12] An interconnection customer may request that PSCo perform a provisional interconnection study at any time. After PSCo receives a completed request for provisional interconnection service and conducts an initial scoping meeting, PSCo is required to provide to the interconnection customer a provisional interconnection study agreement, which: (1) includes the scope of work for the study; (2) specifies the technical data that interconnection customer must provide; (3) specifies the study case and assumptions; and (4) identifies an estimate of the study's cost.[13] The provisional interconnection study will then identify the potential interconnection facilities and network upgrades, as well as the estimated cost thereof, that may be required to provide the provisional interconnection service.[14]

6. PSCo's Tariff includes a methodology for calculating PSCo's available transfer capability (ATC), which is defined as a "measure of the capability remaining in the transmission network for further commercial activity over and above already committed uses."[15] PSCo calculates ATC by, in part, subtracting existing transmission commitments (i.e., the committed uses of a transmission provider's transmission system) from total transfer capability (i.e., the amount of power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way

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[10] *Id.* § 4.2.2 (Initiation of a Resource Solicitation Cluster).

[11] *See generally id.* §§ 6.4 (Provisional Interconnection Request and Study Agreement), 6.5 (Scope of Provisional Interconnection Study, 6.6 Provisional Interconnection Study Procedures).

[12] *See Reform of Generator Interconnection Procedures & Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 5 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

[13] PSCo, Transmission and Service Agreements Tariff, attach. N (0.10.1), § 6.4 (Provisional Interconnection Request and Study Agreement).

[14] *Id.* § 6.5 (Scope of Provisional Interconnection Study).

[15] *Id.*, attach. C (Methodology to Assess Available Transfer Capability) (0.2.0) § 1(a) (Definitions).

of all paths between those areas under specified system conditions).[16] PSCo's calculation of existing transmission commitments includes, among other inputs, the "firm capacity set aside for Native Load forecast commitments" for the relevant time period (including losses) and "Native Load growth" (not otherwise included in the transmission reliability margin or capacity benefit margin components of the ATC calculation).[17] Elsewhere, the Tariff defines the term "Native Load Customers" as PSCo's wholesale and retail power customers on whose behalf PSCo, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet the reliable electric needs of such customers.[18]

7. As relevant to this proceeding, section 28.2 of the Tariff requires PSCo, on behalf of its native load customers, to "designate resources and loads in the same manner" as any network customer, and "[t]his information must be consistent with the information used by [PSCo] to calculate [ATC]."[19] Sections 30.1 and 30.2 of the Tariff set forth the requirements for designating network resources.[20]

B. Relevant Colorado State Proceedings

8. In 2019, Colorado enacted a statute directing certain qualifying utilities in the state to reduce carbon dioxide emissions associated with electricity sales by 80% from 2005 levels by 2030 and to seek to achieve the goal of providing its customers with energy generated from 100% clean energy resources by 2050, or sooner if practicable. The statute also required such utilities to submit, as part of their next electric resource plan to be filed with the Colorado Public Utilities Commission (Colorado Commission), a clean energy plan that will achieve the 2030 clean energy target and make progress toward the 100% clean energy goal.[21]

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[16] *Id.*

[17] *Id.* § 1(b) (Mathematical Algorithms Used to Calculate ATC).

[18] *Id.*, pt. I, § 1 (Definitions) (0.3.0).

[19] *Id.*, pt. III, § 28 (Nature of Network Integration Transmission Service) (0.4.0), § 28.2 (Transmission Provider Responsibilities).

[20] *Id.*, pt. III § 30 (Network Resources) (0.2.0), §§ 30.1 (Designation of Network Resources), 30.2 (Designation of New Network Resources).

[21] *See* Colo. Rev. Stat. § 40-2-125.5(3), (4). An electric resource plan refers to the process by which electric utilities in Colorado determine the need for additional resources and develop cost-effective resource portfolios to meet that need reliably. 4 Colo. Code Regs. § 723-3:3601; *see id.* § 723-3:3604. Electric resource plans consist of two phases.

9. On March 2, 2021, PSCo filed an application for a certificate of public convenience and necessity with the Colorado Commission, seeking approval to construct the Colorado Power Pathway transmission project (Power Pathway). The Power Pathway consists of approximately 560 miles of new 345 kV transmission lines, divided into five segments, as well as the expansion or construction of several substations, to connect the Front Range region of Colorado to areas rich in solar and wind potential in eastern Colorado.[22] In support of its application, PSCo explained that because eastern Colorado currently has limited available transmission, generation project developers would need to develop long, costly, and unreliable radial or generation-tie lines to interconnect renewable resources in these areas to the existing transmission network. PSCo asserted that the Power Pathway will therefore serve as a transmission backbone that will unlock the clean energy resources in eastern Colorado, without which PSCo will be unable to integrate the significant amount of new resources needed to meet its statutory emission reduction requirement by 2030.[23] Additionally, PSCo explained that it was proposing the Power Pathway in advance of its next electric resource plan (2021 Electric Resource Plan) to allow bidders to propose to interconnect to the Power Pathway during the Phase

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In Phase I, the Colorado Commission reviews the utility's plan to procure additional generation resources to meet its identified needs. In Phase II, the utility implements a competitive solicitation process whereby it issues a request for proposals, receives competitive bids and utility-owned proposals, and files a report within 120 days after the bids are received (120-Day Report) presenting the utility's preferred resource portfolio (Phase II competitive solicitation). At the end of Phase II, the Colorado Commission issues a final decision approving, conditioning, modifying, or rejecting the utility's preferred portfolio. The utility subsequently seeks to acquire those resources through contract negotiations or with applications for certificates of public convenience and necessity. *See In the Matter of the Application of Public Service Company of Colorado for Approval of its 2021 Electric Resource Plan and Clean Energy Plan*, Proceeding No. 21A-0141E, at PP 10-15 (Colorado Commission Jan. 23, 2024) (Phase II Decision); *see generally* 4 Colo. Code Regs. §§ 723-3:3611, 3613, 3616, 3617.

[22] *In the Matter of the Application of Public Service Company of Colorado for a Certificate of Public Convenience and Necessity for Colorado's Power Pathway 345 kV Transmission Project and Associated Findings Regarding Noise and Magnetic Field Reasonableness*, Proceeding No. 21A-0096E, at PP 1-2, 13 (Colorado Commission June 2, 2022) (Power Pathway Decision).

[23] *Id.* P 17.

II competitive solicitation.[24] PSCo explained that it intends to bring the Power Pathway online in three stages between 2025 and 2027.[25]

10. On March 31, 2021, PSCo filed with the Colorado Commission its 2021 Electric Resource Plan, including a clean energy plan, to comply with Colorado's emissions reduction law. PSCo proposed the retirement of several coal-fired generating facilities between 2027 and 2031 and the acquisition of substantial replacement generation.[26] PSCo also forecasted its native peak demand to grow at a compounded annual rate of 0.3% through 2030.[27]

11. On June 2, 2022, the Colorado Commission granted PSCo a certificate of public convenience and necessity for the Power Pathway.[28] The Colorado Commission found that, without the additional capacity provided by the Power Pathway, PSCo will be unable to interconnect the quantity of renewable resources it requires to decarbonize its generation fleet in accordance with Colorado's statutory mandate.[29] The Colorado Commission further explained that waiting to approve the Power Pathway until after it approved the development or acquisition of new renewable generation would threaten the timely completion of the necessary transmission.[30] The Colorado Commission also observed that although PSCo's preferred resource portfolio in its 2021 Electric Resource Plan would leave some unused capacity on the Power Pathway, it was nonetheless convinced that the Power Pathway will be fully utilized in the near future as PSCo and

[24] *Id.* P 21.

[25] *Id.* P 19.

[26] *See In the Matter of the Application of Public Service Company of Colorado for Approval of its 2021 Electric Resource Plan and Clean Energy Plan*, Proceeding No. 21A-0141E, at PP 1-2, 49-51 (Colorado Commission Aug. 3, 2022) (Phase I Decision).

[27] *Id.* P 168.

[28] Power Pathway Decision at P 1.

[29] *Id.* P 57 ("More specifically, we are persuaded . . . that without the proposed transmission backbone in Eastern Colorado allowing for access to solar and wind resources . . . , it is very unlikely that [PSCo] will be able to meet the 80 percent emissions reduction target by 2030 and its projected 2030 peak summer load.").

[30] *Id.*

other utilities take further steps towards emission reduction goals and to meet other initiatives.[31]

12. On August 3, 2022, the Colorado Commission issued its Phase I Decision approving, with modifications, PSCo's 2021 Electric Resource Plan. The Colorado Commission authorized PSCo to commence an all-source, competitive bidding process to acquire new generation resources to meet its projected resource needs through 2028 and advance its clean energy plan.[32] The Colorado Commission also approved the timing of two subsequent resource acquisition processes: one beginning in 2024, and the next by October 2026.[33]

13. On September 18, 2023, PSCo filed its 120-Day Report with the Colorado Commission, proposing various resource portfolios for consideration.[34] In the 120-Day Report, PSCo included its preferred resource portfolio, which called for acquiring approximately 7,200 MW of additional wind, solar, storage, biomass, and gas generation resources.[35]

14. On January 23, 2024, the Colorado Commission issued its Phase II Decision modifying PSCo's proposal by selecting one of PSCo's alternative proposed resource portfolios. The Colorado Commission found that the alternative portfolio, which contains 1,338 MW lower resource additions than PSCo's preferred portfolio (5,854 MW rather than 7,192 MW),[36] will reduce costs to customers, considering factors such as the cost of renewable generation curtailments.[37] The Colorado Commission explained that

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[31] *Id.* P 58.

[32] Phase I Decision at PP 1, 4, 518

[33] *See id.* PP 88-89, 97, 437-39.

[34] *See* Phase II Decision at PP 2, 40.

[35] *See id.* P 92.

[36] Compared to PSCo's preferred portfolio, the alternative portfolio has 19 MW fewer biomass resources, 350 MW fewer solar resources, and 1,706 MW fewer wind resources, but 41 MW more gas resources and 678 MW more storage resources. *Id.*

[37] *See id.* PP 4, 92, 105-107. The Colorado Commission explained that PSCo's preferred portfolio proposed the interconnection of vast amounts of new renewable generation years before most of the associated transmission upgrades can be constructed. *Id.* P 105.

the alternative portfolio instead defers some of the proposed generation for future resource acquisitions.[38]

II. Complaint

A. Complainants' Provisional Interconnection Requests

15. Complainants are two Invenergy affiliates who are developing the Projects at issue in this proceeding. The Projects are: (1) the 200 MW Southern Star Solar project; (2) the 100 MW Southern Star Storage project; and (3) the 200 MW Towner III wind project. Complainants seek to interconnect the Projects to PSCo's transmission system.[39]

16. Complainants state that, on February 17, 2023, CORE Electric Cooperative (CORE), a load-serving entity in Colorado, submitted a request to initiate a Resource Solicitation Cluster, composed of the Projects, in PSCo's interconnection queue (CORE Resource Solicitation Cluster). Complainants state that PSCo assigned the CORE Resource Solicitation Cluster a queue position date of May 19, 2023. According to Complainants, PSCo has been CORE's wholesale electricity supplier since 1992, but that arrangement will terminate at the end of 2025, at which time CORE plans to continue taking Network Integration Transmission Service (network service) from PSCo pursuant to rollover rights provided under PSCo's Tariff. Complainants state that CORE will replace power previously sourced from PSCo with power purchased from, among other sources, the Projects. Complainants assert that the Projects are contracted to supply CORE with energy to serve its load beginning in 2026.[40]

17. Complainants state that, on August 28, 2023, Complainants submitted requests for PSCo to study the Projects for provisional interconnection service while the CORE Resource Solicitation Cluster remained pending in PSCo's interconnection queue, with a proposed commercial operation date of December 31, 2025. Complainants represent that provisional interconnection service will afford the Projects an opportunity to interconnect on an expedited timeline and begin serving CORE's load on a provisional basis by the end of 2025.[41]

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[38] *See id.* PP 5, 132, 136, 142, 267.

[39] Complaint at 2, 7-8.

[40] *Id.* at 2, 8-9. Complainants state that, on October 10, 2023, CORE submitted a network service request to PSCo seeking to use its rollover rights to transmission service. *Id.* at 15.

[41] *Id.* at 2, 7-10.

18. Complainants state that PSCo tendered provisional interconnection study agreements to Complainants on September 14, 2023. The initial drafts of the provisional interconnection study agreements included a list of study assumptions to be used in conducting the provisional interconnection studies, including an assumption that native load priority will "be modeled as Firm Transmission Service on Colorado's Power Pathway with associated preliminary Network Upgrades as placeholders."[42] Complainants allege that, when asked to explain what was included in the native load priority, PSCo did not answer and subsequently removed the reference to native load priority from the provisional interconnection study agreements.[43] Complainants claim that PSCo explained the removal by stating that the reference was "superfluous" because native load priority is defined in Order Nos. 888 and 890 and included as a firm existing transmission commitment. According to Complainants, PSCo further explained that, in the study assumptions, it would model certain segments of the Power Pathway as being in-service and would also model generation reasonably forecasted to be in-service and serving PSCo's native load, during the time periods studied, to reflect PSCo's native load priority.[44] Complainants state that they requested more information from PSCo regarding the study assumptions, but had no choice but to execute the provisional interconnection study agreements under protest because provisional interconnection service is their only option for the Projects to achieve interconnection by their requested commercial operation date.[45]

19. Complainants assert that, on December 21, 2023, PSCo provided Complainants a list of the study assumptions for the Projects' provisional interconnection studies, including an explanation of how PSCo would calculate and apply ATC in the studies and a list of higher queued generators that would be included in the studies' base cases. PSCo explained that, through its calculation of ATC, it will grant its native load a priority to firm capacity on existing transmission elements, as well as certain transmission

[42] *Id.* at 11; *see id.*, Ex. C (Draft Provisional Interconnection Study Agreement) at 5, 10, 15.

[43] Complaint at 11-12.

[44] *Id.*; *see id.*, Exs. A (Final Provisional Interconnection Study Agreements), D (Emails re: Provisional Interconnection Study Agreements). As noted above, the Power Pathway is divided into five segments. Complainants represent that two such segments are expected to be in service by 2025. Complaint at 12 n.31.

[45] Complaint at 12-13; *see id.* Ex. A (Final Provisional Interconnection Study Agreements).

elements under development, including the Power Pathway.[46] PSCo added that, while generation pending in PSCo's 2021 Electric Resource Plan "is not reflected as queued generation in interconnection studies at this time," priority to firm capacity on PSCo's transmission system for deliverability of these "future network resources" are reflected in the native load forecast component of its ATC calculation.[47] According to Complainants, these study assumptions confirm PSCo's intent to prioritize its own generation by reserving transmission capacity for PSCo's own projects, irrespective of where or whether they are queued, essentially setting aside transmission capacity that would otherwise be available to interconnection customers.[48]

20. Complainants note that the study assumptions provided by PSCo do not identify the amount of transmission capacity being set aside for its native load or the specific resources selected in PSCo's 2021 Electric Resource Plan that will be entitled to that capacity. According to Complainants, as of the date of the Complaint, PSCo also had not designated any new "native load" resources that will use the Power Pathway.[49]

B. Complainants' Claims

21. As discussed further below,[50] Complainants generally raise two claims. In Claim No. 1, Complainants allege that PSCo is conducting the Projects' provisional interconnection studies in violation of the Tariff and the Commission's open access policies. Complainants assert that PSCo is allowing its own resources to jump ahead of Complainants' higher-queued Projects by setting aside firm transmission capacity on the Power Pathway for its lower or unqueued generation. Complainants contend that this practice violates a fundamental interconnection rule that interconnection customers have

[46] Complaint at 3, 13-14; *id.* Ex. F (Invenergy Provisional and CORE RSC Generator Dispatch Study Assumptions).

[47] Complaint, Ex. F (Invenergy Provisional and CORE RSC Generator Dispatch Study Assumptions).

[48] Complaint at 13-14.

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

[50] *See infra* section IV.B.

access to available transmission capacity on a first-come, first-served basis according to queue date.[51]

22. Further, Complainants contend that, although the Commission's native load priority policy allows a transmission provider to reserve transmission capacity needed to serve its own native load, PSCo cannot rely on that policy to reserve transmission capacity on the Power Pathway for its future generation resources. Complainants assert that PSCo cannot exercise native load priority under these circumstances because PSCo has neither demonstrated that the reserved capacity is needed to serve reasonably forecasted native load growth, nor designated the network resources that will use the reserved capacity to serve its native load. In Complainants' view, PSCo's conduct is anticompetitive because it seeks to give preferential treatment to its own generation, to the determinant of competitors.[52]

23. Complainants request that the Commission therefore direct PSCo to re-conduct the Projects' provisional interconnection studies "on the basis of proper study assumptions," in accordance with Commission policy and the Tariff.[53] Specifically, Complainants request that the study assumptions exclude: (1) any generation resources that are lower-queued than the Projects or unqueued altogether; (2) any unreserved firm transmission service commitments or firm transmission service commitments associated with generation resources lower-queued than the Projects; and (3) any other assumptions that would effectively set aside available transmission capacity for PSCo's future generation resources, purchases, or native load priority.[54]

24. In Claim No. 2, Complainants allege that PSCo violated section 6.4 of the Tariff by failing to specify in the Complainants' study agreements the assumptions to be used in the Projects' provisional interconnection studies. According to Complainants, PSCo omitted critical details about the amount of Power Pathway capacity that PSCo is setting

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[51] Complaint at 4, 17-18 (citing *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at P 35 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, at P 541, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

[52] *Id.* at 4-6.

[53] *Id.* at 34.

[54] *Id.*

aside under its native load priority and the specific generation resources for which PSCo is reserving such capacity.[55]

25. Complainants request that the Commission therefore direct PSCo to provide detailed information regarding the study assumptions used in the Projects' provisional interconnection studies. Specifically, Complainants assert that PSCo should provide: (1) the type, size, and location of any not-yet-in-service generation resources; and (2) all transmission service reservations or any other quantity of transmission capacity modeled, reserved, and dispatched in the study cases.[56]

III. Notice of Filing and Responsive Pleadings

26. Notice of the Complaint was published in the *Federal Register*, 89 Fed. Reg. 369 (Jan. 3, 2024), with interventions and protests due on or before January 11, 2024. On December 27, 2023, Xcel Energy Services Inc. (Xcel), on behalf of PSCo, filed a motion for an extension of time to file an answer to the Complaint. On January 3, 2024, the Commission issued a notice of extension of time to file an answer and comments on the Complaint to and including January 18, 2024. Clearway Energy Group LLC, Elevate Renewables F7, LLC, and Edison Electric Institute filed timely motions to intervene, and the Colorado Commission filed a notice of intervention. CORE filed a timely motion to intervene and comments in support of the Complaint (CORE Comments). Xcel, on behalf of PSCo, filed an answer to the Complaint and a motion to dismiss (PSCo January 18 Answer).

27. On February 2, 2024, Xcel, on behalf of PSCo, filed an answer to the CORE Comments (PSCo February 2 Answer), and CORE and Complainants filed answers to the PSCo January 18 Answer (CORE February 2 Answer and Complainants February 2 Answer, respectively). On February 16, 2024, Complainants filed an answer to the PSCo February 2 Answer (Complainants February 16 Answer), and the Colorado Commission filed out-of-time comments (Colorado Commission Comments). On February 20, 2024, PSCo filed an answer to the Complainants February 2 Answer and Complainants February 16 Answer (PSCo February 20 Answer). On February 27, 2024, Complainants filed an answer to the Colorado Commission Comments and the PSCo February 20 Answer (Complainants February 27 Answer). On February 28, 2024, CORE filed an answer to the PSCo February 20 Answer (CORE February 28 Answer). On March 15, 2024, Xcel, on behalf of PSCo, filed an answer to the Complainants February 27 Answer and the CORE February 28 Answer (PSCo March 15 Answer).

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

[56] *Id.* at 34.

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Complainants', PSCo's, and CORE's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

30. We deny the Complaint, as discussed below. As an initial matter, we find that the Complaint is ripe for resolution. However, we find that Complainants have not met their burden under FPA section 206 to demonstrate that PSCo's conduct violates the Tariff or Commission policy.

1. Ripeness

a. Complaint

31. Complainants assert that the Complaint is timely and that the Commission should not wait until the Projects' provisional interconnection study results are published to rule on the merits, because PSCo has already acknowledged that it intends to reserve transmission capacity for future generation resources to serve PSCo's native load.[57] Complainants assert that they therefore have every reason to believe that: (1) the Projects will be assigned significant network upgrades and required to post substantial financial security to execute provisional large generator interconnection agreements (LGIA); and (2) significant network upgrades will likewise be identified for the CORE Resource Solicitation Cluster. In Complainants' view, although they will contest the study results for those reasons, they should not have to pay financial security for these potentially significant and unwarranted network upgrades in the meantime.[58]

b. CORE Comments

32. CORE asserts that the Commission should grant Complainants' requested relief to prevent PSCo from discriminating against Complainants and giving preferential

[57] *Id.* at 33.

[58] *Id.* at 33-34.

treatment to its own resources.[59] CORE contends that PSCo's conduct will harm CORE by forcing the Projects to finance the cost of network upgrades that should otherwise be assigned to lower-queued resources that seek to use the Power Pathway. Additionally, CORE argues that if the Projects are assigned new network upgrades, the Projects' final interconnection studies will be delayed, forcing them to rely on inferior provisional interconnection service until the network upgrades are complete. CORE posits that it may also be required to find alternative resources on short notice, which would burden its customers.[60]

c. PSCo January 18 Answer

33. PSCo asserts that the Commission should dismiss the Complaint as unripe because the Projects' provisional interconnection studies had yet to be completed. In support of its argument, PSCo cites *CSolar IV South, LLC v. CAISO*, in which the Commission dismissed as unripe a complaint alleging that the California Independent System Operator Corporation (CAISO) unjustly and unreasonably interpreted its tariff in a manner that would allow it to terminate incomplete but progressing interconnection requests if they made material modifications or downsized.[61] According to PSCo, the Commission dismissed the complaint as "speculative" because CAISO had "taken no affirmative steps to terminate [the relevant] interconnection request" and committed to using termination as a "last resort compelled by specific factual circumstances."[62]

34. PSCo argues that the Commission should take a similar approach in this proceeding because Complainants ask the Commission to find with certainty that a future action will yield an unjust or unreasonable result without knowing the results of the Projects' provisional interconnection studies. PSCo argues that Complainants cannot claim that the studies violate the Tariff or improperly reflect PSCo's native load priority on the Power Pathway until the studies at issue are completed.[63]

35. PSCo further contends that the Commission should not interject itself into a dispute before the Commission-approved process has run its course. PSCo notes that, in *Lynch v. ISO New England, Inc.*, for example, the Commission dismissed a petition for

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[59] CORE Comments at 1.

[60] *Id.* at 8-10.

[61] PSCo January 18 Answer at 23 (citing *CSolar IV S., LLC v. Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,250, at PP 8-9 (2013) (*CSOLAR*)).

[62] *Id.* at 23-24 (quoting *CSOLAR*, 142 FERC ¶ 61,250 at PP 43, 47).

[63] *Id.* at 24.

declaratory order, finding that the requested relief "would inappropriately circumvent" established procedures and that the proper remedy was to "object to the final outcome of those procedures."[64] PSCo asserts that the Complaint here similarly seeks to improperly circumvent PSCo's interconnection procedures and that Complainants' proper remedy is to review and then address the final outcome of those interconnection procedures.[65]

36. PSCo argues that endorsing Complainants' position would disrupt an already backlogged interconnection process that depends on the timely completion of studies, because it would encourage interconnection customers to file complaints over potential interconnection upgrades, based on speculative fears of adverse results, while those studies are still ongoing. In PSCo's view, this outcome would subject every interconnection study to a risk of pre-emptive litigation and would place the Commission in the position of addressing challenges without knowing the relevant facts.[66]

d. CORE February 2 Answer

37. CORE argues that PSCo's motion to dismiss should be denied because there is substantial evidence that PSCo is violating its Tariff.[67] According to CORE, a Tariff violation is grounds to grant the Complaint even if the harm from the Tariff violation is not complete. CORE contends that the Tariff violation and current harm stem from PSCo's admission that it is giving its own yet-to-be-queued resources priority over the higher-queued Projects.[68]

38. Specifically, CORE argues that PSCo is attempting to accomplish a shift in its own resource mix to incorporate more renewable resources using the Power Pathway at the expense of higher-queued generators that must rely on the Power Pathway's capacity to serve load. CORE argues that PSCo is not allowed to reserve transmission capacity for native load solely because it seeks to change its own resource mix. Further, according to CORE, PSCo incorrectly presumes that the only harm that can be caused by its violation

[64] *Id.* at 24-25 (quoting *Lynch v. ISO New England, Inc.*, 107 FERC ¶ 61,242, at P 15 (2004) (*Lynch*)).

[65] *Id.* at 25.

[66] *Id.* at 25-26.

[67] CORE February 2 Answer at 3.

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

is harm that results from a denial of transmission capacity, when in fact the harm is caused by PSCo prioritizing its own unqueued resources over the queued Projects.[69]

39. Thus, according to CORE, Complainants have shown that a Tariff violation has occurred, and continues to occur, and that CORE is harmed by the violation. In CORE's view, this is not a contingent future event, but rather a current violation of the Tariff, the underlying facts of which PSCo admits.[70]

40. Moreover, CORE argues that PSCo's Tariff violation is causing current harm to CORE and can be remedied before any further harm occurs. According to CORE, the uncertainty in the interconnection process has led to concerns about the availability of sufficient generation for CORE to serve its load starting January 1, 2026. CORE asserts that, in the near future, CORE may have to secure replacement resources to bridge the gap, which is costly both in terms of power supply prices and the redeployment of CORE's staff to negotiate power agreements.[71]

41. Finally, CORE asserts that, even if harm were only a possibility, the Commission has broad authority under the FPA to remedy anti-competitive practices that pose a theoretical threat to just and reasonable rates.[72] In CORE's view, PSCo's Tariff violation is anti-competitive because it interferes with CORE's load-serving obligations and efforts to meet clean energy goals in a reliable and cost-efficient manner.[73]

e. Complainants February 2 Answer

42. Complainants similarly argue that the Complaint is ripe because PSCo is currently violating its Tariff. As Complainants see it, PSCo's ripeness argument is undermined by PSCo's own proffered study assumptions and by its admissions in this proceeding that it is currently setting aside transmission capacity for its own, unqueued generation. Complainants note that, specifically, PSCo admits that its study assumptions reserve capacity on the Power Pathway for resources intended to serve PSCo's native load irrespective of the fact that those resources are not in the interconnection queue. According to Complainants, PSCo even concedes that it is reserving some portion of the

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

[70] *Id.* at 5-7.

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

[72] *Id.* at 12 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F. 3d 41, 56-69 (D.C. Cir. 2014)).

[73] *Id.* at 12-15.

Power Pathway's capacity for resources that will be selected in subsequent resource solicitations. Complainants therefore argue that, by PSCo's own admission, PSCo is prioritizing its own unqueued resources in the Projects' study assumptions. Complainants contend that the Commission is not required to refrain from acting on a complaint until after a transmission owner finishes violating its tariff. Rather, Complainants argue, complaints are only unripe if the alleged violation has not yet occurred.[74]

43. Further, Complainants contend that PSCo's unlawful study assumptions harm both Complainants and CORE by imposing an undue delay on the Projects' interconnections. According to Complainants, they will have to wait to receive what they have proven will be an inaccurate and unlawful study, which will thereafter require restudy, delaying the Projects' interconnection. Complainants contend that requiring them to wait to file a new complaint until after the provisional interconnection studies are complete may make it impossible for Complainants to receive even provisional service before CORE exits its supply arrangement with PSCo. According to Complainants, CORE needs to know the status now so that it can properly plan to serve its load. Complainants argue that PSCo's attempt to delay Commission action would also cascade down to the interconnection study of the CORE Resource Solicitation Cluster and, ultimately, delay the Projects' commercial operation. Complainants assert that PSCo is violating Tariff provisions that were expressly intended to prevent transmission providers like PSCo from using their monopoly power to frustrate and delay interconnection customers in their attempts to interconnect.[75]

f. Colorado Commission Comments

44. The Colorado Commission agrees with PSCo that the Complaint is speculative and should therefore be dismissed as unripe. The Colorado Commission contends that Complainants do not meet their burden of proof under the FPA because they merely assert that the outcome of PSCo's studies *may* be anti-competitive or unduly discriminatory. The Colorado Commission maintains that the facts upon which the Complaint is premised are necessarily in flux because they are contingent on the outcome of ongoing interconnection studies.[76]

45. The Colorado Commission asserts that the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) applies a similar prudential ripeness doctrine when determining whether to review speculative claims such as the ones presented here.

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[74] Complainants February 2 Answer at 10-11.

[75] *Id.* at 12-13.

[76] Colorado Commission Comments at 3-5.

The Colorado Commission states that the D.C. Circuit has invoked this ripeness doctrine to postpone review of a claim that lacked a proper evidentiary record for the court to evaluate the nature—or indeed the existence—of a conceivable injury.[77] The Colorado Commission argues that such is the case here because Complainants are asking the Commission to intercede in an ongoing process based on an inchoate threat of harm.[78]

g. PSCo February 20 Answer

46. PSCo responds that although it cannot say for certain how native load priority on the Power Pathway will affect Complainants' study results until it completes the provisional interconnection studies, Complainants' claim of harm does not add up on its face because (1) PSCo is asserting native load priority to only 4,050 MW, (2) the expected capacity of the Power Pathway is 5,500 MW, and (3) the total capacity of the three Projects is only 500 MW. Further, PSCo asserts that, in *Cargill v. NV Energy, Inc.*, the Commission stated that if transmission customers object to the amount of transmission capacity that the transmission provider seeks to reserve through a native load priority claim, the transmission provider must justify that amount when it files the transmission service agreements. Comparably, PSCo contends, its obligation to justify its native load priority will attach if Complainants object to PSCo's proposed interconnection terms, which will not be available until it completes the studies.[79]

47. PSCo also argues that Complainants have offered no evidence that any delays, let alone undue ones, will necessarily result from PSCo's use of native load priority. In PSCo's view, the alleged delays are speculative because Complainants assume that PSCo will have to perform restudies due to allegedly erroneous native load priority assumptions.[80]

h. Complainants February 27 Answer

48. In response, Complainants assert that the Commission can remedy unjust, unreasonable, and unduly discriminatory practices before the harm occurs, let alone while the harm is occurring. Otherwise, Complainants contend, transmission owners would

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[77] *Id.* at 5 (citing *Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 60-61 (D.C. Cir. 2002)).

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

[79] PSCo February 20 Answer at 9-10 (citing *Sierra Pac. Power Co.*, 143 FERC ¶ 61,144, at P 115 (2013) (*Sierra Pacific*)).

[80] *Id.* at 11.

have significant incentives to violate their tariffs in any circumstance in which delay, itself, provided its own benefits.[81]

49. Complainants assert that PSCo is also wrong that Complainants suffer no harm from PSCo's unlawful conduct. Complainants argue that any study issued by PSCo that relies on incorrect study assumptions will, by definition, be inaccurate and require restudy, costing Complainants and CORE critical time, resources, and money. In Complainants' view, delay serves only to benefit PSCo by forcing CORE to continue to procure supply from PSCo until the Projects can finally interconnect. Complainants argue that the Projects are also unfairly impacted by any unqueued generation modeled ahead of them in the queue.[82]

i. Determination

50. Under FPA section 206, a complainant has the "burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential."[83] The Commission has found that a complainant does not meet this burden of proof if the complaint fails to present a "ripe controversy."[84] We find that the Complaint presents a ripe controversy and thus deny PSCo's motion to dismiss the Complaint as unripe.

51. Complainants do not dispute that the Projects' provisional interconnection studies were still pending when they filed the Complaint. Complainants, however, have submitted supporting evidence with the Complaint showing that PSCo explicitly informed Complainants that it would, in fact, reserve transmission capacity on the Power Pathway for resources it planned to acquire, in the future, to serve its native load. Specifically, several weeks after tendering the Projects' provisional interconnection study agreements, PSCo notified Complainants that it would set aside this capacity, through its calculation of ATC in the studies' base case, pursuant to PSCo's native load priority.[85] Further, in its own pleadings in this proceeding, PSCo repeatedly states that it will reflect native load priority in the Projects' studies by reserving transmission capacity over the Power Pathway for resources that PSCo anticipates acquiring through its current and

[81] Complainants February 27 Answer at 4-5.

[82] *Id.* at 5-6.

[83] 16 U.S.C. § 824e(b).

[84] *Mich. Elec. Transmission Co., LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,025, at P 16 (2016).

[85] *See* Complaint, Exs. D, F.

upcoming electric resource plans.[86] Accordingly, based on PSCo's own representations, the record provides a sufficient basis on which the Commission can address Complainants' claim that PSCo is improperly exercising its native load priority over the Power Pathway.[87]

52. To the extent that PSCo and the Colorado Commission assert that the Complaint is unripe because Complainants fail to prove that they have suffered actual harm as a result of PSCo's native load priority reservation, we disagree. The question of whether a complainant has demonstrated a particular harm, if any, relates only to the proper remedy for the alleged violation.[88] As discussed further below, because we deny the Complaint on its merits, we need not reach the question whether Complainants have demonstrated any harm.

53. Further, contrary to PSCo's contention, the Commission's findings in *CSOLAR* are inapposite. In that case, the Commission found a complaint was not ripe for consideration because CAISO had not taken affirmative steps to terminate the complainants' interconnection request and/or LGIA but rather, to the contrary, had made "numerous commitments" to outline specific circumstances around which CAISO would *not* exercise the termination remedy and would view such a remedy as "an absolute last resort compelled by specific factual circumstances."[89] The Commission thus dismissed the complaint, finding that the claims were speculative and based on an "inchoate

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[86] *See, e.g.*, PSCo January 18 Answer, App. A at PP 26, 36, 37, 39, 40, 45, 50, 51, 64, 82, 84.

[87] Likewise, although not specifically addressed by the parties, we find that Claim No. 2 is also ripe for resolution, as it is based on actions that already occurred by the time the Complaint was filed. As noted above, Claim No. 2 alleges that PSCo violated its Tariff by failing to specify certain information in the Projects' provisional interconnection study agreements, which were tendered and executed several months before the Complaint was filed.

[88] *See Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250, at PP 114-115 (2012) (finding complaint ripe for resolution but setting for hearing and settlement judge procedure the "more difficult" issue of whether the complainants were *harmed* by the tariff violations) (emphasis added); *Cargill Power Mkts., LLC v. Pub. Serv. Co. of N.M.*, 132 FERC ¶ 61,079, at PP 24-25 (2010) (granting complaint but setting for hearing the issue of harm and remedy).

[89] *CSOLAR*, 142 FERC ¶ 61,250 at P 43; *see also id.* P 44 (noting that both the complainants and CAISO recognized that CAISO "may not unilaterally terminate an LGIA because Commission approval would be necessary for such termination to take effect").

threat."[90] The Complaint in this proceeding, by contrast, is not based on speculation or mere threats of future action. PSCo does not argue that its use of native load priority, reflected through its ATC calculation in the Projects' provisional interconnection studies, is contingent on the occurrence of some future, uncertain event. Instead, PSCo has affirmatively represented, both in correspondence with Complainants preceding the Complaint and in pleadings filed in this proceeding, that it will exercise native load priority over the Power Pathway in a manner that, Complainants claim, violates the Tariff and the Commission's open access requirements.

54. Similarly, contrary to PSCo's argument, we also find the factual circumstances in *Lynch* to be distinguishable from this case. There, the Commission dismissed as premature a petition for declaratory order concerning whether certain customers should share cost responsibility for a particular transmission line. The Commission reasoned that granting the petition would inappropriately "circumvent established procedures," given that the Commission-approved cost allocation review process had not yet "run its course."[91] In this case, however, PSCo does not dispute the basic facts on which the Complaint is premised. While the record does not disclose the results of PSCo's reservation of transmission capacity rights, the results are not necessary for resolution of the Complaint. Rather, it is the reservation itself, which PSCo unconditionally acknowledges will be reflected in the studies,[92] that provides the crux of the Complaint. Thus, under these circumstances, we find that the Complaint is ripe for consideration.

2. Claim No. 1

a. Complaint

55. Complainants allege that PSCo is violating its Tariff and the Commission's open access policies by performing the Projects' provisional interconnection studies in a manner that gives PSCo's own generation resources preferential access to the Power Pathway. Complainants assert that, under PSCo's LGIP, resources that have not yet submitted interconnection requests, or that have submitted interconnection requests but are lower-queued, are not included in the interconnection study for higher-queued

[90] *Id.* P 47 (internal quotation marks omitted).

[91] *Lynch*, 107 FERC ¶ 61,242 at P 15.

[92] *See, e.g.*, PSCo January 18 Answer, app. A at PP 36 (admitting that "PSCo will determine ATC when conducting the Provisional Interconnection Studies by considering generation reasonably forecasted to be in service and serving PSCo's native load to reflect PSCo's native load priority."), 84 (admitting that "PSCo is reserving transmission capacity on the [Power Pathway] to serve its native load and will reflect native load priority in its calculation of ATC.").

resources. Complainants contend that, likewise, access to available transmission capacity by transmission and interconnection customers is based on the date that service is requested.[93]

56. Complainants allege that PSCo has nonetheless stated that it will model in the Projects' base cases the unqueued generation resources that PSCo intends to use to serve its native load. Complainants argue that, in doing so, PSCo will not only needlessly limit capacity for the Projects' provisional interconnection service but will also force Complainants to pay for network upgrades that almost certainly would not be required if PSCo were to instead study the Projects according to queue date. Additionally, Complainants assert that, because execution of a provisional LGIA requires financial security equal to the estimated cost of the potential network upgrades, PSCo is likely to impose extraordinarily high financial security requirements for Complainants to execute the Projects' provisional LGIAs.[94]

57. Complainants further argue that PSCo's reliance on the Commission's native load priority policy does not cure its unlawful inclusion of lower- or unqueued resources in the Projects' study assumptions. Complainants note that to ensure that transmission owners do not favor their own generation, Order No. 888 requires that transmission owners provide transmission service to network customers on a comparable basis to the transmission service they provide themselves. Complainants contend that while the Commission recognized that transmission owners should be allowed to deliver electricity needed for their native load obligations, transmission owners do not have unfettered discretion to use the transmission system for native load to the detriment of other transmission customers. Complainants assert that instead, Order No. 888 established two processes for reserving capacity for native load uses, depending on whether it is needed for current or future native load obligations.[95]

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[93] Complaint at 20-21.

[94] *Id.* at 22-25.

[95] *Id.* at 25-26 (citing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at P 14, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,279 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*

58. Complainants contend that to reserve transmission capacity for current native load obligations, the transmission owner, like any other network service customer, must reserve capacity by designating the network resources intended to serve its native load.[96] Complainants note that PSCo's Tariff incorporates this designation requirement.[97] Complainants state that, for future native load obligations, Order No. 888 permits a transmission owner to reserve transmission capacity needed for native load growth reasonably forecasted within the utility's current planning horizon.[98] Complainants assert that to the extent the capacity is not needed to serve existing transmission commitments, the capacity must be released for sale, including capacity built for planned load growth for which load has not yet materialized. Complainants argue that the forecasted load growth need must also be posted on OASIS so that other network customers know what transmission capacity is available.[99]

59. Complainants allege that PSCo has not complied with any of these requirements because PSCo has not designated any network resources interconnecting to the Power Pathway to serve existing native load, nor has PSCo reserved transmission capacity to meet native load growth. Complainants allege that, according to PSCo's own forecast, its native load is projected to grow at a compounded annual rate of only 0.3% through 2030 (approximately 50 MW per year). Complainants additionally argue that the resource needs identified in PSCo's 120-Day Report are not for native load growth but rather are driven by its need to replace existing network resources with new, renewable generation. Complainants assert that compliance with state policy does not negate the Commission's native load priority rule.[100]

60. Finally, Complainants allege that PSCo has not justified its native load priority claim to the capacity on the Power Pathway. Complainants assert that while a transmission provider may be eligible to invoke native load priority, eligibility does not establish that the transmission provider has properly exercised that right or that the

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Transmission Access Pol'y Study Grp. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002)).

[96] *Id.* at 26 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,753-54).

[97] *Id.* at 27 (citing PSCo, Transmission and Service Agreements Tariff, pt. III, § 28 (0.4.0), § 28.2 Transmission Provider Responsibilities).

[98] *Id.* (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,694, 31,745; Order No. 890, 118 FERC ¶ 61,119 at P 107).

[99] *Id.* at 27-28.

[100] *Id.* at 28-30.

transmission provider has properly established the amount of capacity required to serve its native load needs. According to Complainants, PSCo has failed to properly exercise native load priority and failed to provide Complainants with any data to substantiate its native load priority claim, including the actual amount of transmission capacity that PSCo seeks to reserve for its own projects.[101]

b. PSCo January 18 Answer

61. In its answer to the complaint, PSCo argues that, in the event the Commission does not dismiss the Complaint as unripe, the Commission should find that Complainants have failed to show that PSCo's use of native load priority is unjust, unreasonable, unduly preferential, or inconsistent with PSCo's Tariff and Commission precedent. According to PSCo, it anticipates that it will need to procure nearly 4,000 MW of utility-scale renewable resources through its 2021 Electric Resource Plan to meet Colorado's carbon emission reduction goals while also accounting for anticipated native load growth. PSCo states that, in conjunction, it will also accelerate the retirement of, or reduce the maximum capacity factor for, four existing coal plants. PSCo states that these retirements are in areas that are not conducive to utility-scale renewable resources and thus, to procure the 4,000 MW of renewable resources, PSCo must tap into the renewable energy-rich Front Range, located east of Denver.[102]

62. PSCo asserts that, historically, Colorado utilities submit applications to the Colorado Commission to construct large transmission facilities after a resource acquisition process, pursuant to an electric resource plan approved by the Colorado Commission. PSCo asserts that the Front Range region, however, lacks the backbone transmission system required to integrate new clean energy resources into PSCo's system, and without guaranteed transmission access, PSCo foresaw little developer interest in the competitive resource acquisition solicitation process. PSCo argues that the Power Pathway thus supports Colorado's 2030 carbon emission reduction target by providing developers with an assurance of transmission availability during the Phase II competitive solicitation process in a timeframe that allows developers to take advantage of federal tax credits expiring at the end of 2025.[103]

63. PSCo states that it submitted its 2021 Electric Resource Plan shortly after proposing the Power Pathway and that it sequenced these submittals intentionally, because transmission facilities, which may be hundreds of miles long, take longer to construct than generation resources, so it is difficult—if not impossible—to have

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

[102] PSCo January 18 Answer at 7.

[103] *Id.* at 7-9.

transmission lines ready when new generation resources are ready, without proactive planning and development. According to PSCo, its 2021 Electric Resource Plan application explained that the Power Pathway represented a key component of achieving the desired resource mix necessary to meet Colorado's emission reduction goals, in large part because PSCo's existing transmission system was unable to reliably accommodate this level of additional renewable generation.[104]

64. PSCo states that, based on the new resources expected to be acquired through its electric resource plans, it announced on its OASIS notice board in March 2023 that it had reflected the Power Pathway in study models for transmission and interconnection service requests. According to PSCo, the OASIS announcement also stated that the Power Pathway is being built to enable PSCo's delivery of resources in its integrated resource planning and that the transfer capability on the Power Pathway is subject to PSCo's native load priority.[105]

65. PSCo asserts that its 2021 Electric Resource Plan relies on the Power Pathway to deliver the output of to-be-acquired resources to PSCo's native load. PSCo explains that the specific resources that PSCo will obtain are pending review by the Colorado Commission and that the remainder will be evaluated in two forthcoming resource solicitations, commencing in 2024 and 2026. PSCo states that it reasonably expects the Power Pathway to connect approximately 4,000 MW of renewable generation in the Front Range to PSCo's load and that the Colorado Commission expressly approved the Power Pathway on this predicate. According to PSCo, it cannot achieve its 2021 Electric Resource Plan or meet Colorado's carbon emission reduction mandate without its use of the Power Pathway.[106]

66. PSCo maintains that setting aside transmission capacity on the Power Pathway is consistent with the Commission's policy on native load priority for several reasons. First, PSCo argues that native load priority is used primarily for the reliability needs of native load customers, which is the fundamental reason for PSCo's reservation of the Power Pathway capacity. According to PSCo, the only way to accomplish its state-mandated emission reductions while still being able to reliably serve its load is to acquire new zero- and low-carbon generation resources. PSCo asserts that its native load priority reservation ensures that the Power Pathway will be available to deliver those resources.[107]

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[104] *Id.* at 9-11.

[105] *Id.* at 13.

[106] *Id.* at 15-16.

[107] *Id.* at 33-34.

67. Second, PSCo argues that applying native load priority to future transmission facilities, such as the Power Pathway, is permissible under Order No. 888-A, which provided that "the ability to reserve capacity to meet the reliability needs of a transmission provider's native load applies equally to present transmission and *transmission that is built in the future*."[108] PSCo notes that, as the Commission explained, each transmission provider "has a duty to plan and construct the transmission system to meet the present and future needs of its native load and, by comparability, its third-party network customers."[109]

68. Third, PSCo asserts that the use of native load priority is not limited only to overall increases in load. Instead, PSCo contends, native load priority ensures that the transmission capacity needed to deliver the resources acquired (and to be acquired) to serve native load is available. PSCo argues that, in *Arizona Public Service Co. v. Idaho Power Co.*,[110] for example, the Commission upheld Idaho Power's decision to set aside transmission capacity based on its expectation that it would need to replace the generation associated with exchange agreements that were due to expire, concluding that a transmission provider may plan to continue using capacity that involves network resource purchases that are due to expire.[111] PSCo argues that, as in *APS v. Idaho Power*, it does not matter that the resources PSCo will use in the future have not yet been identified. According to PSCo, this defeats Complainants' claim that the lack of properly-queued generation means that native load priority cannot be claimed for the affected transmission capacity.[112]

69. PSCo further argues that, as in *APS v. Idaho Power*, there is no question whether PSCo needs to replace a significant portion of its existing generation fleet and must set aside a portion of the Power Pathway to do so. PSCo asserts that, on a macro level, it must meet Colorado's emission mandates within the current planning horizon and, on a more resource-specific level, it must retire a total of 1,768.6 MW of baseload generation

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[108] *Id.* at 34 (quoting Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,180 (emphasis added)).

[109] *Id.* (quoting Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,220).

[110] *Ariz. Pub. Serv. Co. v. Idaho Power Co.*, 87 FERC ¶ 61,303 (*APS v. Idaho Power*), *order on reh'g*, 89 FERC ¶ 61,061 (1999) (APS Rehearing Order), *order granting clarification*, 91 FERC ¶ 61,059 (2000) (APS Clarification Order).

[111] PSCo January 18 Answer at 35-36 (citing *APS v. Idaho Power*, 89 FERC at 62,223-24).

[112] *Id.* at 36-37.

used by PSCo to serve its native load.[113] According to PSCo, the retirement of these resources cannot be replaced on a one-to-one basis with MW from renewable resources. PSCo asserts that the generation needed to replace the vast majority of the accredited capacity of these fossil fuel resources is much higher, and due to location constraints, cannot be simply replaced at the same location. PSCo states that the Power Pathway provides access to the locations where the replacement resources are expected to be located.[114]

70. PSCo contends that its plans to add generation resources to serve its native load and to use a portion of the Power Pathway's capacity are all publicly available and developed in accordance with state law. PSCo states that the specific inputs for the Projects' provisional interconnection studies will be provided to Complainants with the forthcoming study results, as required by the Tariff. PSCo nevertheless explains that the total expected capacity of the Power Pathway is approximately 5,500 MW, and in March 2023 PSCo reasonably anticipated needing 4,050 MW based on the modeling projections in its 2021 Electric Resource Plan. PSCo states that those projections identified a need for a total of approximately 5,700 MW of new resources between 2024 and 2030 to address load growth on the system, replace retiring existing generation and expiring purchase power contracts, and meet Colorado state mandates. According to PSCo, because the Power Pathway is intended to access the areas of Colorado where new wind and solar resources will be located to achieve the 2021 Electric Resource Plan, PSCo calculated how much of the capacity of those new transmission facilities could be used to deliver that generation.[115]

71. PSCo maintains that Complainants and other transmission customers can request to use available unreserved capacity on the Power Pathway, as provided under the Tariff, but that such a request does not guarantee that any specific resource will be deliverable to any specific load using the Power Pathway. PSCo explains that only studies, such as those underway for Complainants' Projects, can determine whether any given interconnection or transmission service request can be granted and, if granted, whether the request will require additional upgrades. Further, PSCo notes that, consistent with Commission policy, Complainants and third-party customers will be able to use on an

[113] PSCo explains that, as a result of a state settlement, it must retire several large coal facilities, including the 2028 retirement of Craig 2 (446.4 MW), the 2028 retirement of Hayden 1 (190.0 MW), the 2027 retirement of Hayden 2 (275.4 MW), and the retirement of Comanche 3 (856.8 MW) no later than January 1, 2031. *Id.* at 37.

[114] *Id.* at 37-38.

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

interim basis the Power Pathway capacity that is subject to PSCo's native load priority until PSCo's resources need that capacity.[116]

72. PSCo argues that, at its heart, the Complaint asks the Commission to find that PSCo cannot set aside capacity to serve its native load on the Power Pathway because PSCo does not yet have specific interconnection requests for the resources that will use that capacity. As PSCo sees it, if the Commission were to adopt that position, PSCo's ability to conduct resource planning under Colorado's state-mandated processes would be severely limited. PSCo maintains that it identifies transmission needs, receives authorization to build transmission facilities to address those needs, and then conducts competitive resource procurements that allow developers to site their resources and submit bids on the assumption of delivery over the new transmission. PSCo asserts that this planning enables a healthy competition for new resources, but necessarily requires a multi-year lag between when the transmission is identified and when the specific projects PSCo will acquire are identified. PSCo contends that, under Complainants' theory, any developers can swoop in and submit interconnection requests in this intervening period, placing themselves in the queue ahead of the resources that PSCo will ultimately acquire in the resource solicitation process, frustrating the purposes of resource planning and Colorado's policy goals.[117]

73. PSCo further contends that if the native load priority must be forgone and the capacity instead passed to Complainants and other parties, PSCo's ability to retire its coal resources on the existing schedule may be jeopardized, as those retirements are premised on PSCo's ability to receive replacement renewable generation, which is dependent on receiving capacity on the Power Pathway. PSCo asserts that if it cannot proceed in this manner, it will likely need to build out even more transmission at even higher costs.[118]

74. Finally, PSCo argues that contrary to Complainants' claims, its use of native load priority does not shelter its projects from cost responsibility for network upgrades. PSCo asserts that its ratepayers will bear the vast majority of the costs of all transmission developments on the PSCo system. According to PSCo, its ratepayers are paying for almost all the costs of the Power Pathway and will also pay for approximately $2.8 billion in additional network upgrades to deliver the power from the Power Pathway to PSCo's loads. Further, PSCo asserts that it will reimburse Complainants, and any other interconnection customers, for the costs of network upgrades that those customers

[116] *Id.* at 41.

[117] *Id.* at 42-43.

[118] *Id.* at 43.

front for the development of their projects, because PSCo's policy is to pay such refunds immediately following commercial operation.[119]

c. CORE Comments

75. CORE argues that PSCo intends to provide its own resources preferential access to the Power Pathway's transmission capacity by: (1) including PSCo's own lower- or unqueued resources in the Projects' study case assumptions and thereby limit the transmission capacity that is available to the Projects; and/or (2) reserving transmission capacity for unsupported native load growth assumptions through its calculation of ATC. In CORE's view, either path provides PSCo an unlawful competitive advantage in violation of the Commission's open access policy. CORE asserts that this conduct is also inconsistent with PSCo's representations in prior proceedings. CORE asserts that, specifically, PSCo had represented in those prior proceedings that (1) the Tariff's Resource Solicitation Cluster provisions are not limited to resource planning entities that serve PSCo native load, and (2) any request to interconnect to the Power Pathway will follow the DISIS process, regardless of whether the interconnection requests are made by PSCo for its native load or by other parties.[120]

76. CORE further argues that it has rollover rights to its current network service. According to CORE, PSCo's improper reservation of transmission capacity will prevent CORE from exercising its rollover rights to capacity on the Power Pathway and undermine CORE's ability to continue serving its own load.[121]

d. PSCo February 2 Answer

77. In response to CORE's comments, PSCo argues that CORE erroneously asserts that PSCo may only claim native load priority for load growth and, in the absence of load growth, must designate known, specific resources. In PSCo's view, such a limit on native load priority would prevent PSCo from using native load priority to set aside the transmission capacity needed to deliver its forthcoming resources, which cannot be identified until it completes the resource procurement process established by Colorado law. PSCo contends that native load priority may be exercised for the replacement of firm resources, even when the transmission provider cannot yet identify the specific new replacement resources. Moreover, PSCo contends, generation for forecasted native load

[119] *Id.* at 44.

[120] CORE Comments at 7-8 (citing PSCo Answer, attach. 1, Docket No. ER23-629 (May 8, 2023); Invenergy Answer, Docket No. ER23-629, at 12-14 (Apr. 24, 2023)).

[121] *Id.* at 9.

uses over the planning horizon does not need to be specified or designated as network resources at the time of the forecast.[122]

78. PSCo further argues that CORE ignores the purpose of native load priority. PSCo states that it has an obligation to reliably serve its native load and that native load priority allows it to develop transmission for that purpose. PSCo asserts that it proposed, and the Colorado Commission approved, the Power Pathway to enable PSCo's change in resource mix in compliance with state law. PSCo contends that, under section 217 of the FPA, Congress mandated protection of the native load priority for this type of situation.[123]

79. Additionally, in response to CORE's claim of harm, PSCo argues that its use of native load priority does not prevent CORE from exercising its rollover rights. PSCo states that, at CORE's election, PSCo's marketing function currently takes transmission service on CORE's behalf for power under the power supply agreement between PSCo and CORE. PSCo states that CORE, however, has elected to terminate service under the agreement effective December 31, 2025 and to thereafter pursue power for its needs from third-party sources other than PSCo. PSCo argues that because CORE will be using different network resources than were previously designated on its behalf, rollover is not assured. PSCo maintains that, at this time, it cannot confirm that rollover rights will be available in full.[124]

80. PSCo contends, moreover, that the Power Pathway was planned and developed as a local transmission project under PSCo's Order No. 890 planning process to enable PSCo to change the network resources it uses to serve its native load. PSCo states that it did not design the Power Pathway to accomplish CORE's current plans, of which PSCo has little understanding. PSCo asserts that, outside of the interconnection requests at issue in this proceeding, CORE has not meaningfully participated in PSCo's transmission planning process or offered information to facilitate PSCo's transmission planning for CORE.[125]

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[122] PSCo February 2 Answer at 3-5.

[123] *Id.* at 5-6 (citing 16 U.S.C. § 824q(b)(4)).

[124] *Id.* at 6-7. PSCo notes that interconnection service is not transmission service and that it will still need to separately study the transmission service needed to deliver the output of the Projects to CORE's load.

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

81. Lastly, PSCo disagrees with CORE's claim that PSCo is acting contrary to representations made to the Commission in other proceedings. PSCo states that it has never disclaimed its right to exercise native load priority and, most importantly, there is no inconsistency between PSCo's use of native load priority and the manner in which it studies generator interconnections. PSCo explains that all generator interconnections to PSCo's transmission system will follow the DISIS process, whether through a Resource Solicitation Cluster or DISIS cluster, and that all such studies will reflect PSCo's use of transmission capacity that has been set aside to serve PSCo's native load.[126]

e. CORE February 2 Answer

82. CORE states that, as PSCo's network customer, it is entitled to comparable rights to native load priority. CORE argues that, by effectively putting the higher-queued Projects behind PSCo's yet-to-be queued resources, PSCo is not only violating the Tariff's provisions regarding queue priority, but is also giving its own native load priority a higher status than CORE's native load priority. CORE contends that this backdoor grab of transmission capacity is a blatant violation of the Commission's open access requirements and a prime example of how anti-competitive impacts can creep into the process if left unchecked. According to CORE, because it is eligible to rollover its network service rights to the same amount of capacity it is currently taking, PSCo was obligated to plan its transmission system to accommodate those rollover rights. CORE further argues that, as CORE's transmission planner, PSCo is also required to plan for CORE's load growth and resource needs. CORE contends that its rollover rights should thus be reflected in PSCo's ATC calculation as an existing firm transmission commitment and the Projects should be deliverable, with no need to build new transmission capacity for them.[127]

f. Complainants February 2 Answer

83. Complainants argue that the Complaint has established a prima facie case that PSCo's performance of the provisional interconnection studies violates the Tariff or Commission precedent. Complainants claim that PSCo's own study assumptions demonstrate that PSCo is modeling unqueued native load resources ahead of the earlier-queued Projects. According to Complainants, PSCo admits that it set aside 4,050 MW of transmission capacity for the future generation resources that it plans to interconnect to the Power Pathway.[128]

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[126] *Id.* at 10-12.

[127] *Id.* at 8-10.

[128] Complainants February 2 Answer at 14-15.

84. Complainants contend that PSCo's study assumptions also depart from Commission precedent by modeling all generation resources that have approved long-term firm transmission service, but are not yet in-service, similar to existing generation. Complainants assert that PSCo cannot allow not-yet-in-service, lower-queued generation resources to skip ahead of higher-queued resources merely because those resources are associated with firm transmission.[129] Complainants assert that the Commission recently granted a complaint in *Invenergy Solar Development North America LLC v. Tri-State Generation and Transmission Association*,[130] finding that a transmission service request associated with later-queued interconnection service could not be treated as a pre-existing capacity reservation in the earlier-queued project's restudy. In Complainants' view, PSCo's plan is not meaningfully different from that of the later-queued interconnection request in *Invenergy v. Tri-State*.[131]

85. Further, Complainants argue that procuring resources needed for reliability pursuant to a state-directed or state-mandated process does not justify PSCo's native load priority claim. In Complainants' view, if a transmission owner could justify its native load priority by simply invoking reliability, there would have been no need for the Commission to have established rules for asserting native load priority. According to Complainants, the Commission explained in Order No. 888 that transmission owners asserting native load priority for the purpose of maintaining reliability must still designate network resources in the same manner as its customers and, yet, PSCo has failed to do so.[132] Complainants likewise contend that PSCo's construction of the Power Pathway, and its acquisition of resources pursuant to a state-directed integrated resource planning process, do not justify its native load priority claim, as such a policy would swallow the Commission's native load rules, making them wholly subject to the outcome of each utility's procurement process.[133]

86. Complainants also argue that PSCo is required to plan its transmission system for its network customers, like CORE. Complainants assert that PSCo ignores that: (1) for almost three decades, CORE has been an existing wholesale customer of PSCo and thus

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[129] *Id.* at 17-18 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 541).

[130] *Solar Dev. N. Am. LLC v. Tri-State Generation & Transmission Ass'n, Inc.*, 174 FERC ¶ 61,184 (2021) (*Invenergy v. Tri-State*).

[131] Complainants February 2 Answer at 17-18 (citing *Invenergy v. Tri-State*, 174 FERC ¶ 61,184 at PP 13-14, 56, 60-61).

[132] *Id.* at 20 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694; Order No. 888-A ¶ 31,048, at 12,334).

[133] *Id.* at 20-21.

should be included in its native load planning through 2025; and (2) PSCo has known since 2020 that, beginning in 2026, CORE will be a network customer rolling over its existing transmission rights. Complainants contend that CORE should therefore be included in PSCo's native load calculation and planned for when PSCo proposed to build the Power Pathway. Further, Complainants argue that because CORE is eligible to rollover its network service rights to the same amount of capacity it is taking from PSCo, PSCo was obligated to plan its transmission system to accommodate those rollover rights in the same amount. According to Complainants, CORE's rollover rights should thus be reflected in ATC as an existing firm transmission commitment, and no new transmission capacity should need to be built for the Projects.[134]

87. Complainants contend that PSCo also misconstrues *APS v. Idaho Power* to argue that it has carte blanche to replace existing fossil fuel generation with renewable generation without designating the replacement resources. Complainants argue that *APS v. Idaho Power* is inapposite because it stands for the proposition that a transmission owner may continue its pre-existing use of firm transmission service into the future, whereas PSCo proposes to drastically increase its use of the transmission system when it replaces existing generation capacity with new generation that has a capacity three times as high.[135] Complainants contend that rollover rights do not permit PSCo to increase its use of existing transmission for thousands of MWs of additional capacity, nor can PSCo simply swap out one designated resource for another at another point of receipt, as that would inappropriately result in rollover customers having priority over transmission customers in the queue that have already requested service over a given transmission path.[136]

88. Complainants contend that PSCo cites no precedent to support its claim that retiring 1,768 MW of baseload generation and replacing it with approximately 7,000 MW of renewable resources that are not designated as network resources justifies its reservation of 4,050 MW of transmission capacity. Complainants argue that, under PSCo's approach, a utility could effectively wipe out all available transmission capacity—making it unavailable to all other generation and transmission customers—by replacing one network resource with a resource that needs more capacity.[137]

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[134] *Id.* at 21-22.

[135] *Id.* at 22-23 (citing *APS v. Idaho Power*, 87 FERC at 61,223-24).

[136] *Id.* at 23 (citing Order No. 890, 118 FERC ¶ 61,119 at P 1236).

[137] *Id.* at 23-24.

89. Complainants argue that, to the extent PSCo argues that it properly reserved capacity on the Power Pathway because it posted its intent to reserve such capacity on OASIS, that is incorrect because the Commission's independent rules governing native load priority are not satisfied by simply posting on OASIS. Further, Complainants contend that, to the extent PSCo argues that its OASIS posting satisfied its obligation to designate resources, that is also incorrect because designated network resources must be specifically identified.[138]

90. Similarly, Complainants contend that, insofar as PSCo argues that it need not designate network resources to obtain native load priority because the need for the native load priority can be documented through a reasonable forecast, PSCo conflates two issues. Complainants assert that a transmission provider does not need to designate network resources to obtain native load priority if that native load priority is used to accommodate forecasted native load growth. Complainants assert that, based on PSCo's 2021 Electric Resource Plan, however, PSCo anticipates native load growth of only 0.3% annually or about 50 MW per year. Complainants argue that PSCo could therefore reserve approximately 50 MW of capacity per year without designating network resources and that, to reserve the remaining capacity, PSCo was required to designate network resources, which it did not do.[139]

91. Next, Complainants argue that because PSCo has failed to properly invoke its native load priority, the Commission does not need to reach the question of whether PSCo justified its 4,050 MW transmission reservation. Complainants argue that, to the extent the Commission nonetheless does so, it should reject PSCo's speculative reservation because the Colorado Commission's Phase II Decision substantially modified PSCo's resource procurement, reducing PSCo's planned procurement by almost 1,350 MW. According to Complainants, transmission reservations must be backed by designated resources or demonstrated native load growth, not PSCo's premature judgment about how much capacity is needed to interconnect an evolving and as yet unapproved set of future generation projects.[140]

92. Additionally, Complainants argue that even assuming that the Complaint would limit PSCo's ability to conduct its state-directed resource planning process, the U.S. Constitution's Supremacy Clause mandates that neither the FPA nor the Commission's open access and interconnection rules yield to Colorado's state processes or policies. In Complainants' view, while PSCo may insist that its attempt to set aside capacity on the Power Pathway is not intended to be anticompetitive and only reflects a desire to achieve

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[138] *Id.* at 24-25.

[139] *Id.* at 25.

[140] *Id.*; *see id.* at 15-17.

carbon emission reductions, "[s]tates may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority over interstate wholesale rates."[141]

93. Complainants further argue that PSCo's Tariff includes the Resource Solicitation Cluster study process by which it studies bids and ultimately selects resources in its generator interconnection queue. Complainants contend that the fact that PSCo did not initiate its own Resource Solicitation Cluster until late last year does not allow it to do an end run around that Tariff process by reserving transmission capacity for its resources. Complainants argue, moreover, that if PSCo's resource procurement plan was reasonably forecasted and its alleged requirements adequately demonstrated, PSCo could have designated network resources and reserved transmission earlier. Complainants assert that PSCo's decision not to do so only confirms that PSCo could not move forward without a greater degree of certainty in the procurement process.[142]

94. Finally, Complainants contend that PSCo incorrectly implies that only PSCo ratepayers are paying for the Power Pathway, when in fact PSCo's transmission customers, like CORE, also pay for PSCo's transmission system, including the Power Pathway. Further, Complainants argue that the Tariff's network upgrade reimbursement policy does not justify PSCo's abuse of longstanding precedent. Complainants argue that they should post security only for network upgrades that stem from properly conducted interconnection studies, which has not occurred here.[143]

g. Complainants' February 16 Answer

95. In response to PSCo's February 2 Answer, Complainants again assert that PSCo misreads *APS v. Idaho Power*. According to Complainants, *APS v. Idaho Power* stands for the proposition that a transmission owner can set aside transmission capacity for existing uses consistent with rollover rights without designating network resources. As Complainants see it, that precedent does not permit transmission owners to significantly increase their transmission capacity reservation without designating network resources. Complainants contend that, if it did, the retirement of only a few facilities could be used

[141] *Id.* at 26-27 (quoting *Hughes v. Talen Energy Mktg.*, LLC, 578 U.S. 150, 164 (2016)).

[142] *Id.* at 28-30.

[143] *Id.* at 33-34.

to lock up thousands of MWs of transmission capacity in perpetuity, as PSCo attempts to do here.[144]

96. Complainants further argue that Commission precedent provides that transmission owners need not designate network resources to accommodate forecasted load growth, not that such designations may be dispensed with if those additional resources are replacing resources for existing native load.[145] Complainants contend that the Commission in *Wisconsin Public Power Inc. System v. Wisconsin Public Service Corp.* distinguished between reserving transmission capacity for current native load and reserving for forecasted load growth.[146]

97. Regarding PSCo's reference to FPA section 217, Complainants argue that section 217 does not provide an end-run around the Commission's native load priority rules. Complainants contend that section 217 comports with the Commission's rule requiring transmission owners to designate resources in order to assert native load priority.[147]

98. Further, Complainants assert that PSCo's arguments about CORE's rollover rights and transmission planning are irrelevant to the issue at hand—namely, whether PSCo is violating its Tariff and the Commission's open access policies by setting aside transmission capacity for its own unqueued resources in the Projects' interconnection studies—and are therefore outside the scope of this proceeding. Complainants maintain that PSCo's arguments miss the point that by reserving the Power Pathway's capacity for itself, PSCo is all but ensuring that capacity will not be available for CORE irrespective of the outcome of PSCo's studies, rendering CORE's rollover rights a pre-determined nullity. Similarly, Complainants contend that PSCo's argument about CORE's level of participation in PSCo's transmission planning process is irrelevant to whether PSCo followed its Tariff and abided by Commission policy. Complainants contend that PSCo's assertion that the Power Pathway was planned as a local public policy transmission project is likewise irrelevant, because local public policy projects are not exempt from the requirements of PSCo's Tariff and the Commission's open access policies and a

[144] Complainants February 16 Answer at 3.

[145] *Id.* at 3-4 (citing *Midwest Indep. Transmission System Operator, Inc.*, 101 FERC ¶ 61,030 (2002)).

[146] *Id.* at 4 (citing *Wisc. Pub. Power Inc. Sys. v. Wisc. Pub. Serv. Corp.*, 84 FERC ¶ 61,120, at 61,658 (1998) (*Wis. Pub. Power*)).

[147] *Id.* at 4-5 (citing Order No. 890, 118 FERC ¶ 61,119).

transmission project's status as a public policy project does not entitle a transmission owner to the exclusive use of such project.[148]

h. Colorado Commission Comments

99. The Colorado Commission argues that the Commission's native load priority precedent allows PSCo's reservation of transmission capacity. The Colorado Commission asserts that PSCo's obligations to serve its native load are directly linked to Colorado's statutory requirements to reduce greenhouse gas emissions by 80% from 2005 levels by 2030. The Colorado Commission explains that, to achieve these goals, Colorado is transitioning to renewable resources, which has resulted in the early closure of several fossil fuel generation resources. The Colorado Commission states that, in the near term, these retirements will require a significant amount of MWs to be replaced to ensure that PSCo's native load can be reliably served.[149]

100. The Colorado Commission explains that, in granting a certificate of public convenience and necessity for the Power Pathway, the Colorado Commission agreed with PSCo that adding a transmission backbone in eastern Colorado will unlock clean energy and natural gas peaking resources necessary for PSCo to meet the 2030 clean energy target. The Colorado Commission states that it is keenly aware of the significant losses accruing in the coming years to PSCo's generation fleet and the need to replace that lost generation by acquiring additional renewable, storage, and natural gas-peaking resources through a competitive resource acquisition process. The Colorado Commission maintains that, in order to ensure reliable service in light of multiple coal plant closures and the addition of replacement generation resources in the coming years, it is imperative that PSCo be able to appropriately reserve transmission capacity to serve its native load requirements.[150]

101. The Colorado Commission argues that reserving capacity on the Power Pathway ahead of other queued generation projects is not unduly discriminatory or anticompetitive. The Colorado Commission asserts that in *APS v. Idaho Power*, the Commission found no fault with Idaho Power's set-aside of transmission capacity because it needed to replace generation under exchange agreements that were set to

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[148] *Id.* at 6-8.

[149] Colorado Commission Comments at 8-9.

[150] *Id.* at 9-14. The Colorado Commission explains that, in its Phase II Decision issued on January 23, 2024, it approved elements of PSCo's resource procurement plan, including 5,190 MW of renewable energy and 640 MW of natural gas peaking capacity by 2030, with roughly half of this amount coming from third-party bidders. *Id.* at 13-14.

expire in the near future.[151] The Colorado Commission asserts that, similarly, PSCo's needs are in transition due to state mandates and, while PSCo may not know the specific implementation timing for those resources, it is evident that PSCo's plant closures and generation fleet reconfiguration must be accomplished in the near term.[152]

102. The Colorado Commission asserts that Order No. 888 and FPA section 217 give transmission providers leeway and affirmative duties to provide robust and reliable service to their native load. Additionally, the Colorado Commission states that Order Nos. 890 and 890-A emphasized the need for transmission providers to be transparent in how they queue native load projects or reserve capacity to serve native load. In the Colorado Commission's view, PSCo's statements on its OASIS regarding its native load capacity reservations are consistent with these requirements and are the type of up-front transparency that the Commission requires when transmission providers reserve native load capacity. Further, according to the Colorado Commission, PSCo's native load reliability and capacity needs are public information that were front and center during the Power Pathway and 2021 Electric Resource Plan proceedings before the Colorado Commission.[153]

103. Further, the Colorado Commission asserts that PSCo's native load obligations are not speculative, but rather are concrete and defined by state statute and PSCo's 2021 Electric Resource Plan.[154]

104. Finally, the Colorado Commission states that the Commission's long-standing open access policies may not be well-positioned to address some of the unique transmission challenges faced at this time. The Colorado Commission explains that, historically, interconnection and transmission capability of the system generally exceeded the demand for these services. The Colorado Commission asserts that the current reality, however, bears little resemblance to this historical model, because the demand for interconnection and transmission services in Colorado enormously exceeds coincident peak demand. The Colorado Commission argues that the Commission should be careful about allocating transmission capacity on the Power Pathway based solely on interconnection queue priority and without regard to PSCo's rights as a transmission provider to set aside capacity to serve its native load. According to the Colorado Commission, granting the Complaint may actually reduce the competitiveness in resource acquisitions for both CORE and PSCo because, instead of being able to contract with the

[151] *Id.* at 14-16 (citing *APS v. Idaho Power*, 87 FERC at 62,224).

[152] *Id.* at 16.

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

[154] *Id.* at 19-20.

lowest cost generator, in the best location, for the exact resource needed, CORE and PSCo may be forced to pay higher prices to contract with those entities that may be earlier in the queue.[155]

i. PSCo February 20 Answer

105. PSCo states that in *APS v. Idaho Power*, the Commission subsequently granted Idaho Power's requested clarification that it could set aside *future* transmission capacity to meet native load needs even though the new generation resources that would use that capacity were unknown. PSCo therefore argues that, contrary to Complainants' contention, *APS v. Idaho Power* did not turn on rollover rights—i.e., the right to continue taking the same service at the end of a contract term—but rather dealt with the replacement of existing generation with new, different power sources to be identified at a later date, as well as generation additions to supplement potential shortcoming of existing generation at a future time. PSCo asserts that a transmission provider must designate resources only to support *current* uses of its transmission system, not *future* uses.[156]

106. PSCo also argues that to ensure that any set aside for native load is appropriate, it is not enough for a transmission provider to simply assert the need. PSCo contends that, instead, the need must be documented through a reasonable forecast. PSCo asserts that it has met these requirements because it has explained how much generation it expects to need to serve native load, how much transmission capacity on the Power Pathway it will need to deliver that generation to its native load, why PSCo has not yet designated any network resources, and where in the public record this information has been made available. According to PSCo, the Projects' provisional interconnection studies will be based on that public record and the currently available information on the timing of PSCo's transmission construction and resource procurements. PSCo represents that the details about the specific underlying assumptions will be provided when the studies are complete and available for review along with the terms of any resulting service agreement.[157]

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[155] *Id.* at 21-24. The Colorado Commission argues that, going forward, the Commission should consider whether to instead allocate interconnection rights based on a percentage of transmission system peak load to a load-serving entity. The Colorado Commission maintains that this realignment of interconnection priority would help ensure that the right generation is built where and when needed and lead to a more predictable and manageable process. *Id.* at 24-26.

[156] PSCo February 20 Answer at 4-5 (citing APS Clarification Order, 91 FERC at 61,208-61,209).

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

107. In response to Complainants' and CORE's arguments that CORE has not received transmission rights comparable to PSCo's native load, PSCo states that it considers the needs of all transmission customers pursuant to its transmission planning process. PSCo asserts that it can and will plan for CORE in the same manner that it plans for itself but relies on CORE's participation in PSCo's local planning process. PSCo argues that CORE, however, has not participated meaningfully in PSCo's transmission planning process and that PSCo cannot incorporate CORE's resource plans into its transmission planning process, including building out the transmission system to accommodate those resource plans, unless CORE provides them.[158]

108. PSCo argues that Complainants' and CORE's related claims that PSCo is infringing on CORE's rollover rights as a network customer are similarly misplaced. PSCo contends that no such automatic rollover rights exist because CORE will be using different network resources. According to PSCo, rollover rights do not permit PSCo to simply swap out resources around the system at will, and regardless of CORE's right to continue taking transmission service, all new generation must be studied.[159]

109. Next, PSCo argues that because its exercise of native load priority complies with Commission precedent, no conflict exists between the Commission's open access requirements and Colorado's resource planning process. PSCo contends that Colorado's policy simply drives the reasons for the generation changes that have led PSCo to assert native load priority for a portion of the Power Pathway. PSCo argues that granting the Complaint, in contrast, would unnecessarily impair Colorado's resource planning process and PSCo's ability to procure resources in transmission-constrained regions, creating a conflict with state law that does not currently exist. PSCo argues that granting the Complaint would also create a conflict with the requirements of FPA section 217 by depriving PSCo of the ability to expand transmission facilities, as it has done with the Power Pathway, to serve native load customers on a long-term basis.[160]

110. PSCo further argues that Complainants misunderstand PSCo's Tariff. According to PSCo, it could not have initiated its own Resource Solicitation Cluster before the CORE Resource Solicitation Cluster based merely on the bids it received during Phase I of the 2021 Electric Resource Plan's procurement process. PSCo explains that it received nearly 1,000 generator bids by the March 1, 2023 deadline in that procurement process and the CORE Resource Solicitation Cluster received a queue date of May 19, 2023. PSCo asserts that it could not have evaluated 1,000 bids and narrowed them into several packages suitable to initiate cluster studies within two and a half months. PSCo argues,

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[158] *Id.* at 12-13.

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

[160] *Id.* at 14-16.

moreover, that the Tariff provides that a valid interconnection request must meet one of three readiness milestones, which could not be met until, at the earliest, PSCo submitted its 120-Day Report to the Colorado Commission on September 18, 2023.[161]

111. PSCo argues that Complainants likewise misunderstand Colorado's resource procurement process. PSCo argues that its 120-Day Report identified three dozen different procurement plans, which hardly enables PSCo to create a study cluster, designate network resources, or execute power purchase agreements. Further, PSCo asserts that the Colorado Commission's Phase II Decision does not demonstrate that PSCo proposed a speculative plan. Rather, PSCo contends, the Phase II Decision adopted one of PSCo's alternative plans to reduce costs to customers.[162]

j. Complainants February 27 Answer

112. Complainants argue that PSCo grossly overstates *APS v. Idaho Power*'s holding. As Complainants see it, that case does not stand for the proposition that transmission owners can set aside transmission capacity to replace existing generation with even larger quantities of generation without designating network resources. Rather, Complainants contend, the Commission clarified under the unique factual circumstances of that case that Idaho Power did not need to designate in advance the replacement resources that may be needed to replace Idaho Power's hydroelectric units during critical water years. Complainants assert that in that case the replacement resources were not *in addition* to the designated resources, but rather were simply necessary to make up the difference of lost capacity from designated resources during critical water years.[163]

113. Furthermore, Complainants argue that PSCo and the Colorado Commission ignore that CORE, too, is a load-serving entity with retail customers in Colorado and its own emission reduction goals. According to Complainants, it is for that reason that CORE engaged in a competitive solicitation (like PSCo) for renewable resources to serve its load, selected the three Projects, and, as required by PSCo's Tariff, initiated a Resource Solicitation Cluster in February 2023 to allow the Projects to interconnect to PSCo's transmission system. Complainants assert that PSCo's Resource Solicitation Cluster process is how load-serving entities, including PSCo and CORE, get queue priority and accommodate resource acquisitions to serve retail customers. Complainants argue that

[161] *Id.* at 20-21.

[162] *Id.* at 21-22.

[163] Complainants February 27 Answer at 7-8.

while PSCo may now claim that this Resource Solicitation Cluster process is inadequate, its recourse is to change the process through a Tariff filing.[164]

114. Complainants contend that even if the Commission were to agree with PSCo that it can queue jump the Projects by invoking native load priority, PSCo has not justified its 4,050 MW reservation. Complainants argue that the Commission should not credit PSCo's unbounded and undemonstrated estimates, particularly when PSCo has not yet procured the resources for which it prematurely reserved transmission capacity. According to Complainants, the native load priority rules are intended to ensure that transmission providers do not hoard transmission capacity for resources for which they do not have committed purchase agreements or native load growth. As Complainants see it, the Colorado Commission's Phase II Decision substantially reducing PSCo's procurement by almost 1,350 MW demonstrates that PSCo's transmission reservation is premature and hypothetical.[165]

k. CORE February 28 Answer

115. In response to PSCo's transmission planning arguments, CORE argues that its level of participation in PSCo's transmission planning process is irrelevant to the question of whether PSCo followed its Tariff and the Commission's native load priority and interconnection rules. CORE nevertheless argues that PSCo had significant transmission planning information about CORE's native load and the resources it intends to use to serve its load. CORE argues that, in any event, no level of CORE's participation in PSCo's planning process would have made PSCo's claim of native load priority on the Power Pathway any less of a Tariff violation.[166]

116. CORE argues that its ability to access transmission for its native load is just as important as PSCo's for the health, safety, and welfare of CORE's members. According to CORE, the Commission's open access principles are most beneficial when new resources are needed and new transmission must be built to accommodate them, and changing the rules to favor one load-serving entity over others undermines this benefit. Moreover, CORE argues that the cost of the Power Pathway is being paid for by CORE and others, not just PSCo, and therefore should not be available to PSCo exclusively.[167]

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[164] *Id.* at 8-9.

[165] *Id.* at 10-11.

[166] CORE February 28 Answer at 5-7.

[167] *Id.* at 9-11.

l. PSCo March 15 Answer

117. In response to Complainants, PSCo asserts that Complainants incorrectly limit the Commission's holding in *APS v. Idaho Power*. PSCo maintains that although the specific resource needs at issue in *APS v. Idaho Power* may have been unique to the transmission provider in that case, the tariff implications are not: the transmission provider may set aside capacity both to replace resources that would be retired and to supplement resource shortcomings resulting from low water flow, even though the transmission provider could not yet identify the additional resources for either need. In both instances, PSCo argues, the transmission provider set aside capacity to ensure reliable service to native load customers, the same reason motivating PSCo. Further, PSCo contends that, like the transmission provider in *APS v. Idaho Power*, PSCo needs to reserve additional capacity for contingency reasons, i.e., the variable nature of the wind and solar resources that are replacing its dispatchable coal generation.[168]

118. In response to CORE, PSCo asserts that CORE confounds the issue of interconnection with rolling over transmission rights, which is not at issue here. PSCo states that it has not in any way limited CORE's rollover rights. PSCo contends that the ability to roll over transmission service, however, does not mean that CORE can add generation to the system without being studied.[169]

119. Regarding CORE's argument about transmission planning, PSCo asserts that it raised the point about CORE's participation in PSCo's transmission planning process only to explain why CORE might not have the transmission capacity needed to accommodate its new resources. According to PSCo, it could not include CORE's resource plans in its transmission planning because CORE has not provided PSCo with its resource forecast information, as required of network customers. PSCo maintains that it cannot plan for CORE's future resources in the same manner that PSCo plans for its own future resources unless CORE provides that information.[170]

120. Finally, PSCo asserts that it will provide the study results to Complainants as soon as they are available. According to PSCo, it could not meet its February 2024 estimate to complete the studies because the Colorado Commission's Phase II Decision, issued in late January 2024, caused changes to the study assumptions. PSCo explains that the Phase II Decision affected PSCo's resource projections and timing for placing resources

[168] PSCo March 15 Answer at 2-4.

[169] *Id.* at 5-6.

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

into service and, as required by the Tariff, the provisional interconnection studies will be tied to the currently available information about use of the transmission system.[171]

m. Determination

121. We find that Complainants failed to meet their burden under FPA section 206 to demonstrate that PSCo's conduct violates the Tariff or the Commission's open access requirements, and we therefore deny Claim No. 1.

122. The crux of the Complaint is that PSCo is violating the Tariff, the Commission's interconnection rules, and the Commission's open access requirements by setting aside transmission capacity—through its calculation of ATC in the Projects' provisional interconnection study assumptions—for PSCo's own, unqueued generation resources. According to Complainants, PSCo improperly relies on its native load priority to do so. Accordingly, the essence of the issue presented in Claim No. 1 is whether Complainants have shown that PSCo's use of native load priority under these circumstances violates the Tariff and the Commission's open access requirements.

123. In Order No. 888, the Commission required public utilities to provide open access transmission service on a comparable basis to the transmission service they provide themselves.[172] The Commission recognized that "the transmission provider is responsible for planning and maintaining sufficient transmission capacity to safely and reliably serve its native load."[173] Thus, in Order Nos. 888 and 889, the Commission allowed transmission providers to reserve sufficient transmission capacity, in their calculation of ATC, to serve their native load.[174] Specifically, under this native load priority, reserved transmission capacity is accounted for as an existing transmission commitment when the transmission provider performs its ATC calculation, rendering the

[171] *Id.* at 8.

[172] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,635-36.

[173] Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,279.

[174] *Id.*; *see* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694, 31,745; *Open Access Same-Time Info. Sys. & Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, at 31,605-07 (1996), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

capacity unavailable for third party use.[175] The Commission also noted that the ability for the transmission providers to reserve capacity using native load priority applies equally to existing transmission and transmission that is built in the future.[176] As the Commission explained in Order No. 890, native load priority strikes the appropriate balance between the transmission provider's need to meet its native load obligations and the need of other entities to obtain service from the transmission provider to meet their own obligations.[177]

124. To that end, the Commission has recognized that a transmission provider may reserve transmission capacity under its native load priority to serve both existing native load needs and anticipated native load growth, with different requirements for each circumstance.[178] For existing native load, a transmission provider may reserve transmission capacity to meet its native load needs but must designate resources and loads on behalf of its native load customers on the same basis as its network customers.[179] As discussed above,[180] consistent with the *pro forma* OATT, section 28.2

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[175] *Sierra Pacific*, 143 FERC ¶ 61,144 at PP 67, 112; *see* PSCo Tariff, attach. C, (Methodology to Assess Available Transfer Capability) §§ 1.a (defining ATC), 1.b (calculation of existing transmission commitments includes the firm capacity set aside to serve peak native load forecast commitments for the time period being calculated as well as native load growth).

[176] Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,181; *see Sierra Pacific*, 143 FERC ¶ 61,144 at P 67 (finding that NV Energy was eligible to exercise native load priority to reserve capacity on a transmission line, which was still being developed, to meet native load needs).

[177] Order No. 890, 118 FERC ¶ 61,119 at P 107.

[178] *Sierra Pacific*, 143 FERC ¶ 61,144 at P 113; *Wis. Pub. Power*, 84 FERC at 61,658-59; *see Puget Sound Energy, Inc.*, 133 FERC ¶ 61,160, at P 12 (2010) ("Under its ATC calculation, Puget may reflect its Existing Transmission Commitments . . . , including, among other things, capacity needed to serve native load, *as well as* reasonably forecasted native or network load growth over Puget's planning horizon" (emphasis added)).

[179] *See, e.g.*, *Aquila Power Corp. v. Entergy Servs. Inc.*, 90 FERC ¶ 61,260, at 61,859 (2000) (*Aquila Power Corp.*); *see also* Order No. 890-B, 123 FERC ¶ 61,299 at P 236 ("[E]ach time a network resource is designated, the transmission provider sets aside ATC as necessary to allow that resource to be used to serve network or native load.").

[180] *See supra* section I.A.

of PSCo's Tariff incorporates this requirement.[181] This designation of network resources requirement disincentivizes transmission customers and transmission providers from oversubscribing transmission capacity, because "the cost of owning a generating unit or committing to a firm purchase would discourage the designation of network resources in excess of the amount needed to serve load."[182]

125. According to Order No. 888, for native load growth, a transmission provider may reserve transmission capacity so long as the claimed load growth is reasonably forecasted within the utility's current planning horizon and supported by a reasonable plan for network resources to meet that native load growth.[183] The transmission provider need not designate network resources at the time of the initial forecast;[184] however, any transmission capacity that is reserved for future load growth, but is not yet needed, must be posted on OASIS and made available to other customers in the interim (i.e., until such time as the capacity is actually needed and used).[185]

126. In this case, according to the evidence submitted with the Complaint, PSCo provided Complainants with the Projects' study assumptions, representing that its calculation of ATC will incorporate existing transmission commitments, including a native load forecast.[186] Native load forecast, in turn, refers to the firm capacity set aside to serve peak native load forecast commitments for the time period being calculated and not otherwise included in the transmission reliability margin or capacity benefit margin

[181] PSCo, Transmission and Service Agreements Tariff, pt. III, § 28 (0.4.0), § 28.2 ("The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff.").

[182] *Wis. Pub. Power Inc. Sys. v. Wis. Pub. Serv. Corp.*, 83 FERC ¶ 61,198, at 61,856 (1998); *see* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,754.

[183] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694; *see* APS Rehearing Order, 89 FERC ¶ 61,061 at 61,202–03.

[184] *Wis. Pub. Power*, 84 FERC at 61,658.

[185] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694; *see, e.g.*, *Puget Sound Energy, Inc.*, 133 FERC ¶ 61,160 at P 12; *El Paso Elec. Co.*, 115 FERC ¶ 61,312, at P 22 & n.16 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,030 at P 13; *Wis. Pub. Power*, 84 FERC at 61,658-59.

[186] Complaint, Ex. F at 5.

inputs.[187] According to those study assumptions, through the native load forecast, PSCo's native load is granted a priority to firm capacity on existing transmission, as well as transmission under development, including the Power Pathway. PSCo further represented that although generation pending in its electric resource plan is not yet reflected as queued generation in interconnection studies, priority to firm transmission capability on the PSCo transmission system for the deliverability of PSCo's future network resources is reflected in the native load forecast.[188]

127. In its January 18 Answer, PSCo confirms that it is constructing the Power Pathway both to accommodate PSCo's native load growth and to interconnect generation resources proposed during its electric resource plan proceedings, which "are necessary to address reliable service to load while retiring certain large coal resources and meeting Colorado's emission requirements."[189] PSCo explains that, to achieve this, it will calculate ATC in the Projects' provisional interconnection studies "by considering generation reasonably forecasted to be in service and serving PSCo's native load to reflect PSCo's native load priority."[190] PSCo states that, specifically, it intends to set aside 4,050 MW of transmission capacity on the Power Pathway to serve its native load.[191]

128. Further, PSCo represents that its native load peak demand is forecasted to grow by only approximately 50 MW per year (i.e., approximately 500 MW by 2032).[192] PSCo thus acknowledges that the resources selected through its 2021 Electric Resource Plan

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[187] *Id.*; *see also* PSCo, Transmission and Service Agreements Tariff, attach. C (0.2.0), § 1(b) Mathematical Algorithms Used to Calculate ATC.

[188] Complaint at 5-6.

[189] PSCo January 18 Answer, app. A, at P 52.

[190] *Id.* ¶ 36; *see id.* ¶ 55 ("PSCo will model ATC consistent with the existing methodology, to include asserting native load priority by incorporating its native load forecast, which will model generation reasonably expected to be in-service."). PSCo asserts that such generation is documented in its 2021 Electric Resource Plan proceeding before the Colorado Commission. PSCo January 18 Answer at 28.

[191] PSCo January 18 Answer, app. A, at P 105; *see id.* P 108 (stating that PSCo's preferred plan in its 2021 Electric Resource Plan selected resources totaling 7,192 MW of nameplate capacity by the summer of 2029, of which approximately 4,050 MW will interconnect to the Power Pathway, contingent on the Colorado Commission's approval).

[192] *Id.* P 53.

will serve native load growth only in part, with the rest serving *existing* native load.[193] PSCo also confirms that it has not yet identified the resources that will use the reserved capacity to serve its existing load, as it is awaiting the Colorado Commission's approval of the specific resources that PSCo will acquire, both in the 2021 Electric Resource Plan proceeding and subsequent resource acquisition proceedings.[194]

129. Under the particular circumstances of this case involving a transmission reservation needed to accommodate near-term resource procurement processes mandated by state law, we find that Complainants have failed to demonstrate that PSCo's conduct violates the Tariff or the Commission's open access requirements. Based on the facts of this case, we agree with PSCo that PSCo may reserve transmission capacity now to serve its existing native load in the future before it designates the relevant network resources, consistent with Commission precedent.

130. Specifically, in *APS v. Idaho Power*, the Commission found that Idaho Power had appropriately included in its calculation of ATC the transmission capacity associated with certain "additional resource acquisition" requirements: (1) new generation made necessary by the replacement of expiring exchange purchases; and (2) generation purchases attributable to the seasonal variations in hydropower availability (i.e., a critical water year requirement).[195] With respect to the expiring exchange agreements, the Commission found that a transmission provider may plan to continue using capacity involving network resource purchases that are due to expire. The Commission further noted that as the date neared when the existing contracts would expire, Idaho Power would be required to either obtain a replacement network resource (and thus continue to include this capacity in its ATC calculations) or release the transmission capacity to new firm requests for service.[196] As for the critical water year requirement, the Commission initially found that although it is appropriate for a transmission provider to consider the seasonal variation in hydropower availability in determining its ATC calculations, a critical water year requirement must be supported by a designated network resource because it constitutes a current use of the system.[197] However, the Commission subsequently clarified that the *pro forma* OATT "does *not* require a utility to designate

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[193] *Id.* PP 103-104, 106.

[194] *Id.* PP 27, 38, 45, 64.

[195] *APS v. Idaho Power*, 87 FERC at 62,223.

[196] *Id.* at 62,223-24; *see* APS Rehearing Order, 89 FERC ¶ 61,061 at 61,201, 61,203.

[197] *APS v. Idaho Power*, 87 FERC at 62,224; APS Rehearing Order, 89 FERC at 61,201.

network resources *now* to cover generation purchases to replace its hydroelectric generation resources *in the future*."[198]

131. Consistent with this precedent, we similarly find that PSCo may set aside transmission capacity on the Power Pathway under its native load priority, through its calculation of ATC, to accommodate the acquisition of additional generation resources to meet its native load obligation, as the reservation will be for a future use of PSCo's transmission system.[199] Similar to the native load priority reservations in *APS v. Idaho Power*, PSCo will be required to designate network resources once the relevant resources are identified and PSCo needs the reserved capacity to serve its native load. If such resources do not materialize or PSCo ultimately does not need the reserved capacity, PSCo will be required to release the transmission capacity to third parties.[200]

132. Complainants and CORE raise several counterarguments, which we find unpersuasive. Complainants assert that the *APS v. Idaho Power* precedent is inapposite because the Commission explained in that case that Idaho Power could set aside transmission capacity for existing uses based on its rollover rights under section 2.2 of the tariff, without designating network resources.[201] Complainants are correct that PSCo does not claim that it is entitled to set aside transmission capacity on the Power Pathway for its future resources based on any rollover rights to such capacity under its Tariff. However, the Commission in *APS v. Idaho Power* relied only in part on the rollover rights provision in the tariff in finding that Idaho Power could reserve capacity generation that would replace the expiring agreements without designating the replacement network resources.[202] Indeed, the Commission's subsequent findings with respect to Idaho

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[198] APS Clarification Order, 91 FERC at 61,209 (emphasis added).

[199] *See id.*

[200] *See* APS Rehearing Order, 89 FERC at 61,203 ("[A]s the date nears when these existing contracts will expire, Idaho Power will be required to either obtain and designate a replacement network resource or release the transmission capacity to new firm requests for service."); *see also* APS Clarification Order, 91 FERC at 61,209 (noting that, according to Idaho Power, it understands that it will need to acquire a replacement network resource promptly when a critical water condition becomes a current need, i.e., after water conditions for a year are known).

[201] Complainants February 2 Answer at 22-23; Complainants February 16 Answer at 4.

[202] *Compare APS v. Idaho Power*, 87 FERC at 62,224 ("*First*, Idaho Power is correct that a transmission provider may plan to continue using capacity that involves network resource purchases that are due to expire."), *with id.* ("Under the *pro forma* tariff, *moreover*, existing firm service customers may continue to take transmission

Power's critical water year requirement did not turn on Idaho Power's rollover rights. Rather, as discussed above, the Commission clarified that the *pro forma* OATT does not require a utility to designate network resources to reserve transmission capacity for replacement generation resources in the future. We find that the Commission's holding in that case applies with equal force here, because PSCo, like Idaho Power in *APS v. Idaho Power*, has sought to set aside transmission capacity to meet its *future* native load needs due to expected, impending changes to its existing resource mix.

133. Complainants similarly assert that *APS v. Idaho Power* is distinguishable from the circumstances here because in that case the Commission allowed Idaho Power to continue its existing use of firm transmission service into the future, whereas PSCo proposes to set aside significantly more transmission capacity than it is currently using for its native load obligations without designating network resources.[203] According to Complainants, under PSCo's approach, a transmission provider could effectively make all transmission capacity unavailable for third parties by replacing one of its network resources with a resource that needs more capacity.[204] Complainants, however, read the Commission's findings in *APS v. Idaho Power* too narrowly. In the APS Clarification Order, the Commission clarified that a utility need not designate network resources now to cover generation resources that the utility will purchase to replace its hydroelectric resources in the future; the Commission did *not* state that such a utility is limited to setting aside transmission capacity for generation that would replace the lost hydropower capacity on a one-to-one MW basis. In any event, we believe that a transmission provider's reservation of transmission capacity under its native load priority is a fact-specific issue to be addressed on a case-by-case basis. As further discussed below, we find that PSCo's use of native load priority comports with the Tariff and Commission requirements based on the record and specific facts of this case.

134. Moreover, we disagree with Complainants' suggestion that PSCo is using its native load priority, without restriction, to set aside an indefinite amount of transmission capacity to meet its native load needs with replacement generation resources. To the contrary, we find that PSCo's ability to use native load priority under these circumstances is reasonably bounded. Specifically, even though PSCo seeks to set aside capacity on the Power Pathway to serve primarily *existing* native load needs (as discussed above), under

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service from the transmission provider when their long-term contracts expire.") (emphasis added), *and* APS Rehearing Order, 89 FERC at 61,201 ("Idaho Power is entitled to the benefits of Section 2.2, because it has an existing dedicated resource in place, i.e., its exchange agreements.").

[203] Complainants February 2 Answer at 22-23; Complainants February 27 Answer at 8.

[204] Complainants February 2 Answer at 24.

the particular circumstances of this case PSCo's use of native load priority closely resembles a transmission provider's use of native load priority to accommodate reasonably forecasted native load *growth*. We find that PSCo's use of native load priority is consistent with the Order No. 888 requirements applicable to such a transmission provider, for the following three reasons.

135. First, as noted above, in the context of native load growth, a transmission provider's use of native load priority must be based upon reasonably forecasted load growth in the transmission provider's current planning horizon and supported by a reasonable plan for network resources to meet that native load growth.[205] Here, in the context of both PSCo's existing native load as well as its native load growth, we find that PSCo's use of native load priority is likewise based on both a reasonable forecast of its native load obligations within its current planning horizon and a reasonable plan to meet those obligations. To meet those obligations for both existing native load and native load growth, the record establishes that PSCo must change its resource mix to comply with state law,[206] the Colorado Commission has found that the Power Pathway will facilitate

[205] APS Rehearing Order, 89 FERC ¶ 61,061 at 61,202-61,203 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694); *see, e.g.*, *Am. Elec. Power Serv. Corp.*, 101 FERC ¶ 61,384, at P 15 (2002) (noting that a *resource plan* submitted to and accepted by the state commission, including projections of the transmission provider's *need for additional transmission capacity in the future* to serve native load, could provide a sufficient basis upon which to reserve transmission capacity based on native load growth) (emphasis added); *Wis. Pub. Power*, 84 FERC at 61,659 (explaining that a transmission reservation for native load growth must be supported by a reasonable plan for network resources to meet that load growth, "e.g., existing generating capacity that is currently in excess of needs and devoted to off-system sales or *planned resource additions*") (emphasis added); *see also* Order No. 890, 118 FERC ¶ 61,119 at P 1257 ("[W]e believe that consideration should be given in our case-by-case evaluations of native load growth forecasts to state-approved integrated resource plans that show a native load need for the capacity.").

[206] PSCo has submitted multiple filings to the Colorado Commission—in the Power Pathway certificate and 2021 Electric Resource Plan proceedings—demonstrating the amount of new resources that PSCo anticipates needing to both reliably serve native load and comply with Colorado's emissions reduction requirement. *See, e.g.*, PSCo January 18 Answer, Ex. 1 (Testimony of James F. Hill (Mar. 2, 2021)) at 19 (averring that PSCo anticipated needing to add approximately 2,300 MW of wind, 1,600 MW of utility scale solar, 400 MW of storage, and 1,300 MW of dispatchable resources to meet its 2030 statutory clean energy target); *id.* Ex. 2 (Testimony of Amanda R. King (Mar. 2, 2021)), at 48 (same).

those state-law mandates,[207] and the transmission reservation is needed to meet a relatively near-term target (2030).[208] Accordingly, we find that PSCo's reservation of Power Pathway capacity in part for existing native load and in part for native load growth is analogous to a transmission provider's use of native load priority based on a reasonable forecast of native load growth and a reasonable plan to meet that growth.[209]

136. Second, Order No. 888 also provides that any capacity reserved for native load growth, but that is not yet needed, must be posted on the transmission provider's OASIS and made available for other customers in the meantime.[210] Consistent with this requirement, PSCo has affirmatively represented that, until such time as PSCo's resources need the reserved capacity on the Power Pathway, PSCo will make the capacity

[207] The Colorado Commission approved the Power Pathway proposal for the express purpose of facilitating PSCo's acquisition of the necessary resources within that timeframe. *See* Power Pathway Decision at P 57 (finding that "[w]ithout the additional injection capacity provided by the [Power Pathway], [PSCo] will be unable to interconnect the quantity of renewable resources it requires to decarbonize its generation fleet in accordance with the mandates" of Colorado law); *id.* P 62 (finding that the "public convenience and necessity requires construction of the [Power Pathway]," because "[e]xisting facilities are not adequate or available to meet the need for increased transmission capacity to serve required new renewable generation or to provide the reliability and resiliency necessary to support a system highly dependent on variable resources"); *see also* Colorado Commission Comments at 11-12 ("The approval of the [Power Pathway], to serve as the networked transmission backbone in eastern Colorado, was necessary to ensure interconnection for generation resources that were certain to be built in that renewable energy rich area to aid PSCo in meeting Colorado's reliability, affordability, and clean energy goals.").

[208] As noted above, Colorado law sets forth a 2030 deadline to comply with the 80% emissions reduction target. Further, aside from this statutory deadline, PSCo explains that when calculating ATC under its Tariff, it uses native load "forecast commitments" over a 10-year planning horizon, consistent with NERC standards. PSCo January 18 Answer at 35 n.119.

[209] Because we find that Complainants have not met their burden under section 206 of the FPA to demonstrate that PSCo's use of native load priority under these circumstances violates the FPA or the Commission's open access and interconnection requirements, we need not reach Complainants' Supremacy Clause argument. *See* Complainants February 2 Answer at 26-27.

[210] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694.

available to third-party customers on an interim basis.[211] In addition to PSCo making this interim capacity available, any unused transmission capacity on the Power Pathway, once operational, must also be posted to OASIS.

137. Third, in the context of native load growth, the Commission has explained that if the above requirements are met, a prospective transmission customer will have the opportunity to monitor and, if appropriate, challenge the transmission provider's load growth reservations.[212] Likewise, here, we note that Complainants, CORE, and any other third party may monitor developments in PSCo's electric resource planning processes and challenge PSCo's reservation of Power Pathway capacity if PSCo's ongoing and upcoming resource acquisitions do not ultimately justify the reserved capacity. For those reasons, we find that PSCo's use of native load priority under these circumstances is reasonably bounded and does not conflict with the requirements of Order No. 888 or the Tariff.

138. Complainants also suggest that PSCo cannot reserve transmission capacity for generation resources that are not yet in PSCo's interconnection queue, arguing that access to available transmission capacity by transmission and generation customers is based on the date that service is requested.[213] Complainants assert that because such resources have a lower queue priority than the Projects, PSCo's conduct amounts to "queue jumping."[214] However, Complainants' argument conflates queue position priority and native load priority. Under PSCo's Tariff, an interconnection request assigned a higher queue position is one that has been placed earlier in the queue in relation to another

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[211] PSCo January 18 Answer at 41-42.

[212] *Wis. Pub. Power*, 84 FERC at 61,659.

[213] *See, e.g.*, Complaint at 1 ("Contrary to the Commission's open access transmission policies and PSCo's [Tariff"], in [the Projects' provisional interconnection] studies, PSCo is improperly setting aside transmission capacity—and thereby network injection capacity— for PSCo's own unqueued generation resources ahead of [Complainants'] queued generation projects."); Complainants February 2 Answer at 10 (asserting that PSCo is violating its Tariff because its "study assumptions reserve capacity on the [Power Pathway] for projects intended to serve PSCo's native load irrespective of the fact that those projects are not in the interconnection queue"); *id.* at 14 (arguing that "PSCo is violating its Tariff and Commission policy by modeling unqueued 'native load' resources in the base case for the Projects' interconnection studies ahead of the earlier-queued . . . Projects"); *id.* at 21.

[214] Complainants February 27 Answer at 6; *see id.* at 10; Complaint at 4 ("PSCo's proposal to let its projects jump higher queued projects violates a fundamental interconnection rule.").

interconnection request with a lower queue position.[215] Native load priority, in contrast, concerns priority to certain transmission capacity associated with the delivery of network service—in this case, the reservation of capacity on the Power Pathway for use by generation resources, to be procured by PSCo through its resource acquisition process to serve PSCo's native load.[216] Contrary to Complainants' suggestion, PSCo's use of native load priority does not allow PSCo to process the interconnection requests associated with those future resources before the Projects' higher-queued interconnection requests or otherwise allow those resources to obtain interconnection service before the Projects.[217] Further, to the extent Complainants suggest that a transmission provider may not invoke native load priority to set aside transmission capacity for resources that have not yet entered the transmission provider's interconnection queue, we likewise disagree. As discussed above, Commission precedent supports the use of native load priority to set aside transmission capacity for future use by resources that have not yet been identified,[218] and we find that such future resources may, under the specific facts of this case, include those that have not yet requested interconnection service.

139. For similar reasons, we find that Complainants' reliance on *Invenergy v. Tri-State* is misplaced.[219] In that case, the Commission granted in part a complaint by Invenergy alleging that Tri-State improperly treated a transmission service request associated with a lower-queued interconnection request as an existing transmission capacity reservation in the interconnection study for Invenergy's higher-queued project.[220] The Commission's determination, however, did not hinge on whether Tri-State had properly exercised native

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[215] PSCo, Tariff, attach. N (0.10.1), § 4.1.2 Higher Queue Position. Additionally, PSCo will perform the DISIS for a cluster by updating the base case to include all generating facilities that, on the date the DISIS Request Window closes, are existing, have a pending higher queued interconnection request, or have executed an LGIA or requested that an unexecuted LGIA be filed with the Commission. *Id.* § 7.3.

[216] *See Sierra Pacific*, 143 FERC ¶ 61,144 at P 112 (explaining that network service recognizes the right of the transmission provider to use its network resources to serve native load needs).

[217] *See* Order No. 2003, 104 FERC ¶ 61,103 at P 118 (noting that interconnection and delivery are "separate aspects of transmission service").

[218] *See APS v. Idaho Power*, 87 FERC at 62,223-24; APS Clarification Order, 91 FERC ¶ 61,059 at 61,209.

[219] *See* Complainants February 2 Answer at 18-19 (citing *Invenergy v. Tri-State*, 174 FERC ¶ 61,184).

[220] *Invenergy v. Tri-State*, 174 FERC ¶ 61,184 at PP 1, 56.

load priority or not. In fact, the order made no mention of native load priority. Accordingly, the Commission's determination in that case was premised on the particular facts, unique to that case, that differ from the facts presented here.

140. Complainants additionally assert that PSCo's reservation of 4,050 MW of capacity on the Power Pathway is speculative and premature. For support, Complainants point to the Colorado Commission's Phase II Decision, which, according to Complainants, reduced PSCo's proposed resource procurement by almost 20% (approximately 1,350 MW).[221] We find this argument unpersuasive. In the Phase II Decision, the Colorado Commission modified PSCo's clean energy plan, which proposed a preferred resource portfolio consisting of approximately 7,200 MW of new resources to be acquired through 2027. The Colorado Commission selected one of PSCo's proposed alternative portfolios instead, which has 1,338 MW fewer resources than the preferred portfolio.[222] Notably, however, the Colorado Commission further found that by selecting the alternative portfolio, certain resource acquisitions would be deferred for later electric resource plans.[223] Accordingly, while we recognize that pending resource acquisition processes entail some degree of uncertainty, we disagree with Complainants that the Colorado Commission's findings in the Phase II Decision render PSCo's transmission reservation speculative.[224]

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[221] Complainants February 2 Answer at 14, 26, 30.

[222] Phase II Decision at PP 3, 91-93.

[223] *See id.* PP 5, 132, 136, 142, 267. The Colorado Commission explained that although the alternative portfolio results in "a smaller, less aggressive resource acquisition" in PSCo's 2021 Electric Resource Plan proceeding, it will likely result in a *larger* acquisition in PSCo's next scheduled resource plan in 2024. *Id.* P 132 (emphasis added); *see also* Colorado Commission Comments at 13-14 (explaining that its Phase II Decision approved PSCo's plan to transition way from its remaining coal generation facilities and to add 5,190 MW of renewable energy and 640 MW of natural gas peaking capacity, and that another procurement process, looking at needed acquisitions in the 2029 to 2031 timeframe, was set to begin in the summer of 2024).

[224] We note that the record does not disclose the exact amount of transmission capacity on the Power Pathway that PSCo has actually set aside in the Projects' provisional interconnection studies. Although PSCo represented, at least initially, that it was asserting native load priority to 4,050 MW of transmission capacity, in its most recent answer PSCo represented that the Colorado Commission's Phase II Decision required certain unspecified "changes" to the Projects' study assumptions. *Compare* PSCo February 20 Answer at 9, *with* PSCo March 15 Answer at 8. In any event, even

141. Finally, to the extent that CORE and Complainants contend that PSCo's use of native load priority is unduly discriminatory because PSCo's calculation of ATC should also account for CORE's rollover rights under the Tariff,[225] we are unpersuaded. In Order No. 888, the Commission explained that if a transmission customer subject to the rollover right selects a new power supplier that substantially changes the location or direction of its power flows, the customer's right to continue taking service from the transmission provider may be affected by transmission constraints associated with the change.[226] Under that standard, neither CORE nor Complainants have provided sufficient evidence demonstrating that CORE is entitled to rollover service in this case, given that CORE's power supply arrangement with PSCo will terminate at the end of 2025 and CORE will thereafter purchase power from new, third-party suppliers, including the Projects. Even assuming that rollover service is available under these circumstances, we find that the record does not provide sufficient information to evaluate whether, or to what extent, PSCo's calculation of ATC has accounted for CORE's native load and rollover rights under the Tariff. Likewise, with respect to Complainants' related argument that PSCo's native load priority on the Power Pathway effectively nullifies CORE's rollover rights, we are unpersuaded because the record does not support Complainants' assertion that PSCo's use of native load priority "all but ensur[es] that capacity will *not* be available for CORE."[227]

142. Accordingly, based on the record before us, we find that Complainants have not shown that PSCo's use of native load priority to set aside Power Pathway capacity in the Projects' study assumptions violates the Tariff, the Commission's interconnection rules, or the Commission's open access requirements. For that reason, we find that Complainants have not met their burden under section 206 of the FPA to demonstrate that PSCo is conducting the Projects' provisional interconnection studies in an unjust, unreasonable, or unduly discriminatory or preferential manner.

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assuming that PSCo has reserved the full 4,050 MW of capacity under its native load priority, Complainants have failed to demonstrate that the amount is speculative, for the reasons discussed above.

[225] CORE February 2 Comments at 9-10; Complainants February 2 Answer at 21-22.

[226] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,665 n.176.

[227] Complainants February 16 Answer at 6.

3. Claim No. 2

a. Complaint

143. Complainants argue that PSCo violated section 6.4 of the Tariff by failing to specify in the Complainants' study agreements the assumptions to be used in the Projects' provisional interconnection studies. Complainants allege that the study assumptions provided by PSCo lack basic information about both the amount of Power Pathway capacity that PSCo is setting aside to accommodate its native load obligations and the generation resources for which PSCo is reserving such capacity. In Complainants' view, PSCo's delay in providing complete and transparent study assumptions highlights its anticompetitive and unduly discriminatory conduct.[228]

b. PSCo January 18 Answer

144. PSCo asserts that it has provided Complainants all the information required at this point in the interconnection process and, following completion of the Projects' provisional interconnection studies, will provide Complainants with the study results and all required accompanying information. PSCo asserts that it satisfied section 6.4 of its LGIP because Attachment A to each Project's provisional interconnection study agreement lists the project-specific parameters, proposed commercial operation date, and the nature of the requested service (i.e., Network Resource Interconnection Service). PSCo notes that, on September 25, 2023, it also identified the study case and assumptions in response to Complainants' questions about the provisional interconnection study agreements and then, on December 21, 2023, reiterated the study case and assumptions in greater detail.[229]

145. PSCo contends that the only additional details Complainants specifically identify as missing are the amount of capacity on the Power Pathway that PSCo is setting aside to accommodate its native load, the generation resources for which PSCo is reserving that capacity, and whether PSCo will ultimately study its own unqueued generation resources. PSCo argues that LGIP section 6.4, however, did not require PSCo to provide these details in the provisional interconnection study agreements, nor does section 6.4 oblige PSCo to provide such detail before completing the studies. According to PSCo, such details will be identified in the study results, if relevant.[230]

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[228] Complaint at 18-19.

[229] PSCo January 18 Answer at 27-29.

[230] *Id.* at 29.

146. PSCo argues that Complainants are unlike the interconnection customers in *Sierra Pacific*, where the Commission took issue with the utility's failure to respond to legitimate inquiries.[231] PSCo notes that the interconnection customers in *Sierra Pacific* had completed the study process, at which point the utility became obligated to defend its native load priority claim.[232] PSCo argues that Complainants' demand for detailed study information before PSCo can complete a study exceeds the Tariff requirements and would subject the study process to both pre- and post-result challenges.[233]

147. Further, PSCo contends that although Complainants criticize PSCo for not disclosing the amount of transmission capacity it will use on the Power Pathway, that information is openly discussed in the Colorado Commission dockets regarding the Power Pathway and PSCo's 2021 Electric Resource Plan. PSCo asserts that Complainants also criticize PSCo for failing to identify the specific resources for which PSCo will reserve the Power Pathway's capacity but the ultimate selection of those resources awaits the Colorado Commission's approval.[234]

c. Complainants February 2 Answer

148. In response, Complainants assert that *Sierra Pacific* does not stand for the proposition that PSCo need not defend its native load priority claim until after it completes the interconnection studies. According to Complainants, in *Sierra Pacific*, the Commission found that the record did not provide sufficient information to determine whether the transmission owner established its right to the full capacity of a transmission line and that the transmission owner therefore would have to justify its native load priority claim when filing the transmission service agreements. Complainants contend that, here, PSCo already stated that it intends to account for native load priority through the native load forecast component of ATC, which would have the effect of reducing capacity available for the Projects. Complainants argue that, having done so, PSCo must justify its reservation now and within the confines of its Tariff and Commission precedent.[235]

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[231] *Id.* at 30 (citing *Sierra Pacific*, 143 FERC ¶ 61,144 at P 116).

[232] *Id.* (citing *Sierra Pacific*, 143 FERC ¶ 61,144 at P 30).

[233] *Id.* at 31.

[234] *Id.*

[235] Complainants February 2 Answer at 18 (citing *Sierra Pacific*, 143 FERC ¶ 61,144 at PP 30, 36, 46, 115).

149. Complainants assert that PSCo has not provided Complainants with the specific study assumptions required by section 6.4 of its LGIP. According to Complainants, section 7.1 of PSCo's LGIP Business Practice Manual also "expressly requires PSCo to '[provide] Study assumptions, including a list of all higher-queued projects (MW, type) which will be modeled in the Provisional Interconnection Study."[236] Complainants argue that PSCo points to no rule stating that base case information can be provided only when the studies conclude. If that were the case, Complainants contend, interconnection customers would have to wait months for any insight into how a transmission owner conducts a study or to run their own analysis. According to Complainants, PSCo still has not provided the size, type, and exact location of the generation included in the base case, beyond its representation that such generation consists of those resources PSCo will procure in the 2021 Electric Resource Plan proceeding. Further, Complainants argue that while PSCo admits that it set aside 4,050 MW of transmission capacity and that this reservation is reflected in its ATC calculation, PSCo has not explained how that will manifest in the base cases for the Projects' studies and it is unclear how ATC is accounted for in the interconnection studies. Complainants assert that PSCo must make such material details explicitly clear to its interconnection customers.[237]

d. PSCo's February 20 Answer

150. PSCo responds that it has provided the information necessary at this stage in the study process. PSCo asserts that it reserved 4,050 MW of capacity on the Power Pathway based on its best available estimate of the renewable resources needed to replace the retiring baseload generation and reduce carbon emissions pursuant to Colorado law. PSCo states that it identified this amount as part of its application for the Power Pathway, prior to proposing the 2021 Electric Resource Plan. PSCo contends that it reserved this capacity based on the capacity of the renewable generation expected to use the Power Pathway, which will be higher than the planned retirements due to the lower capacity factors of intermittent, non-emitting generation.[238]

151. PSCo argues that, at the time of its January 18 Answer, it could not provide the size, type, and exact location of the generation modeled in the Projects' base case because that information remained pending before the Colorado Commission. PSCo asserts that now that the Colorado Commission has issued its Phase II Decision, however, Complainants have most of that information and will receive the remainder with the

[236] *Id.* at 31 (quoting PSCo, Business Practice Manual: attach. N, Large Generator Interconnection Procedure, § 7.1).

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

[238] PSCo February 20 Answer at 16-17.

study results. In short, PSCo argues, Complainants have all the information to which they are reasonably entitled at this stage of the study process.[239]

e. Determination

152. We find that Complainants have failed to meet their burden under FPA section 206 to demonstrate that PSCo's conduct violates the Tariff or PSCo's Business Practice Manual, and we therefore deny Claim No. 2 of the Complaint.

153. In support of their claim, Complainants principally rely on section 6.4 of PSCo's LGIP, which provides, in pertinent part, that:

> At any time, a customer may request Transmission Provider perform a Provisional Interconnection Study. . . . If the customer has provided sufficient information to initate [sic] a study and has confirmed they desire a study, . . . Transmission Provider shall provide to Interconnection Customer a Provisional Interconnection Study Agreement . . . .
>
> The Provisional Interconnection Study Agreement shall . . . *specify the study case and assumptions* . . . . Interconnection Customer shall execute the Provisional Interconnection Study Agreement within ten (10) Business Days of receipt and deliver the Provisional Interconnection Study Agreement . . . to Transmission Provider within this timeframe.[240]

154. Complainants also cite section 7.1 of PSCo's LGIP Business Practice Manual, which provides, in pertinent part, that:

> Upon receiving a Provisional Interconnection Study request, ... PSCo assigns the Provisional Interconnection Queue Position for internal tracking, creates a work order and schedules a Scoping Meeting within ten (10) Business Days of receiving a completed Provisional Interconnection Study Request.

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

[240] PSCo, Transmission and Service Agreements Tariff, attach. N, § 6.4 Provisional Interconnection Request and Study Agreement (emphasis added).

> PSCo reviews the request and provides the following information at the Scoping Meeting if available.
>
> . . .
>
> *Study assumptions, including a list of all higher queued projects (MW, type) which will be modeled in the Provisional Interconnection study.*[241]

155. As part of the Complaint, Complainants submitted copies of the initial draft provisional interconnection study agreements for the Projects. Attachment A to those initial draft agreements provides a list of the study assumptions for the Projects' provisional interconnection studies, including, among other things, the proposed point of interconnection, commercial operation date, and type of interconnection service (NRIS).[242] With respect to PSCo's native load priority the initial draft agreements stated only that "Native Load Priority shall be modeled as Firm Transmission Service on Colorado's Power Pathway with associated preliminary Network Upgrades as placeholders."[243] According to additional evidence submitted with the Complaint, PSCo later removed that statement from the final, revised study agreements, explaining in an email to Complainants that, upon review, PSCo determined that the reference to native load priority was "superfluous" because native load priority is defined in Order Nos. 888 and 890 and included as a firm existing transmission commitment.[244]

156. In response to Complainants' further inquiries about the study assumptions, however, PSCo subsequently provided additional information about those assumptions. As relevant here, with respect to native load priority, PSCo provided the following further explanations: (1) "Generation reasonably forecasted to be in service and serving

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[241] PSCo, Business Practice Manual: Att. N, Large Generator Interconnection Procedure, § 7.1 (emphasis added).

[242] Complaint, Ex. C (Draft Provisional Interconnection Study Agreement) at 5, 10, 15.

[243] *Id.*, Ex. C (Draft Provisional Interconnection Study Agreement) at 5, 10, 15.

[244] *Id.*, Ex. D (Emails re Provisional Interconnection Study Agreements) at 1. As noted above, under PSCo's Tariff, existing transmission commitments include firm capacity set aside to serve peak native load forecast commitments. PSCo, Transmission and Service Agreements Tariff, attach. C (0.2.0), § 1(b) (Mathematical Algorithms Used to Calculate ATC); *see also* Order No. 890, 118 FERC ¶ 61,119 at P 244 ("[Existing transmission commitments] should be defined to include committed uses of the transmission system, including . . . native load commitments.").

PSCo native load, during the time periods studied, will be modeled in order to reflect PSCo's native load priority";[245] (2) the calculation of ATC to be applied in the study cases will include "the firm capacity set aside to serve peak Native Load forecast commitments for the time period being calculated"; (3) PSCo's "native load is granted a priority to firm capacity on existing transmission elements as well as certain transmission elements under development, including the [Power Pathway], which is being constructed to deliver new renewable generation selected in PSCo's Electric Resource Plan to serve PSCo load"; and (4) "[w]hile generation pending in PSCo's Electric Resource Plan is not reflected as queued generation in interconnection studies at this time, priority to firm transmission capability on the PSCo transmission system for the deliverability of PSCo's future network resources are reflected in" the native load forecast component of its ATC calculation.[246] In addition, PSCo provided a list of higher-queued interconnection requests that would be included in the base cases.[247]

157. Notwithstanding these supplemental explanations, Complainants assert that PSCo violated the Tariff because the study assumptions should have also described the amount of Power Pathway capacity that PSCo is setting aside, the resources for which PSCo is reserving that transmission capacity, and whether PSCo will model its own unqueued or lower-queued generation in the Projects' provisional interconnection studies.[248] However, we find that Complainants have not shown that the Tariff required PSCo to provide this specific information in the Projects' provisional interconnection study agreements. Aside from the brief reference to "study case and assumptions," section 6.4 of the Tariff does not indicate the specific type of information to be provided in provisional study agreements.[249]

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[245] Complaint, Ex. D (Emails re Provisional Interconnection Study Agreements) at 1.

[246] *Id.*, Ex. F (Invenergy Provisional and CORE RSC Generator Dispatch Study Assumptions) at 5-6.

[247] *Id.* at 7.

[248] *See* Complaint at 19-20.

[249] Similarly, to the extent Complainants assert that PSCo also violated section 7.1 of its Business Practice Manual, Complainants' own evidence demonstrates that PSCo provided a list of higher-queued generators that would be modeled in the studies' base cases along with the other study assumptions, as noted above. Further, we note that PSCo's Business Practice Manual, which describes the requirements, processes, and methodologies for processing interconnection requests under PSCo's LGIP, is not a rate on file with the Commission. *See PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,160, at P 77 (2024) (finding that the Commission had "no statutory obligation to enforce the

158. Further, the Tariff's *pro forma* provisional interconnection study agreement does not lend support to Complainants' position.[250] Article 5.0 of the *pro forma* provisional interconnection study agreement provides that the scope of the provisional interconnection study will be consistent with Article 5.9.2 of the LGIA. Article 5.9.2 of PSCo's *pro forma* LGIA, in turn, provides that the transmission provider will study whether stability, short circuit, thermal, and/or voltage issues would arise from the provisional interconnection and to confirm the interconnection facilities, network upgrades, distribution upgrades, and/or system protection facilities that would be required for the provisional interconnection service. Article 5.9.2 further states that the generating facility's maximum permissible output in the provisional LGIA must be reviewed quarterly and updated if there are changes to system conditions compared to the conditions previously used to determine of the maximum permissible output. Article 5.9.2, however, does not otherwise specify the assumptions to be used in the provisional interconnection study, let alone dictate that PSCo must include the specific information requested by Complainants here.

159. Moreover, section 6.6 of the PSCo's LGIP provides that:

> Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation and work papers and databases or data developed in the preparation of the Provisional Interconnection Study, subject to confidentiality arrangements . . . . The Provisional Interconnection Study results may be used to develop a Provisional Large Generator Interconnection Agreement at the discretion of Transmission Provider.[251]

160. We find that the specific information and inputs used to reflect PSCo's native load priority in the Projects' studies, through its ATC calculation, qualifies as "supporting documentation," "work papers," or "data" that would be developed as PSCo prepares the Projects' provisional interconnection studies and, thus, would not necessarily be available

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terms" of PJM Interconnection, L.L.C.'s Business Practice Manual 14B, which was not filed with the Commission); *N.Y. Indep. Sys. Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216, at P 32 n.17 (2007) (finding that the Commission had no statutory obligation to enforce the terms of New York Independent System Operator's Installed Capacity Manual, as it was not a filed rate schedule and thus could not override the terms of the tariff).

[250] PSCo, Transmission and Service Agreements Tariff, attach. N (0.10.1), app. 5.2.

[251] *Id.*, attach. N (0.10.1), § 6.6 Provisional Interconnection Study Procedures.

when PSCo tenders the study agreements. To the extent they have not already done so, Complainants may request this additional information from PSCo once the studies have been prepared.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.