192 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Salsa Solar Energy, LLC
Towner Wind Energy III LLC

Docket No. EL24-50-001

v.

Public Service Company of Colorado

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued July 24, 2025)

1. On February 20, 2025, the Commission issued an order denying a complaint (Complaint) filed 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] by Salsa Solar Energy, LLC and Towner Wind Energy III LLC (together, Complainants) against Public Service Company of Colorado (PSCo).[3] On March 24, 2025, Complainants and CORE Electric Cooperative (CORE) (together, Rehearing Parties) timely filed requests for rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,[4] the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by

[1] 16 U.S.C. §§ 824e, 825e.

[2] 18 C.F.R. § 385.206 (2024).

[3] *Salsa Solar Energy, LLC v. Pub. Serv. Co. of Colo.*, 190 FERC ¶ 61,108, at P 1 (2025) (Complaint Order).

[4] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

section 313(a) of the FPA,[5] we are modifying the discussion in the Complaint Order and continue to reach the same result in this proceeding, as discussed below.[6]

I. Background

1. Relevant Tariff Provisions

3. PSCo is a public utility engaged in the generation, transmission, and distribution of electric power and energy in Colorado.[7] PSCo studies generator interconnection requests under its Large Generator Interconnection Procedures (LGIP) in attachment N of its Tariff. PSCo's LGIP provides an option for provisional interconnection service,[8] which allows limited operation of a generating facility before completion of the full interconnection study process.[9] A provisional interconnection study identifies potential interconnection facilities and network upgrades needed to provide provisional interconnection service.[10]

4. Attachment C of PSCo's Tariff includes a methodology for calculating PSCo's available transfer capability (ATC), which is a "measure of the capability remaining in the transmission network for further commercial activity over and above already committed

[5] 16 U.S.C. § 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

[6] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Complaint Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[7] Complaint at 8.

[8] *See* PSCo, Transmission and Service Agreements Tariff (Tariff), attach. N (Standard Large Generator Interconnection Procedures) (0.10.1) §§ 6.4 (Provisional Interconnection Request and Study Agreement), 6.5 (Scope of Provisional Interconnection Study), 6.6 (Provisional Interconnection Study Procedures).

[9] *See Reform of Generator Interconnection Procs. & 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).

[10] PSCo, Tariff, attach. N (Standard Large Generator Interconnection Procedures) (0.10.1) § 6.5 (Scope of Provisional Interconnection Study).

uses."[11] PSCo calculates ATC by, in part, subtracting existing transmission commitments from total transfer capability.[12] 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.[13] Native load customers are PSCo's wholesale and retail power customers for whom PSCo has undertaken an obligation to construct and operate its system to meet their needs for reliable electric power.[14]

5. Tariff section 28.2 requires PSCo, on behalf of native load customers, to "designate resources and loads in the same manner."[15] Tariff sections 30.1 and 30.2 set forth the requirements for designating network resources.[16] In particular, designating a new network resource requires "as much advance notice as practicable."[17]

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

[12] *Id.*

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

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

[15] *Id.*, pt. III, § 28 (Nature of Network Integration Transmission Service) (0.4.0), § 28.2 (Transmission Provider Responsibilities); *see generally 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 (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. 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); *Open Access Same-Time Info. Sys. & Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996) (cross-referenced at 75 FERC ¶ 61,078), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049 (cross-referenced at 78 FERC ¶ 61,221), *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.*, 225 F.3d 667.

[16] PSCo, Tariff, pt. III, § 30 (Network Resources) (0.2.0), §§ 30.1 (Designation of Network Resources), 30.2 (Designation of New Network Resources).

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

2. Colorado State Proceedings

6. In 2019, Colorado enacted a statute directing certain utilities to reduce by 80% carbon dioxide emissions associated with electricity sales from 2005 levels by 2030 and to seek to provide energy generated from 100% clean energy resources by 2050 or sooner. The statute required such utilities to submit, as part of their next electric resource plan filed with the Colorado Public Utilities Commission (Colorado Commission), a clean energy plan to achieve the 2030 target and to progress toward the 2050 goal.[18]

7. PSCo requested approval from the Colorado Commission to construct the Colorado Power Pathway transmission project (Power Pathway) on March 2, 2021. 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.[19] 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

[18] *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. 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 in which 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 then 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.

[19] *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. 2, at PP 1-2, 13 (Colorado Commission June 2, 2022) (Power Pathway Decision).

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.[20] Additionally, PSCo explained that it was proposing the Power Pathway before its next electric resource plan (the 2021 Electric Resource Plan) to allow bidders to propose to interconnect to the Power Pathway during competitive solicitation.[21] PSCo explained that it intends to bring the Power Pathway online in three stages between 2025 and 2027.[22]

8. PSCo then 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.[23] PSCo also forecasted its native peak demand to grow at a compounded annual rate of 0.3% through 2030.[24]

9. The Colorado Commission approved the Power Pathway.[25] The Colorado Commission found that, without the Power Pathway's additional capacity, PSCo will be unable to interconnect the quantity of renewable resources required to decarbonize its generation fleet in accordance with Colorado law.[26] 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

[20] *Id.* P 17.

[21] *Id.* P 21.

[22] *Id.* P 19.

[23] *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).

[24] *Id.* P 168.

[25] Power Pathway Decision at P 1.

[26] *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.").

completion of the necessary transmission.[27] 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 other utilities take further steps toward emission reduction goals and to meet other initiatives.[28]

10. The Colorado Commission also approved, with modifications, PSCo's 2021 Electric Resource Plan. The Colorado Commission authorized PSCo to begin an all-source, competitive bidding process to acquire new generation resources to meet projected resource needs through 2028 and advance its clean energy plan.[29] The Colorado Commission also approved the timing of two subsequent resource acquisition processes.[30]

11. PSCo later submitted its 120-Day Report to the Colorado Commission, proposing various resource portfolios for consideration.[31] PSCo's preferred resource portfolio called for acquiring approximately 7,200 MW of additional wind, solar, storage, biomass, and gas generation resources.[32] The Colorado Commission modified 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 less resource additions than PSCo's preferred portfolio—will reduce costs to customers, considering factors such as the cost of renewable generation curtailments.[33] The Colorado Commission explained that the alternative portfolio instead defers some of the proposed generation for future resource acquisitions.[34]

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[27] *Id.*

[28] *Id.* P 58.

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

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

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

[32] *See id.* P 92.

[33] *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.

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

3. Complaint

a. Complainants' Provisional Interconnection Requests

12. Complainants are two Invenergy affiliates who are developing the Projects at issue in this proceeding. The Projects include: (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.[35]

13. Complainants stated that, on February 17, 2023, 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. Complainants stated that PSCo assigned the 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, when CORE plans to continue taking network service from PSCo via rollover rights provided under PSCo's Tariff. Complainants stated that CORE will replace power previously sourced from PSCo with power purchased from, among other sources, the Projects. Complainants asserted that the Projects are contracted to supply CORE with energy to serve its load beginning in 2026.[36]

14. Complainants stated that, on August 28, 2023, Complainants submitted requests for PSCo to study the Projects for provisional interconnection service while they remained pending in PSCo's interconnection queue, with a proposed commercial operation date of December 31, 2025. Complainants asserted 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.[37]

15. Complainants stated 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

[35] Complaint at 2, 7-8.

[36] *Id.* at 2, 8-9. Complainants stated 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.

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

Pathway with associated preliminary Network Upgrades as placeholders."[38] Complainants alleged 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.[39] Complainants claimed that PSCo explained the removal by stating that the reference was superfluous because native load priority is defined in Order Nos. 888 and 890[40] 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 periods studied, to reflect PSCo's native load priority.[41] Complainants stated 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 the only option for the Projects to achieve interconnection by the requested commercial operation date.[42]

16. Complainants asserted 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 would grant its native load a priority to firm capacity on existing transmission elements, as well as certain transmission elements under development, including the Power Pathway.[43] PSCo added that, while

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

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

[40] *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *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).

[41] Complaint at 11-12; *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 represented that two such segments are expected to be in service by 2025. *Id.* at 12 n.31.

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

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

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.[44] According to Complainants, these study assumptions confirmed 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.[45]

17. Complainants noted that the study assumptions provided by PSCo did 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 would 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 would use the Power Pathway.[46]

b. Complainants' Claims

18. In Claim No. 1, Complainants alleged that PSCo is conducting the Projects' provisional interconnection studies in violation of the Tariff and the Commission's open access policies. Complainants asserted 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 contended that this practice violates a fundamental interconnection rule that interconnection customers have access to available transmission capacity on a first-come, first-served basis according to queue date.[47]

19. Further, Complainants contended 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 asserted 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

[44] *Id.* Ex. F (Invenergy Provisional and CORE RSC Generator Dispatch Study Assumptions).

[45] *Id.* at 13-14.

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

[47] *Id.* at 4, 17-18.

conduct is anticompetitive because it seeks to give preferential treatment to its own generation, to the detriment of competitors.[48]

20. Complainants requested 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.[49] Specifically, Complainants requested 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.[50]

21. In Claim No. 2, Complainants alleged 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 aside under its native load priority and the specific generation resources for which PSCo is reserving such capacity.[51]

4. Complaint Order

22. In the Complaint Order, the Commission denied the Complaint.[52] The Commission first found that the Complaint was ripe for resolution[53] and then separately addressed each claim.

a. Claim No. 1

23. The Commission found 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 it thus denied Claim No. 1.

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

[49] *Id.* at 34.

[50] *Id.*

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

[52] Complaint Order, 190 FERC ¶ 61,108 at P 2.

[53] *Id.* PP 50-54 (citing 16 U.S.C. § 824e(b)).

24. The Commission explained that in Order Nos. 888 and 889, the Commission allowed transmission providers to exercise native load priority by reserving sufficient transmission capacity, in their calculation of ATC, to serve their native load.[54] The Commission further explained 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.[55] For existing native load, the Commission stated, 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.[56] The Commission noted that, consistent with the *pro forma* Open Access Transmission Tariff (OATT), section 28.2 of PSCo's Tariff incorporates this requirement.[57] For native load growth, the Commission stated, 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.[58] The Commission explained that the transmission provider need not designate network resources at the time of the initial forecast, though any transmission capacity that is reserved for future load growth, but 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).[59]

25. The Commission found, under the particular circumstances of this case involving a transmission reservation needed to accommodate near-term resource procurement processes mandated by state law, that Complainants had failed to demonstrate that

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[54] *Id.* P 123 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,279; 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, *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253, *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667).

[55] *Id.* P 124.

[56] *Id.*

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

[58] *Id.* P 125.

[59] *Id.*

PSCo's conduct violates the Tariff or the Commission's open access requirements.[60] Specifically, based on the facts of this case, the Commission found 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.[61]

26. The Commission cited for support a series of orders in complaint proceedings between Arizona Public Service Company (APS) and Idaho Power Company (Idaho Power).[62] In the APS Complaint Order, the Commission found, among other things, that Idaho Power had appropriately included in its calculation of ATC the transmission capacity associated with certain "additional resource acquisition" requirements generation purchases attributable to the seasonal variations in hydropower availability (i.e., a critical water year requirement).[63] In those proceedings, the Commission further 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.[64] However, in the APS Clarification Order, the Commission later clarified that the *pro forma* OATT "does *not* require a utility to designate network resources *now* to cover generation purchases to replace its hydroelectric generation resources *in the future*."[65]

27. Consistent with that precedent, the Commission similarly found in the Complaint Order 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.[66] The Commission made clear that PSCo will ultimately be required to designate network resources; if such resources do not

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[60] *Id.* P 129.

[61] *Id.*

[62] *Id.* P 130 (citing *Ariz. Pub. Serv. Co. v. Idaho Power Co.*, 87 FERC ¶ 61,303 (APS Complaint Order), *order on reh'g*, 89 FERC ¶ 61,061 (1999) (APS Rehearing Order), *order granting clarification*, 91 FERC ¶ 61,059 (2000) (APS Clarification Order)).

[63] APS Complaint Order, 87 FERC at 62,223.

[64] *Id.* at 62,224; APS Rehearing Order, 89 FERC at 61,201.

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

[66] Complaint Order, 190 FERC ¶ 61,108 at P 131.

materialize or PSCo ultimately does not need the reserved capacity, PSCo will be required to release the transmission capacity to third parties.[67]

28. The Commission found unpersuasive Complainants' attempts to distinguish the APS Clarification Order.[68] The Commission noted that the APS Clarification Order's findings with respect to Idaho Power's critical water year requirement did not turn on Idaho Power's rollover rights.[69] The Commission found that the APS Clarification Order applied, because PSCo, like Idaho Power, had sought to set aside transmission capacity to meet its future native load needs due to expected, impending changes to its existing resource mix.[70] The Commission also rejected Complainants' assertion that the APS Clarification Order was distinguishable because it allowed Idaho Power to continue its existing use of firm transmission service into the future, while PSCo proposed to set aside significantly more transmission capacity than it was currently using for its native load obligations without designating network resources.[71] The Commission explained that the APS Clarification Order 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 further noted that the APS Clarification Order 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.[72]

29. In addition, the Commission disagreed with Complainants' suggestion that PSCo was 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.[73] To the contrary, the Commission found that PSCo's ability to use native load priority under these circumstances was reasonably bounded.[74] Specifically, the Commission found that, even though PSCo sought to set aside capacity on the Power Pathway to serve primarily existing native load needs, under the particular circumstances

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[67] *Id.*

[68] *Id.* P 132.

[69] *Id.*

[70] *Id.*

[71] *Id.* P 133.

[72] *Id.*

[73] *Id.* P 134.

[74] *Id.*

of this case PSCo's use of native load priority closely resembled a transmission provider's use of native load priority to accommodate reasonably forecasted native load growth.[75] The Commission found PSCo's particular use of native load priority to be consistent with the Order No. 888 requirements applicable to such a transmission provider, for three reasons.[76] First, the Commission found that in the context of both PSCo's existing native load as well as its native load growth, PSCo's use of native load priority was based on both a reasonable forecast of its native load obligations within its current planning horizon and a reasonable plan to meet those obligations.[77] Second, the Commission reasoned that until such time as PSCo's resources need the reserved capacity on the Power Pathway, PSCo would make the capacity available to third-party customers on an interim basis and PSCo would post to OASIS any unused transmission capacity on the Power Pathway, once operational.[78] Third, the Commission noted that third parties 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.[79]

30. The Commission next rejected the argument that PSCo's conduct amounts to "queue jumping."[80] The Commission found that this argument conflated queue position priority and native load priority.[81] The Commission similarly distinguished *Invenergy v. Tri-State*, explaining that the Commission's decision there did not turn on native load priority.[82]

31. The Commission was unpersuaded by the argument that PSCo's reservation of 4,050 MW of capacity on the Power Pathway was speculative and premature.[83] The

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[75] *Id.*

[76] *Id.*

[77] *Id.* P 135.

[78] *Id.* P 136.

[79] *Id.* P 137.

[80] *Id.* P 138 (quoting Complainants February 27 Answer at 6).

[81] *Id.*

[82] *Id.* P 139 (citing *Invenergy Solar Dev. N. Am. LLC v. Tri-State Generation & Transmission Ass'n, Inc.*, 174 FERC ¶ 61,184, at PP 1, 56 (2021)).

[83] *Id.* P 140.

Commission recognized that pending resource acquisition processes entail some degree of uncertainty but disagreed that the Colorado Commission's findings in the Phase II Decision rendered PSCo's transmission reservation speculative.[84]

32. Finally, the Commission rejected the argument 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.[85] The Commission found that this argument lacked sufficient support in the record.[86]

b. Claim No. 2

33. In Claim No. 2, Complainants alleged that PSCo violated its Tariff and Business Practice Manuals by failing to specify study assumptions to be used in the Projects' provisional interconnection studies in the Complainants' study agreements.[87] The Commission found that Complainants 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 thus denied Claim No. 2.[88]

II. Discussion

A. Procedural Matters

34. On April 22, 2025, PSCo filed a motion for leave to answer and answer in response to the rehearing requests filed by Rehearing Parties. On May 9, 2025, Complainants filed a motion for leave to answer and answer in response to the motion for leave to answer and answer filed by PSCo. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure[89] prohibits answers to requests for rehearing. Accordingly, we deny PSCo's and Complainants' motions to answer and reject their answers.

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[84] *Id.*

[85] *Id.* P 141.

[86] *Id.*

[87] *Id.* P 1.

[88] *Id.* PP 152-160.

[89] 18 C.F.R. § 385.713(d)(1) (2024).

B. Substantive Matters

1. Native Load Priority

a. Rehearing Requests

35. Rehearing Parties argue that the Commission incorrectly departed from Commission precedent and the Tariff.[90] Specifically, Rehearing Parties contend that the Commission has required transmission owners to satisfy one of two requirements to reserve transmission capacity to serve native load: designate network resources intended to serve existing native load or reserve capacity for future native load by substantiating native load growth.[91] Rehearing Parties maintain that these requirements stem both from the Tariff and Commission precedent, including Order No. 888.[92] As to existing native load, Rehearing Parties argue that the Commission has repeatedly stated that transmission owners must designate network resources and, for support, quote Order No. 888: "'[a] transmission provider taking network service to serve network load under the tariff also is required to designate its resources and is subject to the same limitations required of any other network customer.'"[93]

36. For additional support, Rehearing Parties rely on several Commission orders, which they argue demonstrate that the Commission has repeatedly required that transmission owners designate network resources for serving existing native load.[94] Rehearing Parties also contend that this requirement is contained in Tariff section 28.2.[95]

37. Rehearing Parties argue that, in this case, PSCo did not designate network resources in the same manner as any other network customer because PSCo did not

[90] Complainants Rehearing Request at 8; CORE Rehearing Request at 12.

[91] Complainants Rehearing Request at 8; CORE Rehearing Request at 12.

[92] Complainants Rehearing Request at 8; CORE Rehearing Request at 12-13.

[93] Complainants Rehearing Request at 8 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,753-54); CORE Rehearing Request at 12-14, 19 (same).

[94] Complainants Rehearing Request at 8-12 (citing, e.g., *Morgan Stanley Cap. Grp. v. Ill. Power Co.*, 83 FERC ¶ 61,204, at 61,912 (1998)); CORE Rehearing Request at 13-14 (citing, e.g., *In re Portland Gen. Elec. Co.*, 131 FERC ¶ 61,224, at PP 1, 6 (2010)).

[95] Complainants Rehearing Request at 11; CORE Rehearing Request at 13.

designate any network resources to serve its existing load.[96] Rehearing Parties further state that PSCo could not reserve the capacity for future native load because it did not demonstrate reasonably forecasted native load growth. According to Rehearing Parties, based on PSCo's own load growth forecasts, PSCo could not have reserved transmission capacity for more than 50 MW per year for native load growth.[97]

38. Rehearing Parties therefore assert that the Commission created a carve-out from Order No. 888 that would allow transmission owners to reserve transmission capacity without designating network resources to serve existing native load in order to accommodate near-term resource procurement processes mandated by state law.[98] Rehearing Parties interpret the Complaint Order as creating a new exception for when a utility's use of native load priority for existing load "closely resembles" a transmission provider's use of native load priority to accommodate reasonably forecasted native load growth.[99] Rehearing Parties argue that the Commission cannot create an exception to a rulemaking without a subsequent rulemaking.[100] Rehearing Parties argue that this exception is unjustified and has no basis in Order No. 888 or subsequent precedent.[101]

39. In addition, Rehearing Parties argue that the Commission's justifications for this standard are unavailing.[102] Rehearing Parties dispute the notion that forecasting existing native load is similar to forecasting native load growth.[103] And Rehearing Parties also

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[96] Complainants Rehearing Request at 12; CORE Rehearing Request at 14-15.

[97] Complainants Rehearing Request at 12-13; CORE Rehearing Request at 14 ("The record reflects that PSCo's expected load growth is 50 MW per year, representing a 502 MW load increase by 2032. PSCo could therefore appropriately reserve 502 MW of capacity on the [Power Pathway] for its reasonable forecasted load growth without designating any network resources for the 502 MW.").

[98] Complainants Rehearing Request at 13; CORE Rehearing Request at 15-16, 18; *id.* at 17 (stating separately that the Commission accepted the "argument that a transmission provider only has to designate network resources for *current uses* of the system not *future uses*").

[99] Complainants Rehearing Request at 14; CORE Rehearing Request at 15, 17.

[100] Complainants Rehearing Request at 19; CORE Rehearing Request at 19.

[101] Complainants Rehearing Request at 14-15; CORE Rehearing Request at 16-18.

[102] Complainants Rehearing Request at 15; CORE Rehearing Request at 16-18.

[103] Complainants Rehearing Request at 15-16; CORE Rehearing Request at 17.

dispute the relevance of state resource planning requirements.[104] Rehearing Parties assert that many cases in which the Commission has required transmission owners to designate resources involved state-regulated load serving entities that were presumably subject to state procurements and planning requirements.[105]

40. Rehearing Parties also maintain that the Complaint Order deviates from the purpose of Order No. 888.[106] According to Rehearing Parties, Order No. 888 requires transmission owners to designate network resources so that transmission providers do not have an incentive to tie up valuable transmission capacity in excess of what is needed to serve native load, and the Complaint Order removes that limitation.[107]

41. Finally, Rehearing Parties challenge the Commission's reliance on the APS Clarification Order.[108] Read in context, Rehearing Parties argue, the APS Clarification Order stands for the limited proposition that Idaho Power, and any of its network customers, were permitted to set aside transmission capacity on a contingent basis in an amount equal to its existing native load transmission reservation for years in which its hydroelectric generation could not produce to its full designated resource amount due to water shortages.[109]

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[104] Complainants Rehearing Request at 15-16; CORE Rehearing Request at 17-19, 22-23.

[105] Complainants Rehearing Request at 16-18 (citing *Sierra Pacific Power Co.*, 143 FERC ¶ 61,144, at PP 3, 108-114 (2013), and *Nevada Power Co.*, 145 FERC ¶ 61,237, at P 3 (2013), for the proposition that it would be unnecessary for the Commission to find that network resources were properly designated if "the pendency of state integrated resource planning proceedings and a need to procure state mandated resources" would alone allow transmission reservation); CORE Rehearing Request at 19-21. Complainants also argue that the Commission is impermissibly allowing Colorado state law to supersede federal law by basing its decision on the effect of Colorado state law. Complainants Rehearing Request at 36-38.

[106] Complainants Rehearing Request at 8-9, 18; CORE Rehearing Request at 21.

[107] Complainants Rehearing Request at 18-19; CORE Rehearing Request at 13, 21-22.

[108] Complainants Rehearing Request at 20; CORE Rehearing Request at 23.

[109] Complainants Rehearing Request at 20-25; CORE Rehearing Request at 23-26.

b. Commission Determination

42. We continue to 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.[110] We are unpersuaded by Rehearing Parties' arguments that PSCo improperly exercised native load priority.

43. Order No. 888 required public utilities to provide open access transmission service on a comparable basis to that which they provide themselves.[111] Like the *pro forma* OATT, PSCo's Tariff's thus requires PSCo to "designate resources … in the same manner as any Network Customer."[112] Yet—recognizing the need for safeguards to ensure transmission providers can maintain sufficient transmission capacity to reliably serve native load—the Commission has allowed transmission providers to exercise native load priority.[113] That is, as Order No. 888-A stated, "the transmission provider [may] reserve, in its calculation of ATC, sufficient capacity to serve native load."[114] For existing native load, a transmission provider may reserve transmission capacity to meet its native load needs but must designate resources on behalf of its native load customers on the same basis as its network customers.[115] And 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.[116]

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[110] Complaint Order, 190 FERC ¶ 61,108 at P 121.

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

[112] PSCo, Tariff, pt. III, § 28 (Nature of Network Integration Transmission Service) (0.4.0), § 28.2 (Transmission Provider Responsibilities).

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

[114] *Id.*

[115] *Aquila Power Corp. v. Entergy Servs. Inc.*, 90 FERC ¶ 61,260, at 61,859 (2000).

[116] *Wis. Pub. Power Inc. SYS. v. Wis. Pub. Serv. Corp.*, 84 FERC ¶ 61,120, at 61,658-59 (1998) (explaining that the Commission "d[id] not require that [Wisconsin Power & Light Company] obtain network resources for future load growth").

A reservation for native load growth need not be preceded by a designation of network resources.[117]

44. We continue to find that PSCo must designate network resources for reservations of transmission capacity to serve existing native load in the future, though such designation need not necessarily precede the reservation.[118] Indeed, the PSCo Tariff, which adopted the *pro forma* OATT provision, states that designating a new network resource requires "as much advance notice as *practicable*."[119] The Commission has accordingly recognized that that the *pro forma* OATT does not mandate that a transmission provider must always designate network resources *before* reserving transmission capacity for future use of the transmission system by existing native load.[120]

45. We find that Complainants failed to show that it was practicable for PSCo to designate network resources for the reservation at issue. Specifically, Colorado recently enacted its statute requiring PSCo to reduce by 80% carbon dioxide emissions associated with electricity sales by 2030.[121] Compliance with this statute will likely lead to significant resource retirements and additions—in separate locations.[122] The Colorado Commission thus approved the Power Pathway and found that, without it, PSCo would be unable to interconnect the new resources needed to shift generation as Colorado law requires.[123] The Colorado Commission further explained that waiting to approve the Power Pathway until after it approved the development or acquisition of new generation

[117] *Id.*

[118] Complaint Order, 190 FERC ¶ 61,108 at PP 129, 131. We note that our reasoning applies to the portion of the reservation for existing native load. There is no dispute over whether the portion for native load growth requires pre-designating network resources—it does not.

[119] PSCo, Tariff, pt. III, § 30 (0.2.0), § 30.2 (emphasis added); *Pro forma* OATT, pt. III, § 30.2. More simply, the Tariff does not state that network resource designations must precede transmission reservations.

[120] APS Complaint Order, 87 FERC at 62,224; APS Clarification Order, 91 FERC at 61,209.

[121] Colo. Rev. Stat. § 40-2-125.5(3), (4) (requiring 80% reduction from 2005 levels).

[122] Power Pathway Decision at P 57; PSCo January 18 Answer at 7-8.

[123] Power Pathway Decision at PP 1, 57.

would threaten the timeliness of the necessary transmission.[124] Because PSCo was awaiting the Colorado Commission's approval of the specific resources that PSCo will acquire, PSCo had not yet identified the resources that will use the reserved capacity.[125] Indeed, in comments opposing the Complaint, the Colorado Commission reiterated that the Power Pathway will serve as the "transmission backbone in eastern Colorado … necessary to ensure interconnection for generation resources that were certain to be built in that … area" and that "those renewable and gas peaking generation resources will serve a vital role replacing the loss of generation serving PSCo's native load as a result of the company's closure[s] … in other parts of the state."[126] Given these particular facts, Complainants failed to show that it was practicable for PSCo to designate these network resources because they will be needed to serve native load in the future (and not currently) due to a major state-mandated shift in resources and because, as the Colorado Commission explained, development of the Power Pathway is key to the development of the new resources.

46. Rehearing Parties suggest that the Commission's findings in the Complaint Order would give transmission providers an incentive to tie up transmission capacity beyond that actually needed for native load.[127] It is undisputed, however, that transmission providers may reserve transmission capacity for native load growth *before* resource designation—because there are sufficient safeguards in place. As the Commission explained in the Complaint Order, those safeguards apply with equal force in the circumstances here, where PSCo is reserving transmission capacity to serve existing native load in the future.[128] First, 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.[129] Here, in the context of planning to serve PSCo's existing native load in the future, we find that

[124] *Id.*

[125] Complaint Order, 190 FERC ¶ 61,108 at P 128.

[126] Colorado Commission Comments at 11-12.

[127] Complainants Rehearing Request at 18-19; CORE Rehearing Request at 13, 21-22.

[128] Complaint Order, 190 FERC ¶ 61,108 at P 134 ("[U]nder 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*.").

[129] *Wis. Pub. Power*, 84 FERC at 61,658-59.

PSCo's use of native load priority is likewise based on both a reasonable forecast of, and a reasonable plan to meet, its future native load obligations within its current planning horizon—in light of the significant changes PSCo must make to the types and locations of resources.[130] Second, 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.[131] PSCo has represented that it will make the capacity available to third-party customers on an interim basis.[132] In addition, any unused transmission capacity on the Power Pathway, once operational, must also be posted to OASIS. Finally, third parties—such as Complainants and CORE—will have the opportunity to monitor and, if appropriate, challenge PSCo's reservations if they are unjustified by upcoming resource acquisitions or otherwise.[133] For these reasons, we find that PSCo's use of native load priority under these circumstances is reasonably bounded.

47. Rehearing Parties argue that the Commission's findings are inconsistent with precedent. We disagree. Two aspects of the APS proceedings demonstrate that a transmission provider need not designate network resources before reserving transmission capacity for future use of the transmission system when such designation is not yet practicable. First, in the APS Complaint Order, the Commission found that Idaho Power had appropriately included in its ATC calculations an expectation that it would replace generation from agreements expiring several years in the future.[134] The Commission explained that "a transmission provider may plan to continue using capacity that involves

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[130] Rehearing Parties criticize the Commission's discussion of PSCo's forecasting. Complainants Rehearing Request at 15-16 (arguing that "forecasts … do not justify departing from the Commission's generally-applicable rules"); CORE Rehearing Request at 17. To be clear, "forecasting" functions as a *limit* on PSCo's conduct—its exercise of native load priority may only be based on a reasonable assessment of its future obligations. *See Wis. Pub. Power*, 84 FERC at 61,658-59 (explaining that a reservation of capacity for native load must be supported by a reasonably forecasted native load obligation). "Forecasting" is not a rationale for PSCo's exercise of native load priority. Rather, an aspect of the Commission's rationale in denying the Complaint—that PSCo must accommodate major future changes in the types and location of generation—both substantiates the case for native load priority and separately gives rise to the need for PSCo to create a reasonable assessment of its future obligations.

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

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

[133] *Wis. Pub. Power*, 84 FERC ¶ 61,120 at 61,658-59.

[134] APS Complaint Order, 87 FERC at 62,224; APS Rehearing Order, 89 FERC at 61,203.

network resource purchases that are due to expire," thus demonstrating that a transmission provider need not designate network resources before reserving transmission capacity for future use of the transmission system when such designation is not yet practicable.[135] Indeed, the Commission noted that, to be sure, "as the date nears when these existing contracts will expire, Idaho Power will 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."[136] Complainants argue that the APS Complaint Order merely reiterates the "rule that any transmission customer can continue to keep the same amount of transmission rights it previously had when its contracts expire, consistent with its rollover right."[137] However, the APS Complaint Order's reference to rollover rights was a separate justification from the rule discussed above—that a transmission provider need not designate network resources before reserving transmission capacity for future use of the transmission system when such designation is not yet practicable.[138] In particular, the APS Complaint Order pointed to the *pro forma* tariff to demonstrate that Idaho Power could continue using capacity involving network resource purchases that were due to expire—even though the Commission made no finding on whether Idaho Power was going to exercise such rollover rights.[139]

48. Second, the APS Clarification Order held that "the *pro forma* tariff does not require a utility to designate network resources now to cover generation purchases to replace its hydroelectric generation resources in the future" in light of anticipated

[135] APS Complaint Order, 87 FERC at 62,224.

[136] *Id.*

[137] Complainants Rehearing Request at 24 & n.76.

[138] APS Complaint Order, 87 FERC at 62,224.

[139] *Id.* Complainants also cite *Wisconsin Public Power*, 84 FERC at 61,658, for the notion that "whether rollover rights entitle a transmission owner to set aside capacity for yet to be contracted for resources is based on whether the transmission owner has rollover rights." Complainants Rehearing Request at 24 & n.76. However, that discussion in *Wisconsin Public Power* simply stands for the proposition that where rollover rights cannot be exercised, those rollover rights cannot themselves be the basis of a transmission capacity reservation. *Wisconsin Public Power*, 84 FERC at 61,655-58. And Complainants' argument is refuted by the fact that the APS Complaint Order did not require a finding that the transmission owner was going to properly exercise rollover rights. APS Complaint Order, 87 FERC at 62,224.

emergency conditions.[140] Like the Commission's holding in the Complaint Order here, the APS Clarification Order is also based on the proposition that a designation of network resources need not precede a reservation for the future use of the transmission system when such a designation is not yet practicable due to future critical changes.[141] This interpretation is consistent with the APS Complaint Order, the APS Clarification Order itself, and the *pro forma* tariff provisions at issue. We are not persuaded by Rehearing Parties' arguments to distinguish the APS Clarification Order. For instance, CORE suggests that the holding is "narrowly" applicable to "hydroelectric resources that may be unavailable in July due to water shortages,"[142] while Complainants contend it means only that "in the event of emergencies, the Commission may make equitable exceptions."[143] However, nothing in the APS Clarification Order restricts its holding to hydroelectric resources or "equitable exceptions" during emergencies. CORE also asserts that the APS Clarification Order "only permits a transmission owner to set aside transmission capacity associated with an already designated resource (and only the difference in what the resource could not produce versus its designated amount) in a short-term reliability-type event (e.g., a critical water shortage)."[144] Beyond the fact that such a limitation is not explained in the APS Clarification Order itself, there is no legally principled basis from which to draw such a limitation. As explained above, the APS Complaint Order and the APS Clarification Order are together best understood as based on the more broadly applicable proposition that transmission capacity reservations for future uses are allowed without first designating resources when not yet practicable. This reading is the most sensible, especially in light of other related orders, as explained below.

49. Rehearing Parties argue that several other orders are inconsistent with the Commission's findings in the Complaint Order.[145] We disagree. These orders are not inconsistent with the Commission's findings because they either do not address *when* a

[140] APS Clarification Order, 91 FERC at 61,209.

[141] *See id.*

[142] CORE Rehearing Request at 25-26.

[143] Complainants Rehearing Request at 20-25.

[144] CORE Rehearing Request at 25-26. Complainants make similar arguments. Complainants Rehearing Request at 20-25. We also note that the APS Clarification Order did not restrict the utility to maintaining a constant level of transmission capacity reservations, and a transmission capacity reservation for generation purchases to replace hydroelectric generation resources there could exceed the reservations needed to accommodate the hydroelectric resources.

[145] Complainants Rehearing Request at 8-12; CORE Rehearing Request at 13-14.

network designation must be made, require designation for *current* uses of the transmission system (i.e., not future uses like those here), require designation when it was already practicable, or find that designation is not needed for native load *growth*. For example, in *Morgan Stanley Capital*, the Commission addressed current uses of the transmission system, and designation of the resources there was already practicable, as evidenced in part by the subsequent orders in the proceeding, which Rehearing Parties do not address.[146] *Wisconsin Public Power* merely reaffirmed that for current use of the transmission system for serving existing native load, the transmission provider must designate network resources in the same manner as network customers, and that for native load growth, designation is not required.[147] In *SkyGen*, the Commission did not make findings on when or whether resources must be designated but rather found that a utility had properly designated new network resources, which were included in planning reports approved by state utility commissions.[148] Further, the fact that the designations there were appropriate does not mean those designations set the minimum standard, and, in any event, designating the resources at issue was clearly practicable at the time.[149] Finally, in *Sierra Pacific*, it was practicable to designate the network resources at issue because they were existing network resources that were already serving the native load of two transmission providers; the transmission providers' parent company then simply designated those existing resources to serve as system-wide network resources following

[146] *Morgan Stanley Cap. Grp. v. Ill. Power Co.*, 83 FERC ¶ 61,204 at 61,912, *order on emergency mot.*, 83 FERC ¶ 61,299, at 62,239-41 (1998) (explaining that Illinois Power erroneously failed to produce an existing contract with the Tennessee Valley Authority, which represented a valid network resource), *order on reh'g*, 93 FERC ¶ 61,081 (2000).

[147] *Wis. Pub. Power*, 84 FERC at 61,658 (explaining that for "existing capacity to serve native load currently," the tariff provided that "the transmission provider must designate network resources in the same manner as network customers" and for "native load growth," the Commission "d[id] not require that [Wisconsin Power & Light Company] obtain network resources"); *see also In re Portland Gen. Elec. Co.*, 131 FERC ¶ 61,224 at P 6 (approving a stipulation and consent agreement in an enforcement proceeding involving utility setting aside transmission capacity for current use without adequately designating network resources); *Aquila Power Corp.*, 90 FERC ¶ 61,260 at 61,859-60 (requiring designation for current use of transmission in the same manner as network customers), *order on reh'g*, 92 FERC ¶ 61,064, at 61,192 (2000).

[148] *SkyGen Energy LLC v. S. Co. Servs., Inc.*, 92 FERC ¶ 61,120, at 61,461 (2000).

[149] *Id.* Unlike here, the resources in that case had received certificates of public convenience and necessity, and the transmission provider, Southern Company Services, Inc., had already proceeded toward construction of the facilities. *Id.*

a planned merger of the two transmission providers' systems.[150] Further, the fact that the designations were appropriate under the circumstances of that proceeding does not mean that designation is a prerequisite for exercising native load priority in all instances.

50. Rehearing Parties argue that the Commission seeks to change through this proceeding the content of prior rulemakings—which may only be changed through new rulemaking.[151] Rehearing Parties do not, in fact, cite any rulemaking or portion thereof promulgating a rule specifying *when* resources for serving native load must be designated in relation to when a transmission reservation is made. Rather, Order No. 888 and its progeny left this question open, and the Commission developed answers via case-specific adjudication. Although Order No. 888 and its progeny established that transmission providers serving native load must designate network resources in the same manner as network customers,[152] they did not promulgate a rule setting forth when transmission providers that reserve transmission capacity to serve native load must designate network resources. Instead, "Order Nos. 888 and 889 permit the transmission provider to reserve, in its calculation of ATC, sufficient capacity to serve native load,"[153] without specifying when the transmission provider must make the related network resource designation. We recognize that subsequent adjudications often involved a transmission reservation for native load *growth* preceding a designation of network resources.[154] But as discussed above, the APS Clarification Order demonstrated that native load growth was not the only circumstance in which a reservation could precede a designation.[155] Similarly, the Commission's findings here represent a fact-specific analysis developed via adjudication and justified for the reasons discussed above.[156] Namely, in the circumstances presented here—particularly the fact that it is not yet practicable for PSCo to designate network resources because they are needed to serve native load in the future (and not currently) due to a major state-mandated resource replacement and thus relocation—PSCo need not designate network resources that do not yet exist for its future use of the transmission system to serve native load.[157] Indeed, as the Commission explained in the Complaint

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[150] *Sierra Pac. Power Co.*, 143 FERC ¶ 61,144 at PP 50, 110.

[151] Complainants Rehearing Request at 19; CORE Rehearing Request at 19.

[152] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,635-36, 31,951.

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

[154] *See, e.g.*, *Wis. Pub. Power*, 84 FERC at 61,658.

[155] APS Clarification Order, 91 FERC at 61,209.

[156] *See supra* PP 42-46.

[157] To the extent prior orders, see *supra* P 49, could be read to suggest prior

Order, we believe that a transmission provider's reservation of transmission capacity under its native load priority is a fact-specific issue that should be resolved on a case-by-case basis.[158]

51. Rehearing Parties also dispute the relevance of state resource planning requirements, asserting that many cases in which the Commission has required transmission owners to designate resources involved state-regulated load serving entities that were presumably subject to state procurement and planning requirements.[159] We are not basing our decision, however, on the mere existence of state requirements. Instead, among other factors discussed above, the significant impact of the state mandate in substantially shifting the type and location of generation needed to serve PSCo's native load justifies the Commission's findings.[160]

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rulemakings specified *when* resources for serving native load must be designated in relation to when a transmission reservation is made, such suggestions were unintended overstatements in dicta; more accurately, those orders were instead filling gaps left by prior rulemakings, *consistent* with those rulemakings.

[158] Complaint Order, 190 FERC ¶ 61,108 at P 133. 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 address Complainants' argument that the Tariff contains other procedures PSCo could have followed to obtain transmission priority. Complainants Rehearing Request at 38. In any event, Complainants do not explain why these other procedures would have satisfied the need for the Colorado Commission to approve the Power Pathway before it approved the development or acquisition of new generation, as discussed above.

[159] Complainants Rehearing Request at 15-18; CORE Rehearing Request at 17-23.

[160] Complainants also argue that the Commission is impermissibly allowing Colorado state law to supersede federal law by basing its decision on the effect of Colorado state law. Complainants Rehearing Request at 36-38. 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 this argument.

2. Treatment of CORE

a. Rehearing Requests

52. Rehearing Parties argue that, under Order No. 888, public utilities must provide open access transmission service on a comparable basis to the transmission service they provide themselves.[161] Rehearing Parties contend that the Commission violates this rule by creating an exception whereby PSCo can reserve transmission capacity without designating network resources, while CORE cannot, and fails to provide a sufficient justification.[162]

53. Rehearing Parties also argue that CORE must be included as native load in PSCo's ATC calculation because CORE is a network customer of PSCo's.[163] Rehearing Parties contend that PSCo is failing to accommodate CORE's rollover rights.[164]

b. Commission Determination

54. We continue to 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.[165] We are unpersuaded by Rehearing Parties' arguments on rehearing. As to comparability, we make no findings concerning what CORE can or cannot do with respect to the designation of network resources. Instead, we find that Complainants failed to meet their burden under FPA section 206 to demonstrate that *PSCo*'s conduct was improper. We note that, in any event, PSCo represents that "PSCo will continue to plan for CORE as it does for itself."[166] As to rollover rights, we continue to find that Rehearing Parties have not provided sufficient evidence demonstrating that CORE is entitled to rollover service here, given that CORE's power supply arrangement

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[161] Complainants Rehearing Request at 25-26; CORE Rehearing Request at 26.

[162] Complainants Rehearing Request at 6-7, 26-29 ("The Complaint Order violates Sections 206 and 217 of the Federal Power Act by unduly discriminating against CORE … , a load serving network customer of PSCo with its own carbon emission reduction goals."); CORE Rehearing Request at 26.

[163] Complainants Rehearing Request at 27-29; CORE Rehearing Request at 27-29.

[164] Complainants Rehearing Request at 27-29; CORE Rehearing Request at 27-29.

[165] Complaint Order, 190 FERC ¶ 61,108 at PP 121, 141.

[166] PSCo February 20, 2024 Answer at 12-14; *see also* PSCo March 15, 2024 Answer at 6-7.

with PSCo will terminate at the end of 2025 and CORE will then purchase power from new suppliers—nor have Rehearing Parties provided 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.[167]

3. Support for Transmission Reservation Amount

a. Rehearing Requests

55. Complainants argue that the Commission erred in finding that PSCo adequately supported its 4,050 MW transmission reservation.[168] Complainants contend that the Commission improperly and summarily concluded that PSCo's 4,050 MW transmission reservation is not speculative or premature.[169] Complainants assert that the Commission improperly relied on ongoing proceedings to support PSCo's 4,050 MW reservation.[170] Complainants rely on *Nevada Power Co.* for the proposition that PSCo must provide evidence to substantiate its reservation, and Complainants claim that PSCo did not.[171] Complainants also argue that the Commission's reasoning was internally inconsistent in explaining that PSCo had not stated how much transmission capacity was set aside in the Projects' interconnection studies.[172]

b. Commission Determination

56. We continue to find that Complainants have not shown that PSCo's 4,050 MW transmission reservation is improperly speculative and continue to find, for the reasons given in the Complaint Order and based on the record before us, that Complainants have

[167] Complaint Order, 190 FERC ¶ 61,108 at P 141 (explaining, among other things, 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").

[168] Complainants Rehearing Request at 29.

[169] *Id.* at 30.

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

[171] *Id.* at 31-32 (citing *Nev. Power Co.*, 145 FERC ¶ 61,237 at PP 42-43).

[172] *Id.* at 33.

failed to demonstrate that the amount of PSCo's reservation is unjustified.[173] Complainants rely on *Nevada Power Co.*,[174] where the transmission provider filed unexecuted transmission service agreements under FPA section 205, and the Commission found—at that stage—that the transmission provider had failed to satisfy its burden to justify the amount of transmission capacity it sought to reserve to serve its native load.[175] Because Complainants filed their Complaint under FPA section 206, PSCo does not face such a burden. At this stage, we find that Complainants have failed to sufficiently show that PSCo's reservation amount is impermissibly speculative.[176] Further, we disagree with Complainants that the Complaint Order is internally inconsistent. In the Complaint Order, the Commission noted that, given that the Projects' studies were still pending when the Complaint and answers were filed, Complainants had not provided evidence definitively establishing the exact amount of capacity that PSCo had set aside under its native load priority. The Commission nevertheless found that, even assuming that Complainants had made that showing, it failed to demonstrate on this record that such amount would be impermissibly speculative.[177]

4. Interconnection Queue Position

a. Rehearing Requests

57. Rehearing Parties argue that PSCo is modeling, in the base case of the Project's interconnection studies, its own unqueued generation resources as though they have earlier queue positions than the Projects.[178] Rehearing Parties contend that this conduct is impermissible and that the Commission erred in finding that Complainants conflated queue position and native load priority.[179] Rehearing Parties cite several examples of

[173] Complaint Order, 190 FERC ¶ 61,108 at P 140.

[174] Complainants Rehearing Request at 31-32 (citing *Nev. Power Co.*, 145 FERC ¶ 61,237 at PP 42-43).

[175] *Nev. Power Co.*, 145 FERC ¶ 61,237 at P 40.

[176] To be clear, we do not make a finding in this proceeding that a particular amount of reserved transmission capacity—4,050 MW or otherwise—is, in fact, justified. We reiterate only that, based on this record, Complainants have not met their burden to show that the reservation is unjustified.

[177] Complaint Order, 190 FERC ¶ 61,108 at P 140 n.224.

[178] Complainants Rehearing Request at 33-36; CORE Rehearing Request at 29-30.

[179] Complainants Rehearing Request at 33-36; CORE Rehearing Request at 29-30.

PSCo allegedly acknowledging this conduct.[180] Complainants argue that PSCo's study assumptions impermissibly treat PSCo's later-queued generation resources as being in service or having an earlier queue position than the Projects and that PSCo cannot model phantom generation associated with its native load in interconnection studies.[181]

b. Commission Determination

58. We are unpersuaded by Rehearing Parties' arguments on rehearing. To the extent Rehearing Parties dispute PSCo's reservation for native load priority as reflected in ATC—which is then reflected in interconnection studies and their base cases—we are unpersuaded by this argument for the reasons explained above[182] and in the Complaint Order.[183] In short, Complainants did not meet their burden to demonstrate that, due to PSCo's exercise of native load priority, PSCo improperly calculated ATC. Effectuating native load priority through ATC does not function as impermissible queue-jumping because, otherwise, even native load growth would need to be excluded from the ATC calculation.

59. To the extent Rehearing Parties also argue that, apart from ATC, PSCo directly modeled unqueued nonexistent generation resources as though they had higher queue positions in the Projects' base case, we find that Complainants did not meet their burden to demonstrate such a contention. Rehearing Parties cite no evidence specifying that PSCo carried out such conduct. Rather, the information cited shows that PSCo permissibly incorporated its native load priority into its ATC calculation, which then informed the study and base case.

60. In particular, Complainants cite paragraphs 36 and 37 of PSCo's admissions and denials in response to the Complaint. There, PSCo admitted 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," and "[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 deliverability of PSCo's

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[180] *See, e.g.*, Complainants Rehearing Request at 33-36 nn.114-117 (citing Complaint at 20-25; Complainants February 2 Answer at 14; PSCo January 18 Answer at 28, 31, 39, 40; *id.*, app. A, at PP 20, 36-37, 50, 106); CORE Rehearing Request at 29 nn.78-79.

[181] Complainants Rehearing Request at 33-35.

[182] *See supra* II.B.1.b.

[183] Complaint Order, 190 FERC ¶ 61,108 at P 138.

future network resources are reflected in NL_F," *i.e.* the native load forecast component of ATC.[184] These statements demonstrate that PSCo factored native load priority into its ATC calculation but would not reflect the unqueued generation as though it were higher queued in the studies' base case. Indeed, PSCo further stated that "the projects in PSCo's Electric Resource Plan are *not* presently included in the base case" and PSCo would, in fact, "need approval from the [Colorado Commission] of the resources that PSCo has proposed to develop … ."[185] In addition, Complainants cited Exhibit F to the Complaint as evidence demonstrating the relevant "Study Assumptions."[186] But that exhibit states that "the generation modeled in the Base Case includes," among other things, certain existing and higher-queued generation;[187] it does not state that PSCo's unqueued future generation resources will be modeled in the base case. It instead states that "generation pending in PSCo's Electric Resource Plan is not reflected as queued generation in interconnection studies at this time," though "priority to firm transmission capability on the PSCo transmission system for the deliverability of PSCo's future network resources are reflected in [an element of the ATC calculation]."[188] In sum, the information Complainants rely on does not support their claim that PSCo was modeling unqueued nonexistent generation as though it existed in the base case, but rather it reflects that PSCo was permissibly exercising native load priority in the relevant ATC calculation. Indeed, even Complainants themselves acknowledged that the "Study Assumptions indicate that [PSCo] may not directly model unqueued generation in its base case."[189]

61. The other information Rehearing Parties cite aligns with this understanding. For instance, Rehearing Parties cite to PSCo's statement that it "established the Provisional Interconnection Study base case to include generating resources, including native load priority resources, and network upgrades reasonably expected to be online at the time of [Complainants'] requested commercial operation date."[190] Even assuming PSCo was

[184] PSCo January 18 Answer, App. A, at ¶¶ 36-37 (internal quotation marks omitted).

[185] *Id.* P 39 (emphasis added).

[186] Complaint at 3 (citing Ex. F).

[187] Complaint, Ex. F at 5-6.

[188] *Id.*

[189] *Id.* at 22.

[190] PSCo January 18 Answer, app. A, at P 20; *see also* Complaint, Ex. D. In light of the weight of the record evidence, we further reject Complainants' reliance on its own affiant's recollection of broad statements by PSCo during scoping meetings that predated PSCo's clarifying Study Assumptions. *See* Complaint at 22-25.

referring to future native load priority resources using the Power Pathway, this statement aligns with the discussion above and shows that PSCo would incorporate those future resources into the ATC calculation applied in the base case.

The Commission orders:

In response to the requests for rehearing, the Complaint Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.