

151 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Bonneville Power Administration

Docket No. EL15-13-000

v.

PacifiCorp

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued April 2, 2015)

1. In this order, we set for hearing and settlement judge procedures the complaint filed by Bonneville Power Administration (Bonneville) against PacifiCorp alleging that PacifiCorp is engaging in unjust, unreasonable, and unduly discriminatory and/or preferential behavior in violation of PacifiCorp's Open Access Transmission Tariff (Tariff) with regard to Bonneville's request to roll over the transmission component of a grandfathered agreement providing for bundled power and transmission to Bonneville's customers in southeast Idaho to network integration transmission service under PacifiCorp's Tariff.

I. Background

2. Bonneville and PacifiCorp are parties to two pre-Order No. 888¹ agreements pursuant to which PacifiCorp serves the loads of Bonneville's preference customers² located in an area of southeast Idaho known as the "Goshen bubble," and Bonneville returns an equal amount of power to PacifiCorp's loads in Oregon. Specifically, under the South Idaho Exchange Agreement (Exchange Agreement), PacifiCorp provides bundled power and transmission service to the Goshen substation in southeast Idaho in order to serve the load of Bonneville's Goshen bubble preference customers. In exchange, Bonneville delivers an equivalent amount of power to PacifiCorp's customers in the PacifiCorp West (PACW) service territory. Under the General Transfer Agreement (Transfer Agreement), PacifiCorp delivers the power that is supplied to the Goshen substation under the Exchange Agreement to Bonneville's customers' specific points of delivery.³

3. In 2011, PacifiCorp notified Bonneville that it was terminating the Transfer Agreement and the Exchange Agreement as of June 30, 2016.⁴ As a result, Bonneville sought to unbundle the transmission components of the agreements and rollover that service into network integration transmission service under the PacifiCorp Tariff. According to Bonneville, the rollover rights under the Transfer Agreement were uncontroversial. Bonneville will continue to use the same PacifiCorp facilities to move power from the Goshen substation to Bonneville's customers' specific points of

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (Order No. 888-A), *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 Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² Bonneville is obligated by statute to give "preference and priority" in power sales from federal hydroelectric facilities to certain "preference customers" in the Northwest United States. Preference customers are generally municipalities, cooperatives, and public utility districts making purchases at wholesale for resale to retail customers.

³ Complaint at 8-9.

⁴ *Id.* at 9.

delivery.⁵ However, Bonneville disputes how PacifiCorp has proposed to rollover the network integration transmission service provided under the Exchange Agreement.

4. Bonneville states that PacifiCorp delegated its service obligations under the Exchange Agreement to its affiliated merchant function, PacifiCorp Energy, which handles PacifiCorp's commercial and trading operations. Bonneville explains that Bonneville and PacifiCorp both have load in the Goshen bubble and PacifiCorp Energy has aggregated Bonneville's load into PacifiCorp's native load for purposes of service. Bonneville asserts that PacifiCorp Energy uses its own network resources to serve both Bonneville and PacifiCorp loads in the aggregate, without making a distinction between Bonneville and PacifiCorp load in its scheduling of generation to the Goshen bubble. As a result, in order to rollover Bonneville's transmission service under the Exchange Agreement: (1) PacifiCorp will need to disaggregate Bonneville's Goshen bubble load from PacifiCorp's native load; and (2) PacifiCorp will need to allocate Bonneville some of the network integration transmission service rights that are currently used by PacifiCorp Energy to serve the combined Bonneville-PacifiCorp load in the Goshen bubble.⁶

5. Bonneville asserts that most of the network integration transmission service rights in the Goshen bubble area are held by PacifiCorp Energy.⁷ Bonneville states that the following three scheduling paths directly connect PacifiCorp's transmission system with Bonneville's Goshen bubble loads: (1) Path C to Grace to Goshen (Path C to Goshen); (2) Brady to Antelope to Goshen (AMPS South to North); and (3) BPAT.NWMT to Antelope to Goshen (AMPS North to South).⁸ Bonneville explains that a fourth path, Kinport to Goshen, also connects to Bonneville's Goshen loads, but Bonneville claims that using this path requires additional transmission arrangements with Idaho Power Company (Idaho Power). Bonneville asserts that Idaho Power's system has constraints that make transmitting power to Kinport on a firm basis uncertain, particularly in the summer.⁹

6. Bonneville states that the AMPS North to South path is the only path that directly connects Bonneville's main transmission system to PacifiCorp's PacifiCorp East (PACE) service territory in which the Goshen bubble is located, and therefore is the only point in

⁵ *Id.* at 10-11.

⁶ *Id.* at 11.

⁷ *Id.* at 2.

⁸ *Id.* at 12.

⁹ *Id.* at 12-13.

the PACE service territory where Bonneville can designate its federal generation resources to serve Bonneville's Goshen loads without having to obtain transmission service over another intervening system, which would create potential reliability challenges. Bonneville notes that PacifiCorp Energy currently has designated network resources that reserve all 90 MW of capacity on AMPS North to South.¹⁰

7. Bonneville states that, on April 30, 2013, it submitted a request to PacifiCorp for network integration transmission service beginning July 1, 2016 and, on September 11, 2013, Bonneville and PacifiCorp executed two agreements for network integration transmission service (NITSAs) to serve Bonneville's Goshen loads.¹¹ According to Bonneville, in September and November of 2013, Bonneville asked PacifiCorp, pursuant to a Transmission Consulting Agreement, to study whether Bonneville could designate network resources at a number of points in PACE for delivery to Bonneville's Goshen area loads in light of the transmission service Bonneville would be entitled to on PacifiCorp's PACE system under the rollover provisions of the PacifiCorp Tariff. Bonneville states that, in the November 2013 request, it specifically requested that PacifiCorp study whether capacity would be allocated to Bonneville over AMPS North to South.¹²

8. According to Bonneville, on February 3, 2014, PacifiCorp issued a study in response to Bonneville's requests.¹³ Bonneville states that it agrees that the amount of network integration transmission service rights that PacifiCorp proposed to allocate to Bonneville is reasonable. However, PacifiCorp did not propose to allocate any of these rights over the AMPS North to South path. Bonneville explains that, instead, PacifiCorp proposed to allocate the rights over only Path C to Goshen and AMPS South to North.¹⁴ Bonneville states that PacifiCorp proposed to continue reserving all 90 MW of capacity over AMPS North to South for PacifiCorp Energy's use. Bonneville asserts that PacifiCorp's rationale for not allocating Bonneville capacity on AMPS North to South was that PacifiCorp Energy has a designated network resource that utilizes all 90 MW of capacity on the path.¹⁵

¹⁰ *Id.* at 15-16.

¹¹ *Id.* at 14.

¹² *Id.* at 15.

¹³ *Id.* at 16.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19.

9. Bonneville asserts that subsequent discussions regarding PacifiCorp's treatment of the AMPS North to South path reached an impasse and, on February 24, 2014, Bonneville submitted a transmission service request to designate a 56 MW network resource with delivery over AMPS North to South. Bonneville states that, on February 28, 2014 and March 26, 2014, Bonneville sent clarifying materials to PacifiCorp regarding this request.¹⁶ PacifiCorp performed a system impact study to evaluate Bonneville's request, and then informed Bonneville that it could not provide the requested service without upgrading its facilities because PacifiCorp Energy has existing designated network resources that utilize the full capacity of AMPS North to South.¹⁷ Bonneville states that, in discussions, PacifiCorp has expressed concern that a portion of PacifiCorp Energy's designated resource, Colstrip, might be "stranded" if PacifiCorp Energy is not permitted to retain all of the capacity on AMPS North to South.¹⁸ Bonneville claims that PacifiCorp did not evaluate Bonneville's transmission service request as a rollover request, but instead as a request for new service, unrelated to the service Bonneville is currently receiving from PacifiCorp.¹⁹

II. Complaint

10. On October 30, 2014, Bonneville filed the complaint pursuant to sections 206 and 306 of the Federal Power Act (FPA),²⁰ and Rule 206 of the Commission's Rules of Practice and Procedure²¹ (Complaint). Bonneville argues that PacifiCorp's proposed allocation of network integration transmission service rights grants PacifiCorp's merchant function, PacifiCorp Energy, preferential access to transmission paths that have been used to serve combined PacifiCorp-Bonneville load. Bonneville contends that this improperly limits Bonneville's ability to convert the transmission component of grandfathered power and transmission agreements to equivalent transmission service under PacifiCorp's Tariff. Bonneville asserts that this is not permitted by the PacifiCorp Tariff or Commission precedent and that it would unsettle the longstanding principles of open, non-discriminatory transmission access upon which the Commission's regulatory framework is based.²² Bonneville contends that the apparent reason for PacifiCorp's

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 22.

¹⁸ *Id.* at 20-21.

¹⁹ *Id.* at 22.

²⁰ 16 U.S.C. §§ 824e, 825e (2012).

²¹ 18 C.F.R. § 385.206 (2014).

²² Complaint at 23.

proposed allocation is protecting the economic interest of its merchant function, PacifiCorp Energy, and argues that this embodies the undue preference and discrimination that is forbidden by the FPA.²³

11. Bonneville asserts that, beginning July 1, 2016, PacifiCorp will cease serving Bonneville's Goshen area loads under the Exchange Agreement and the Transfer Agreement, which will open up capacity that PacifiCorp Energy currently uses to serve Bonneville's customers on the three paths on PacifiCorp's transmission system that directly serve Goshen. Bonneville maintains that it must be able to access these paths in order to designate enough network resources to serve its customers' load.²⁴ Bonneville argues that AMPS North to South is the only path that directly connects to Bonneville's transmission system and that it is improper to limit the reallocation of its transmission rights to only the two other transmission paths that PacifiCorp has used to serve Bonneville's Goshen area loads.²⁵

12. Bonneville requests that the Commission order PacifiCorp to allow Bonneville to continue to take transmission service from PacifiCorp over paths that have been used to serve Bonneville's Goshen area loads, and, in particular, the AMPS North to South path.²⁶ Specifically, Bonneville requests that the Commission order PacifiCorp to allocate network integration transmission service capacity across the three Goshen-area transmission lines based on Bonneville's and PacifiCorp's projected seasonally-adjusted percentages of load at Goshen.²⁷ Bonneville explains that its 62.89 percent share of Goshen load in the winter season would result in Bonneville being allocated 56 MW of capacity over the AMPS North to South path during the winter and PacifiCorp being allocated 34 MW. Bonneville states that, in the summer period, its allocation would be limited to 42.59 percent of PacifiCorp's network integration transmission service capacity on the three paths. Bonneville clarifies that it asks that the Commission order PacifiCorp to allocate capacity based on Bonneville's percentage of load for each season and that the numbers provided by Bonneville are for illustrative purposes only.²⁸ Bonneville further requests that the Commission order PacifiCorp to accept Bonneville's February 2014 (as modified on March 26, 2014) request for designation of a network

²³ *Id.* at 3.

²⁴ *Id.* at 22.

²⁵ *Id.* at 23.

²⁶ *Id.* at 3.

²⁷ *Id.* at 40-41.

²⁸ *Id.* at 41.

resource at BPAT.NWMT with delivery over the AMPS North to South path in an amount consistent with the allocations requested by Bonneville.²⁹

A. Right to Roll Over the Transmission Component of the Exchange Agreement

13. Bonneville contends that it satisfies the requirements for rollover transmission service set forth in Section 2.2 of the PacifiCorp Tariff.³⁰ Bonneville also asserts that it is the appropriate entity entitled to rollover rights.³¹ Bonneville argues that, in rollover situations, the right to continue to take transmission service flows to the bundled customer and its load, not the entity or the designated resources that formerly served the load.³² Bonneville cites *Southwest Power Pool, Inc.*³³ in support of this proposition.³⁴ Bonneville asserts that it is the load customer and, accordingly, it is entitled to the rights formerly used by PacifiCorp Energy to serve Bonneville's Goshen bubble loads.³⁵

14. Bonneville asserts that a customer's qualified entitlement to rollover transmission service can be displaced in only two situations: (1) if the customer declines to match a competing request for service; or (2) if the initial transmission service agreement provides for rollover restrictions based on reasonable forecasts of native load growth. Bonneville argues that neither situation exists here.³⁶

B. Effect of Bonneville's Requested Network Resource Designation on Power Flows

15. Bonneville argues that the only Commission-approved basis PacifiCorp could have for denying Bonneville's right to designate its preferred network resources over AMPS North to South is if PacifiCorp found that the designation of those resources would result in a "substantial change in the location or direction of the power flows

²⁹ *Id.* at 42.

³⁰ *See id.* at 24-27.

³¹ *Id.* at 27.

³² *Id.* at 27, 37.

³³ 99 FERC ¶ 61,379 (2002) (*SPP*).

³⁴ *See* Complaint at 27 (citing *SPP*, 99 FERC ¶ 61,379 at 62,607).

³⁵ *Id.* at 37.

³⁶ *Id.* at 27.

imposed” on PacifiCorp’s system.³⁷ Bonneville asserts that PacifiCorp has not made such a finding.

16. Specifically, Bonneville states that the PacifiCorp system impact study that was released in July 2014 did not evaluate whether power flows would change as a result of Bonneville’s request to designate a new network resource because PacifiCorp assumed that PacifiCorp Energy would continue to hold all network integration transmission service rights over AMPS North to South, even though PacifiCorp Energy currently uses those rights to serve both PacifiCorp’s and Bonneville’s load. Bonneville asserts that PacifiCorp approached Bonneville’s request as an incremental transmission service request and concluded that no transmission service could be provided without upgrades to the system because PacifiCorp Energy is currently using all of the capacity on AMPS North to South. Bonneville argues that PacifiCorp’s denial of Bonneville’s request to designate a new network resource to serve Bonneville load without a finding that Bonneville’s request would result in substantially changed power flows is in violation of Commission precedent on rollover transmission service rights.³⁸

17. Bonneville argues that, if its request to designate a new network resource with delivery over AMPS North to South is granted, there will be no changes in the location or direction of any power flows. Bonneville contends that the point of receipt it has requested is the same point of receipt that PacifiCorp has used to serve Bonneville’s and PacifiCorp’s combined Goshen area loads. Bonneville argues that the only difference would be the source of the supply; instead of all the power being generated by PacifiCorp Energy, a portion would be supplied by Bonneville.³⁹

C. Commission Precedent on Retail Access

18. Bonneville asserts that its load in the Goshen bubble area will face the same resource access issue that native load customers seeking direct access to the wholesale energy market have faced in the context of retail access reform. Bonneville states that, in that context, local utilities held all transmission rights on the transmission paths leading to the native customer’s loads, and the Commission has permitted those utilities to reallocate capacity on specific transmission paths that had previously been used to serve native load customers. Specifically, Bonneville states that, in *Arizona Independent Scheduling Administrator Association*,⁴⁰ the Commission found that reallocating a fixed

³⁷ *Id.* at 29 (citing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890-A, 121 FERC ¶ 61,297, at P 636 (2007)).

³⁸ *Id.* at 30.

³⁹ *Id.* at 31.

⁴⁰ 93 FERC ¶ 61,231 (2000) (*Arizona ISA*).

amount of capacity on specific paths to scheduling coordinators for purposes of serving native load was an acceptable means of honoring the native load customers' rollover rights. Bonneville asserts that the Commission reached this finding despite arguments that offering a fixed amount of capacity on specific paths was inconsistent with the Commission's *pro forma* open access transmission tariff and resulted in hybrid point-to-point service.⁴¹

19. Bonneville states that, in *Arizona ISA*, the Commission noted that retail customers are not guaranteed "unfettered access to imports," but approved the reallocation, explaining that "the temporary allocations... reflect a reallocation of the existing amount of transmission capacity used to serve retail load, i.e., existing retail loads will use designated transmission import capability that the transmission providers had been using to reach previously designated network resources."⁴² Bonneville contends that its request to designate its own preferred network resources using a path that PacifiCorp Energy is currently using to serve Bonneville's load, AMPS North to South, is analogous.

D. PacifiCorp's Proposed Justifications for its Decision

20. Bonneville states that, in discussions, PacifiCorp has advanced the following two justifications for its decision to not allocate Bonneville network integration transmission service rights over AMPS North to South, that: (1) PacifiCorp Energy has a designated network resource that is currently using all available capacity on AMPS North to South; and (2) granting capacity to Bonneville would partially strand PacifiCorp Energy's generation resource.⁴³

21. As to the first alleged justification, Bonneville argues that the power from PacifiCorp Energy's designated network resource that uses all available capacity on AMPS North to South is currently being used to serve both Bonneville and PacifiCorp loads and that the portion of the capacity on AMPS North to South currently assigned to PacifiCorp Energy that reflects Bonneville's percentage of load must be reassigned to Bonneville.⁴⁴

22. Bonneville further contends that its right to continued access to the PacifiCorp transmission system upon termination of the Exchange Agreement is not subservient to generation facilities that are a designated network resource, and that granting designated

⁴¹ Complaint at 33.

⁴² *Id.* at 34 (citing *Arizona ISA*, 93 FERC ¶ 61,231 at 61,761).

⁴³ *Id.* at 35.

⁴⁴ *Id.* at 35-36.

network resources such a priority would be inconsistent with the PacifiCorp Tariff and Commission precedent.⁴⁵ Bonneville claims that a designated resource is inseparable from the load that it serves, and that, when a bundled firm customer like Bonneville is being converted from bundled service to open access, the network integration transmission service rights used to serve that customer follow the load, not the entity or the designated resources that formerly served the load.

23. Bonneville also maintains that PacifiCorp's first alleged justification makes little sense from a factual perspective. Bonneville states that PacifiCorp's load obligation will be roughly halved in the Goshen area when the Exchange Agreement terminates.⁴⁶ Bonneville provides an affidavit from a Bonneville employee, Kevin Mozena, which asserts that eTag data shows that, during the past year until June 15, 2014, PacifiCorp Energy had regularly scheduled a portion of its designated network resource on AMPS North to South to serve combined Bonneville and PacifiCorp load in the Goshen area. Mr. Mozena states that, beginning June 15, 2014, it appears PacifiCorp Energy ceased scheduling Colstrip to serve Goshen loads.⁴⁷

24. Bonneville argues that, accordingly, PacifiCorp will be required to back-down some of the resources that are currently designated to serve Bonneville's load and this will free up capacity on PacifiCorp's transmission system that should be reallocated to Bonneville to enable it to designate an equivalent amount of resources for continued service to its network load.⁴⁸ In addition, Bonneville asserts that PacifiCorp has offered to reallocate capacity rights on other paths that would displace PacifiCorp Energy designated network resources; therefore, the same should be possible on AMPS North to South.⁴⁹

25. As to the second alleged justification, Bonneville argues that it is inappropriate and discriminatory for PacifiCorp to consider, in the administration of transmission rights, whether a specific generation resource will have access to markets or transmission capacity.⁵⁰ Bonneville further claims that, in terminating the Transfer Agreement and the Exchange Agreement, PacifiCorp should have considered Bonneville's ability to

⁴⁵ *Id.* at 36.

⁴⁶ *Id.* at 37.

⁴⁷ *Id.* at 20, Att. 2 at P 15.

⁴⁸ *Id.* at 37-38.

⁴⁹ *Id.* at 38.

⁵⁰ *Id.* at 38-39.

designate new resources to serve Bonneville's load as well as the consequences that termination would have on PacifiCorp Energy's ability to find alternative markets for its generation. Bonneville contends that the fact that PacifiCorp may not have considered those factors before terminating Bonneville's grandfathered service should in no way affect Bonneville's rights to designate its own network resources to serve its loads following expiration of the Exchange Agreement.⁵¹

26. Bonneville asserts that, if it is unable to designate a network resource for delivery over AMPS North to South, it would be required to purchase extra firm transmission services from Idaho Power to deliver Bonneville's generation to its loads in the Goshen bubble. Bonneville states that it estimates this would increase its costs by approximately \$1.2 million a year. Bonneville claims that it also would likely be exposed to additional imbalance charges in the PacifiCorp/California Independent System Operator Corporation Energy Imbalance Market and potentially would need to purchase a capacity product to balance its loads in the Goshen bubble, as it would not be able to perform these services directly. Bonneville states that it does not currently have a cost estimate for securing these balancing services. Bonneville also maintains that, during the summer months, Bonneville's resources would be subject to more interruptions over Idaho Power's system, which could potentially disrupt service to Bonneville's loads or cause Bonneville to experience energy imbalance costs and penalties.⁵²

III. Notice and Responsive Pleadings

27. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 65,649 (2014), with answers, protests, and interventions due on or before November 19, 2014. On November 19, 2014, PacifiCorp filed a timely answer to the Complaint. NorthWestern Corporation and the M-S-R Public Power Agency filed timely motions to intervene. Utah Associated Municipal Power Systems (UAMPS), the City of Idaho Falls, Idaho (Idaho Falls), BPA Customer Group,⁵³ Public Power Council, and Northwest Requirements Utilities filed timely motions to intervene and comments. F. Steven Knudsen filed a timely protest against the Complaint. Idaho Power and Public Power Association of New Jersey filed motions to intervene out-of-time. The Idaho Public Utilities Commission (Idaho Commission), Large Public Power Council and American Public Power Association, and National Rural Electric Cooperative filed

⁵¹ *Id.* at 39

⁵² *Id.* at 42-43.

⁵³ BPA Customer Group consists of Pacific Northwest Generating Cooperative d/b/a PNGC Power, Idaho Consumer-Owned Utilities Association, Fall River Rural Electric Cooperative, Inc., Raft River Rural Electric Cooperative, Inc., Lower Valley Energy, the City of Soda Springs, and United Electric Co-op, Inc.

motions to intervene out-of-time and comments. The Utah Division of Public Utilities (Utah Commission) filed late comments.

28. On December 4, 2014, Bonneville filed an answer to PacifiCorp's answer and BPA Customer Group filed a limited answer to PacifiCorp's answer. On December 19, 2014, PacifiCorp filed an answer in response to Bonneville's answer (PacifiCorp December 19 Answer). On January 5, 2015, Bonneville filed an answer to the PacifiCorp December 19 Answer (Bonneville January 5 Answer).

A. PacifiCorp Answer

29. PacifiCorp argues that: (1) the Exchange Agreement expressly limits Bonneville's ability to assert rollover rights, as permitted by Commission precedent; (2) limiting Bonneville's rollover rights is consistent with Commission policy because Bonneville's requested designated resource over AMPS North to South would substantially change power flows on PacifiCorp's transmission system; (3) *SPP* and *Arizona ISA* are distinguishable from the facts of this case; (4) Bonneville's requested relief would strand generating assets that are essential to PacifiCorp's native load service; (5) network integration transmission service does not include a commitment to serve a designated network load using a specific path, or point-to-point-style capacity rights and the service cannot usurp PacifiCorp's prior reservation of the AMPS North to South capacity; (6) Bonneville paid wheeling charges over Idaho Power's transmission before the Exchange Agreement and it is not PacifiCorp's responsibility to provide Bonneville with a wheel-free option after termination of the Exchange Agreement; and (7) Bonneville should not be granted relief pursuant to open access transmission policies because it does not offer reciprocal open access transmission services.

1. Limitations in Exchange Agreement

30. PacifiCorp argues that Bonneville's requested relief is inconsistent with the Exchange Agreement because the agreement expressly limits PacifiCorp's obligation to serve Bonneville and allows PacifiCorp to limit Bonneville's usage of its transmission facilities if the facilities are needed to serve PacifiCorp's native load. PacifiCorp asserts that the Commission's policy is that a transmission provider can limit a customer's rollover rights where it has included such limitations in the original service agreement.⁵⁴

⁵⁴ PacifiCorp Answer at 19 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,196-98; *Nev. Power Co.*, 97 FERC ¶ 61,324, at 62,493 (2001) (“[A] transmission provider can deny a customer the ability to roll over its long-term firm service contract if the transmission provider includes in the original service--at the time it is entered into--specific, reasonably forecasted native load needs that will use the transmission capacity provided under the contract at the end of the contract term.”); *Constellation Power Source, Inc. v. Am. Elec. Power Serv. Corp. and Sw. Power Pool*,

(continued...)

PacifiCorp contends that, in order to make this demonstration, the transmission provider must identify the pre-existing contracts that commence in the future or show that native load and load growth projections are sufficiently specific and supported in the record at the time of the original transmission service agreement.⁵⁵

31. PacifiCorp asserts that, in applying this principle to pre-Order No. 888 agreements such as the Exchange Agreement, the Commission and appellate courts have been willing to show leniency when the agreement language does not perfectly conform to the Commission's policy. In support of this assertion, PacifiCorp cites an Administrative Law Judge (ALJ) opinion in which the ALJ affirmed a transmission provider's decision to deny a rollover request by Texas-New Mexico Power (TNMP) based on language in the agreement that stated "all rights to service under this Agreement shall cease as a matter of contract and [TNMP] shall not claim or assert any continuing right to service under this Agreement."⁵⁶ PacifiCorp contends that the opinion addressed the ability for pre-Order No. 888 contract language to limit rollover rights even if it deviates from the Order No. 888-A language when it stated that, "[t]o suggest that TNMP should prevail because the service agreement, i.e., the PSA, contained no explicit reservation of transmission capacity for native load service, would be to ask the impossible. The PSA was negotiated and drafted long before Order 888 was issued and, hence, could not have included an express exclusion of rollover rights to transmission-only service."⁵⁷

32. PacifiCorp maintains that the Exchange Agreement: (1) limits PacifiCorp's obligations to Bonneville in the event upgrades are required to accommodate both PacifiCorp and Bonneville loads; (2) makes clear that there is no dedication of any PacifiCorp facilities to Bonneville as a consequence of taking service under the Exchange Agreement; and (3) ensures that deliveries required for each party's own operations would not be adversely affected by deliveries for the other party under the Exchange Agreement.⁵⁸ Generally, PacifiCorp asserts that nothing in the Exchange Agreement contemplated granting Bonneville continuing access to a specific transmission path.⁵⁹

Inc., 100 FERC ¶ 61,157, at P 32 (2002); *Pub. Serv. Co. of N.M. v. Ariz. Pub. Serv. Co.*, 99 FERC ¶ 61,162, at 61,667 (2002); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,041, at PP 6-7 (2004)).

⁵⁵ PacifiCorp Answer at 19-20.

⁵⁶ *Id.* at 20 (citing *El Paso Elec.*, 108 FERC ¶ 63,045, at P 9 (2004) (*EPE*)).

⁵⁷ *Id.* at 20-21 (citing *EPE*, 108 FERC ¶ 63,045 at P 60).

⁵⁸ *Id.* at 21.

⁵⁹ *Id.* at 22.

Specifically, PacifiCorp points to section 10 of the Exchange Agreement, which provides that:

The Parties recognize that transmission reinforcement through additional construction or an agreement with the Idaho Power Company may be necessary to continue service to joint Bonneville and [PacifiCorp] loads and load growth in the future...the Parties shall use best efforts to negotiate a charge to Bonneville to cover [PacifiCorp's] additional investment in facilities and/or the cost of service from the Idaho Power Company. If a mutually agreeable charge cannot be negotiated within the ensuing 12 months, Bonneville may make other arrangements to serve that portion of the loads required to alleviate the need for transmission reinforcement, or either Party may terminate this Agreement upon 2-years' prior written notice to the other Party.⁶⁰

33. PacifiCorp asserts that this language provides that PacifiCorp may make transmission reinforcements to serve increased load in the Goshen area, and Bonneville either will agree to pay an additional charge to cover the costs of new facilities and/or arrangements with Idaho Power, or make other arrangements to serve that portion of the loads required to alleviate the need for transmission reinforcement.⁶¹

34. As further evidence of the intent of this section 10, PacifiCorp points to a letter that it submitted to the Idaho Commission. PacifiCorp asserts that when the Exchange Agreement was filed with the Commission, the Idaho Commission intervened in the proceeding and expressed concern about the effects of the Exchange Agreement on PacifiCorp's ability to provide both power and transmission service to its eastern Idaho service territory. PacifiCorp states that the Idaho Commission subsequently filed a statement explaining that it had met with PacifiCorp representatives and citing a letter from PacifiCorp to the Idaho Commission summarizing the meeting where the Idaho Commission concluded that its concerns had been satisfied.⁶² PacifiCorp asserts that the letter stated, in relevant part:

⁶⁰ *Id.*

⁶¹ *Id.* at 23.

⁶² *Id.*

The Company does not believe that the Agreement will have any deleterious impact on the Company's service... the Agreement will require a greater utilization of the Company's transmission capability into the SE Idaho load area. However, in the event that such greater utilization requires that future additional transmission capability be constructed or acquired sooner than would otherwise have been required, the Agreement provides for either termination or participation by [Bonneville] in the cost of such additional transmission capability.⁶³

35. PacifiCorp asserts that this letter makes it clear that the parties agreed to limit Bonneville's rights to PacifiCorp's transmission capacity following the termination of the agreement.⁶⁴ PacifiCorp also notes that section 5 of the Exchange Agreement provides that "[a]ny undertaking by a Party to the other Party under any provision of this Agreement shall not constitute the dedication of system(s) or any portion thereof, of either Party to the public or to such other Party." PacifiCorp argues that the plain meaning of this language demonstrates an intent to limit the other party from arguing that the Exchange Agreement provided a dedication of rights to the transmission system going forward.⁶⁵

36. As further evidence that the Exchange Agreement limits Bonneville's rollover rights, PacifiCorp points to an "Adjustment for Change of Conditions" clause in section 11 of the General Provisions of the Exchange Agreement, which provides that any factor used to determine compensation paid by or energy exchanged between the parties will be changed in an "equitable manner" to conform to any change in conditions. The clause then goes on to state that:

If an increase in the capacity of the facilities being used by either Party in making deliveries hereunder is required at any time after execution of this Agreement to enable such Party to make the deliveries herein required together with those required for its own operations, the construction or installation of additional or other equipment or facilities for that purpose shall be deemed to be a change of conditions within the meaning of the preceding sentence.

⁶³ *Id.* at 24.

⁶⁴ *Id.*

⁶⁵ *Id.* at 25.

37. PacifiCorp argues that this provision demonstrates that it was the intent of the parties to ensure that deliveries required for each party's own operations would not be adversely affected by deliveries for the other party under the Exchange Agreement, and, if an increase in capacity was necessary to accomplish both, the party taking service would pay an "equitable" increased amount.⁶⁶

2. Effect of Bonneville's Requested Network Resource Designation on Power Flows

38. PacifiCorp notes that Bonneville points to the lack of any study showing changes in power flows as evidence that PacifiCorp's decision to not allocate Bonneville capacity on the AMPS North to South path is unsupported. However, PacifiCorp asserts that Bonneville asked that PacifiCorp not conduct studies related to the impact of Bonneville's request on the need for incremental transmission facilities or on related impacts to power flows. PacifiCorp states that, after the Complaint was filed, PacifiCorp performed the study it would have performed in response to Bonneville's request, absent Bonneville's direction not to conduct the study. PacifiCorp asserts that this study considered the addition of a new 345kV line to provide Bonneville's requested service and demonstrated that the addition of Bonneville's designated network resource on the AMPS North to South path would affect power flows on PacifiCorp's system.⁶⁷ PacifiCorp asserts that it acted consistently with Commission policy on rollover right limitations when it assessed transmission availability for Bonneville's new resource designation by considering the request as incremental to PacifiCorp Energy's existing AMPS North to South path capacity allocation under the NITSA, and therefore requiring an upgrade.⁶⁸

3. SPP and Arizona ISA

39. PacifiCorp argues that *SPP* and *Arizona ISA* have minimal relevance to this case and tend to support PacifiCorp's case. PacifiCorp asserts that *SPP* concerned whether a customer who had been taking bundled service under a legacy agreement was entitled to assert a rollover right on the radial line used to deliver the power purchases, or whether the rollover right belonged to the transmission provider making the bundled sale. PacifiCorp contends that it is not asserting that it holds rollover rights instead of Bonneville and, thus *SPP* is irrelevant to the dispute in this case.⁶⁹

⁶⁶ *Id.* at 25-26.

⁶⁷ *Id.* at 27-28.

⁶⁸ *Id.* at 29.

⁶⁹ *Id.*

40. PacifiCorp contends that *Arizona ISA* concerned a temporary, one-year pro rata capacity allocation mechanism for captive retail native load customers to gain access to competitive markets as Arizona transitioned to the Desert Star Independent System Operator (ISO). PacifiCorp claims that *Arizona ISA* is distinguishable from the case here because the facts in this case do not involve a temporary capacity allocation mechanism, transition to an ISO, or captive native load customers being denied access to competitive suppliers.⁷⁰ In addition, PacifiCorp argues that the *Arizona ISA* holding supports PacifiCorp's argument, not Bonneville's. PacifiCorp states that the *Arizona ISA* holding confirms that even captive native load customers cannot assert rollover rights to specific capacity rights, as Bonneville seeks. Specifically, PacifiCorp notes that the Commission found that "[w]hile all retail or native load customers qualify for rollover rights under the *pro forma* tariff, that renewal right does not guarantee any particular transmission reservation. i.e., the proposed rollover provision does not guarantee that formerly captive customers will have unfettered access to imports so as to reach outside suppliers"⁷¹

4. Effect of Bonneville's Requested Relief on Generating Assets

41. PacifiCorp asserts that Bonneville's Complaint seeks to take firm transmission capacity that PacifiCorp Energy has reserved to meet its network load service needs and that granting Bonneville's requested relief would deny PacifiCorp Energy its rights under the NITSA.⁷² PacifiCorp further argues that granting Bonneville's requested relief would physically strand a portion of two generating assets – the Colstrip and Big Fork assets – that are essential to PacifiCorp's native load service. PacifiCorp asserts that PacifiCorp Energy has submitted load and resource updates that demonstrate a continuing need to integrate Colstrip and Big Fork output on a firm basis to serve PacifiCorp Energy's designated network loads in the Goshen bubble and in the rest of PACE.⁷³ PacifiCorp argues that stranding these assets that are necessary to serve native load would be inconsistent with Commission precedent. In support of this, PacifiCorp cites *EPE* in which a rollover request by TNMP sought to displace a portion of the transmission rights of the transmission provider, El Paso Electric Company, that were needed to import resources to serve native load across a constrained path. PacifiCorp states that the ALJ opinion declined to allocate the transmission provider's transmission rights on the path to

⁷⁰ *Id.* at 29-30.

⁷¹ *Id.* at 30 (citing *Arizona ISA*, 93 FERC ¶ 61,231 at 61,761).

⁷² *Id.* at 30-31.

⁷³ *Id.* at 9.

TNMP.⁷⁴ PacifiCorp argues that there are similar policy considerations present in this case and *EPE*. PacifiCorp further contends that in this case, its regulator, the Idaho Commission, has explicitly relied on assurances that an event such as the stranding of a generation asset would not occur as a result of the Exchange Agreement.⁷⁵

5. Nature of Network Integration Transmission Service

42. PacifiCorp argues that network integration transmission service like that which Bonneville receives does not include a commitment to serve a designated network load on a specific path nor does it include point-to-point style capacity rights.⁷⁶ PacifiCorp also asserts that the network integration transmission service offered to Bonneville cannot usurp PacifiCorp Energy's prior reservation of the AMPS North to South transmission capacity, which is necessary to move its designated network resources to meet its network load requirements.⁷⁷ PacifiCorp explains that PacifiCorp Energy has a NITSA that has included the Colstrip and Big Fork resources as designated network resources since 2006.⁷⁸ PacifiCorp asserts that Bonneville is demanding that PacifiCorp reallocate specific capacity to Bonneville, but that doing so would violate PacifiCorp's network integration transmission service obligations to PacifiCorp Energy.⁷⁹

43. PacifiCorp asserts that it would administer its tariff in the same way for a non-affiliated transmission customer as it is in this case involving PacifiCorp Energy. PacifiCorp maintains that the Tariff does not permit a transmission provider to take away the ability to integrate preexisting designated network resources on a firm basis, and

⁷⁴ *Id.* at 31 (citing *EPE*, 108 FERC ¶ 63,045, at PP 67, 69 (2004) (“Here again, it is difficult, if not impossible, to hold that basic principles of justness and reasonableness require EPE - which is to say EPE’s ratepayers – to shoulder the burden of financing and constructing the necessary additional transmission facilities when EPE already owns enough transmission capacity to serve its native load...Neither justice nor law supports the proposition that valuable transmission capacity should be wrested away from a utility that needs it to provide reliable service to its native load customers and given to another utility that can very well do without the capacity on both economic and reliability grounds.”)).

⁷⁵ *Id.*

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 32.

⁷⁸ *Id.* at 8-9.

⁷⁹ *Id.* at 33, Att. PAC-1 at P 16.

thereby physically strand generation assets, in order to satisfy a subsequent transmission request.⁸⁰

44. PacifiCorp also disagrees with Bonneville's suggestion that the AMPS North to South path has traditionally been used to deliver power to Bonneville's Goshen bubble loads. PacifiCorp states that Bonneville's loads were included as a part of PacifiCorp Energy's designated network load, and served under PacifiCorp Energy's NITSA. PacifiCorp contends that all PacifiCorp Energy designated network resources were integrated on a firm basis and delivered to PacifiCorp Energy's designated network loads using a variety of paths, and on a varying basis, depending upon load and resource levels and other system conditions.⁸¹

45. Specifically, PacifiCorp employee Gregory Duvall states in an affidavit that the power from the Colstrip and Big Fork generating facilities that is delivered over the AMPS North to South path is not always necessarily used to serve Goshen load. Mr. Duvall asserts that PacifiCorp Energy did not request designation of Colstrip and Big Fork as network resources under the NITSA with PacifiCorp until 2006, and therefore, those units and the AMPS North to South line were not involved with Bonneville's Goshen bubble loads for the first 17 years of the Exchange Agreement.⁸² Mr. Duvall further states that deliveries on the AMPS North to South path continued past Goshen and further south to serve PacifiCorp load in Utah over 100 times from August 1, 2014 to November 5, 2014.⁸³

6. Need for Third Party Transmission Service

46. PacifiCorp asserts that Bonneville previously paid for transmission service on Idaho Power's transmission system, but entering into the Exchange Agreement allowed Bonneville to avoid paying those charges. PacifiCorp argues that Bonneville is now seeking to avoid paying those charges after termination of the Exchange Agreement, but that it is not PacifiCorp's responsibility to provide a wheel-free rollover option after termination of the Exchange Agreement. PacifiCorp asserts that Bonneville has elected not to build transmission to eliminate the need to wheel across Idaho Power's transmission system to reach its Goshen loads, nor has Bonneville sought expansion of PacifiCorp's system as provided for under the Exchange Agreement and the PacifiCorp Tariff. PacifiCorp argues that, instead, Bonneville seeks to avoid wheeling across Idaho

⁸⁰ *Id.* at 9.

⁸¹ *Id.* at 8-9.

⁸² *Id.*, Att. PAC-1 at P 9.

⁸³ *Id.* at P 12.

Power's system by usurping transmission service that PacifiCorp Energy has purchased and historically used to serve its network loads in Idaho and PACE. PacifiCorp contends that the fact that the Exchange Agreement was cost-effective during its term does not insulate Bonneville, after termination of the Exchange Agreement, from the costs that it would otherwise have had to pay in the absence of the agreement.⁸⁴

7. Bonneville's Requested Relief and Open Access Principles

47. PacifiCorp argues that Bonneville is asking the Commission to order PacifiCorp to provide Bonneville with transmission rights that it is not entitled to under its bilateral contract, and the basis that Bonneville cites for such request is enforcement of the Commission's open access policies. PacifiCorp contends that Bonneville should not be entitled to relief pursuant to the Commission's open access policies because Bonneville does not offer reciprocal open access services to other parties. PacifiCorp asserts that Bonneville's choice to remain nonreciprocal is a choice to contract bilaterally with PacifiCorp and others, and that it would be inequitable to allow Bonneville to avail itself of open access policies when it prefers those policies over the terms of its bilateral contracts.⁸⁵

B. Bonneville Answer

48. Bonneville argues that: (1) the Exchange Agreement does not contain any provision that limits Bonneville's rollover rights and, even if there was such a provision, in order to limit the rollover rights as PacifiCorp proposes, PacifiCorp would need to make an affirmative filing with the Commission proving it had no reasonable expectation of providing transmission service to Bonneville following termination of the Exchange Agreement; (2) power flows will not change if Bonneville is permitted to designate its preferred network resource over the AMPS North to South path and PacifiCorp's power flow study analyzes flows on a hypothetically augmented PacifiCorp transmission system, not power flows on PacifiCorp's existing transmission system; (3) PacifiCorp is wrong in asserting that the transmission rights PacifiCorp Energy has used to serve Bonneville's load accrue to PacifiCorp Energy when PacifiCorp terminates the Exchange Agreement because Commission precedent provides that, upon expiration of the Exchange Agreement, transmission rights must follow Bonneville and its load; (4) PacifiCorp cannot administer its Tariff based on considerations about stranding its merchant unit's generating assets and Bonneville's pursuit of other transmission options has no bearing on PacifiCorp's obligations under the Tariff; and (5) Bonneville's non-jurisdictional status does not negate the Commission's open access policies in this situation.

⁸⁴ *Id.* at 33-34.

⁸⁵ *Id.* at 35-36.

1. Limitations in Exchange Agreement

49. Bonneville states that PacifiCorp's answer argues that the Exchange Agreement contains terms that satisfy the native load recall requirements of Order No. 888-A and, therefore, PacifiCorp may rightfully limit Bonneville's right to roll over the transmission component of the Exchange Agreement. Bonneville argues that Order No. 888-A provides that, to recall transmission capacity for native load under a pre-Order No. 888 agreement, the transmission provider must make a specific filing with the Commission in which the transmission provider has the burden of demonstrating that it had "no reasonable expectation" of continuing to provide transmission service following expiration of the agreement.⁸⁶ Bonneville contends that the portion of Order No. 888-A that PacifiCorp relies on (which permits transmission providers to limit rollover rights if limiting language is included in the original service agreement and is based on a reasonable forecast of the transmission providers' native load needs), applies only to future transmission contracts.⁸⁷ Bonneville argues that PacifiCorp cannot limit Bonneville's rollover rights in a pre-Order No. 888 agreement based on the alleged needs of PacifiCorp's native load without making a specific, affirmative filing to prove that it had no reasonable expectation of continuing the transmission component of the Exchange Agreement. Bonneville asserts that the PacifiCorp Answer does not constitute an affirmative filing for purposes of limiting rollover rights.⁸⁸

50. Bonneville contends that, even if Order No. 888-A's native load reservation provisions may be retroactively applied to a pre-Order No. 888 contract, the provisions of the Exchange Agreement cited by PacifiCorp do not satisfy the Commission's requirement for limiting rollover rights.⁸⁹ Bonneville asserts that section 10 of the Exchange Agreement is a joint planning provision that becomes operative only in a case where additional upgrades "may be necessary to continue service to joint Bonneville and Company loads and load growth in the future." Bonneville states that section 10 contemplates the parties will work together to meet the load needs of both Bonneville and PacifiCorp, and permits termination of the Exchange Agreement only if the parties cannot reach an agreement over the cost sharing of future upgrades. Bonneville argues that this generic right to terminate the Exchange Agreement over a cost sharing issue

⁸⁶ Bonneville Answer at 5.

⁸⁷ *Id.* at 6.

⁸⁸ *Id.* at 8.

⁸⁹ *Id.* at 11.

does not satisfy the requirement that the service agreement contain a specific limitation based on reasonably forecasted native load needs.⁹⁰

51. Bonneville contends that section 5 of the Exchange Agreement, which provides that undertakings pursuant to the agreement do not constitute dedication of a party's system, is a generic provision that does not support limiting rollover rights because it does not contain the precise contract language backed by reasonable evidentiary support that the Commission requires for such limitations.⁹¹ Bonneville similarly argues that the "Adjustment for Change of Conditions" provision does not contain the clear and precise statement declaring the transmission customer's transmission rights will end at the conclusion of the contract because the capacity is needed for native load growth, as is required to meet the Commission's requirements for limitations on rollover rights.⁹²

52. Bonneville also notes that PacifiCorp's argument that there should be leniency in interpreting these contract provisions because it is a pre-Order No. 888 contract is based on an ALJ opinion's findings in *EPE* that were never adopted in a Commission order, and therefore are not precedential. Bonneville asserts that, moreover, PacifiCorp cannot satisfy the same factors that led the ALJ in *EPE* to excuse the transmission provider there from providing rollover rights because the language in the contract at issue provided that the customer "shall not claim or assert any continuing right to service under this Agreement" but the Exchange Agreement does not contain similarly specific or unambiguous language.⁹³

2. Effect of Bonneville's Requested Network Resource Designation on Power Flows and Treatment of Bonneville's Transmission Service Request

53. Bonneville states that the only basis for limiting its right to roll over the transmission component of the Exchange Agreement is if power flows would substantially change as a result of Bonneville's designation of new resources. Bonneville asserts that its rollover rights may not be limited based on a separate assessment of the deliverability of its resource because such an assessment would only apply to a new request for service, not a rollover request, such as if Bonneville was requesting a subsequent network resource be added to its rolled over network integration transmission

⁹⁰ *Id.* at 13-14.

⁹¹ *Id.* at 16.

⁹² *Id.* at 16-17.

⁹³ *Id.* at 17-19.

service, rather than attempting to establish its rolled over transmission service in the first instance.⁹⁴

54. Bonneville states that it did request a power flow study, but simply asked PacifiCorp to not spend Bonneville's deposit on evaluating new build options because Bonneville was not requesting new capacity on PacifiCorp's system, but instead was requesting rollover rights to use existing capacity on AMPS North to South. Bonneville asserts that, despite this request, PacifiCorp did not study whether power flows would change on the existing system if Bonneville's load was served using Bonneville's federal hydropower resources rather than PacifiCorp's coal-fired generation. Bonneville states that, instead, PacifiCorp chose to assume that its merchant affiliate would continue serving the same amount of network load, using the same resources, and treated Bonneville's request as a request for additional capacity. Bonneville contends that these assumptions led PacifiCorp to find that new transmission construction would be required to accommodate Bonneville's request.⁹⁵

55. Bonneville claims that PacifiCorp attempts to justify its position by referring to the PacifiCorp Energy NITSA, which designates Colstrip and Big Fork, among other resources, to serve PacifiCorp's native load. Bonneville argues that, however, designated resources are inseparable from the load they serve, and that, beginning in July 2016, PacifiCorp's native load will not include Bonneville's load. Bonneville contends that PacifiCorp Energy network integration transmission service does not confer upon it the right to inject more energy into the system than required for load, and thus, when Bonneville resumes serving load in the Goshen bubble, power will flow in the same manner it has under the service provided by PacifiCorp Energy, the only difference being the supplier.⁹⁶

56. Bonneville further argues that PacifiCorp's power flow study and the data that PacifiCorp claims show that Bonneville's load in the Goshen bubble is not served using the Colstrip and Big Fork generation⁹⁷ were made in response to the Complaint. Bonneville contends that, if new facilities are added to a system, as PacifiCorp assumes, power flows will obviously change. Bonneville asserts that this does not answer Bonneville's original question of whether serving Bonneville's load in the Goshen bubble using federal hydropower over the AMPS North to South path, rather than using the Colstrip and Big Fork generating facilities, will result in a substantial change in the

⁹⁴ *Id.* at 21-23.

⁹⁵ *Id.* at 24.

⁹⁶ *Id.* at 24-25.

⁹⁷ *See supra* section III.A.5.

location and direction of power flows. Bonneville also alleges that the data provided in the PacifiCorp Answer to show that that Bonneville's load in the Goshen bubble is not served using the Colstrip and Big Fork generation dates back only four months, to August 2014, which is after Bonneville communicated its intent to file the Complaint to PacifiCorp. Bonneville contends that this reflects a change in PacifiCorp's dispatch pattern in anticipation of litigation.⁹⁸

3. Reallocating Capacity from PacifiCorp Energy to Bonneville

57. Bonneville claims that PacifiCorp places transmission rights into the hands of the wrong party when it argues that Bonneville's designation of a network resource with delivery over AMPS North to South cannot usurp PacifiCorp Energy's prior reservation of the path to move designated network resources to meet its network load requirements. Bonneville argues that the transmission rights PacifiCorp Energy has used to serve Bonneville's loads are not PacifiCorp Energy's transmission rights, but are Bonneville's rights, and those rights must revert to Bonneville upon expiration of the Exchange Agreement.⁹⁹

58. According to Bonneville, PacifiCorp's position that it cannot reallocate capacity rights from PacifiCorp Energy to Bonneville is contradicted by PacifiCorp's actions because PacifiCorp has identified network integration transmission service rights that are currently held by PacifiCorp Energy that could be reallocated to Bonneville as a component of its rollover service.¹⁰⁰

4. Concerns about Generating Assets and Bonneville's Pursuit of Other Transmission Options

59. According to Bonneville, PacifiCorp has asserted that PacifiCorp's obligations under its Tariff and Bonneville's rollover rights may be affected by potential changes in generation dispatch of PacifiCorp Energy's merchant resources. Bonneville disputes this assertion, but argues that, even assuming such a consideration is an appropriate way of determining a transmission customer's right to continued transmission service, PacifiCorp overstates the effect that Bonneville's request would have on PacifiCorp Energy's generation assets.¹⁰¹

⁹⁸ Bonneville Answer at 25-26.

⁹⁹ *Id.* at 27.

¹⁰⁰ *Id.* at 29-30.

¹⁰¹ *Id.* at 30.

60. Bonneville asserts that PacifiCorp Energy does not send the entire output of Colstrip to load that is served by AMPS North to South. Bonneville states that, instead, PacifiCorp Energy delivers some of its Colstrip generation to PACW. Bonneville claims that, as a result, the net generation of the Colstrip and Big Fork generating facilities that PacifiCorp could deliver to serve loads over the AMPS North to South path amounts to a maximum of only 81 MW. Bonneville argues that, nevertheless, PacifiCorp contends that all 90 MW of AMPS North to South is reserved for PacifiCorp Energy's use.¹⁰² Bonneville contends that, even if the output of generation resources must be limited to accommodate Bonneville's request, PacifiCorp still will have ample resources to serve its load in PACE because its load and resource study indicates that PacifiCorp is projected to have more than 800 MW of excess generation to serve its native load in PACE.¹⁰³

61. In response to PacifiCorp's claim that Bonneville's true reason for its requested relief is to avoid the need to pay Idaho Power for third-party transmission service, Bonneville argues that its relationship with other transmission providers is irrelevant to determining PacifiCorp's obligation to rollover transmission service. Bonneville states that it is not requesting rollover rights on AMPS North to South to avoid purchasing transmission from Idaho Power, but to provide reliable power service to its customers in PACE. Bonneville maintains that it has already secured 100 MW of point-to-point transmission service on the Idaho Power system and has a second request pending for an additional 100 MW. Bonneville asserts that, however, during the summer all or a portion of Bonneville's schedules across the Idaho Power system will have a curtailment priority that enables Idaho Power to curtail Bonneville's schedules before curtailments are made to any firm schedules.¹⁰⁴

5. Commission's Open Access Policies

62. According to Bonneville, PacifiCorp's answer asserts that, because Bonneville does not have safe-harbor status, PacifiCorp is free to act in an unjust, unreasonable, and discriminatory manner; to not only deny open access service for new requests but to violate its Tariff with respect to existing contracts. Bonneville argues that no legal principle permits violation of a statute or contract when the other party has not breached the contract itself. In addition, Bonneville asserts that it has satisfied previous PacifiCorp rollover requests on the Bonneville system in similar situations.¹⁰⁵

¹⁰² *Id.* at 31.

¹⁰³ *Id.* at 32-33.

¹⁰⁴ *Id.* at 34-35.

¹⁰⁵ *Id.* at 36-38.

C. PacifiCorp December 19 Answer

63. PacifiCorp states that Bonneville is correct that, prior to its initial answer in this proceeding, it never made a specific, affirmative filing asserting that Bonneville had no rollover rights to specific capacity on the AMPS North to South path. However, PacifiCorp argues that this is only because it had no reason to think Bonneville would ever assert such a right. PacifiCorp asserts that it had no such reason because the Exchange Agreement does not provide Bonneville with any specific transmission rights, does not specify any particular transmission path that will be used, and restricts Bonneville's ability to place demands on PacifiCorp's system without paying for a mutually-agreed share of upgrade costs in the event the joint needs of both parties could not be met.¹⁰⁶

64. PacifiCorp asserts that Bonneville views its rollover right as an expansive right to demand specific capacity on PacifiCorp's AMPS North to South path. PacifiCorp states that it views Bonneville's rollover right as a right to continue to have Bonneville's Goshen area loads served on a firm basis under the network integration transmission service tariff, as those loads were under the Exchange Agreement. PacifiCorp argues that its transmission system has been used in various ways over the term of the Exchange Agreement to serve the relevant loads. PacifiCorp contends that it has already agreed to provide Bonneville with firm network integration transmission service rights to continue to serve its loads as they were served under the Exchange Agreement, and thus, it has satisfied Bonneville's rollover rights.¹⁰⁷

65. PacifiCorp states that Bonneville has argued that normal Tariff rules do not apply to its request to designate a new network resource with delivery over AMPS North to South because it is not a "subsequent" request to designate a network resource, but instead an initial attempt to establish rollover rights. PacifiCorp asserts that this is incorrect because Commission policy makes clear that a system impact study may be necessary when rolling over grandfathered contracts if there could be substantial changes to power flows.¹⁰⁸ PacifiCorp states that, because the Exchange Agreement provides no specific transmission rights, Bonneville's theory would allow it to assert a rollover right to any transmission on PacifiCorp's system that might arguably have been used to serve Bonneville's Goshen area loads and PacifiCorp would not be able to study such an initial

¹⁰⁶ PacifiCorp December 19 Answer at 3.

¹⁰⁷ *Id.* at 3-4.

¹⁰⁸ *Id.* at 6 (citing *Entergy Servs., Inc.*, 137 FERC ¶ 61,199, at P 325 (2011)).

request. PacifiCorp asserts that this would render the transmission planning process meaningless.¹⁰⁹

66. Bonneville asserts that PacifiCorp ignored the fact that designated network resources are “inseparable from the load they serve,” as well as the fact that PacifiCorp will not be serving Bonneville’s Goshen bubble load any longer. PacifiCorp argues that Bonneville appears to be suggesting that the Colstrip and Big Fork generating facilities are inseparable from Bonneville’s loads because they have served those loads in the past, and, now that Bonneville has decided to serve its load in a different way, those generating facilities must be stranded. PacifiCorp argues that the nature of network integration transmission service does not support Bonneville’s assertion because electrons from particular designated network resources are not “color coded” and transmitted to particular loads. Instead, all of a network customer’s resources are used to flexibly serve all of its network loads in a variety of different ways depending on system conditions.¹¹⁰

67. PacifiCorp contends that all of PacifiCorp Energy’s designated network resources have been integrated and dispatched to serve all of its network loads, including Bonneville’s Goshen area loads, and that the removal of those loads from PacifiCorp Energy’s designated network loads does not change the fact that the Colstrip and Big Fork designated network resources will continue to be needed to serve PacifiCorp’s remaining designated network loads in PACE at large. PacifiCorp argues that, therefore, PacifiCorp is not tying up valuable transmission capacity or operating its resources in excess of what is needed to serve load because the removal of Bonneville’s Goshen area loads from PacifiCorp’s PACE loads does not change PacifiCorp’s need to use Colstrip and Big Fork to serve its remaining and future loads.¹¹¹

68. PacifiCorp disputes Bonneville’s claim that the maximum net generation that the Colstrip and Big Fork generating facilities could deliver to serve loads over the AMPS North to South path amounts to only 81 MW. PacifiCorp states that, given the firm transmission capability PacifiCorp has purchased from Bonneville to move Colstrip output to designated network loads in PACW, 86 MW of firm transmission capacity is needed during peak generation to deliver Colstrip’s output to PacifiCorp Energy’s designated network loads in PACE. PacifiCorp asserts that the 90 MW of capacity on the

¹⁰⁹ *Id.* at 6-7.

¹¹⁰ *Id.* at 7-8. PacifiCorp provides copies of the agreements associated with PacifiCorp’s use of the Colstrip and Big Fork generating facilities to serve loads in Montana prior to 2006 as evidence that these facilities did not make deliveries to the Goshen area prior to 2006. *See id.* at 11-12, Exs. PAC-7-PAC-10.

¹¹¹ *Id.* at 8-9.

AMPS North to South path is managed by PacifiCorp Energy to deliver the potential 91 MW of combined peak generation from Colstrip and Big Fork.¹¹²

69. According to PacifiCorp, Bonneville also incorrectly states that PacifiCorp does not post any available transmission capacity on the AMPS North to South path on the open access same-time information system.¹¹³ PacifiCorp states that it posts up to 90 MW of non-firm capacity that would be available to Bonneville at no additional cost for use whenever PacifiCorp Energy's Colstrip and Big Fork resources are scheduled at less than their maximum capabilities.

70. PacifiCorp also argues that Bonneville is incorrect in asserting that PacifiCorp's load and resource study indicates that it is projected to have more than 800 MW of excess generation to serve its native load in PACE. PacifiCorp states that its Integrated Resource Plan has already included a reduction in Goshen area load due to termination of the Exchange Agreement because notice of the termination was given in 2011.¹¹⁴

71. PacifiCorp further contends that Bonneville's assertion that market purchases and wheeling arrangements are not a reliable and effective way to meet load obligations is incorrect. PacifiCorp argues that, during the term of the Exchange Agreement, it has used both market purchases and wheeling arrangements to serve Goshen load, including Bonneville's portion. PacifiCorp states that its system consists of over 50 different load pockets that utilize these types of arrangements for reliable service, including conditional firm network integration transmission service provided by Bonneville.¹¹⁵

72. PacifiCorp states that Bonneville implies that the eTag data provided by PacifiCorp was suspect and that PacifiCorp purposefully discontinued scheduling Colstrip and Big Fork on the AMPS North to South line on June 15, 2014 because Bonneville had threatened to file a complaint. PacifiCorp rejects this implication and asserts that the eTag data provided with its December 19 Answer shows that PacifiCorp used the AMPS North to South path for transmission of Colstrip and Big Fork generation into the broader Utah load area when the energy was not required to serve designated network loads in the Goshen area because of low load and high wind generation conditions in the Goshen area. PacifiCorp asserts that new wind generation came online in the Goshen area in 2012 and that, with increased resource levels occurring in the Goshen area, PacifiCorp projects that the Colstrip and Big Fork generating facilities will

¹¹² *Id.* at 14.

¹¹³ *Id.* at 15 (citing Bonneville Answer at 31).

¹¹⁴ *Id.* at 16.

¹¹⁵ *Id.* at 17.

be scheduled into the Utah load area more frequently and into the Goshen area less frequently.¹¹⁶

73. PacifiCorp responds to Bonneville's argument that its system impact study results used incorrect assumptions by arguing that Attachment D of its Tariff provides that PacifiCorp must determine the assumptions upon which the study is based, including whether to exclude capacity needed to meet current and reasonably forecasted demand of native load customers, network customers, and customers with existing firm contracts. PacifiCorp asserts that, accordingly, Bonneville's demand that no incremental facilities be studied cannot be reconciled with the Tariff.¹¹⁷

D. Bonneville January 5 Answer

74. Bonneville asserts that it has not asked to add new load that might warrant an expansion of PacifiCorp's transmission system and reiterates that PacifiCorp Energy used network integration transmission service capacity on all three of PacifiCorp's transmission paths that serve the Goshen bubble to serve the combined Bonneville-PacifiCorp load. Bonneville argues that the only reason PacifiCorp has not offered to provide it with service over the AMPS North to South path is that PacifiCorp believes PacifiCorp Energy's need for all of the capacity on the path is greater than Bonneville's continuing need for its portion of the capacity.¹¹⁸

75. Bonneville claims that its designated resources will not change power flows on PacifiCorp's transmission system. Bonneville further argues that the Commission has rejected numerous requests by transmission providers to expand the limitations on rollover rights for reasons including changes in transmission system topology, loop flow impacts due to changes in transactions on other transmission systems, and redispatch of designated network resources.¹¹⁹

76. Bonneville disputes PacifiCorp's claim that PacifiCorp has already agreed to provide Bonneville with firm network integration transmission service rights to serve its

¹¹⁶ *Id.* at 19.

¹¹⁷ *Id.* at 20.

¹¹⁸ Bonneville January 5 Answer at 2-3.

¹¹⁹ *Id.* at 5 (citing *Exelon Generation Co., LLC v. Sw. Power Pool, Inc.*, 101 FERC ¶ 61,226, at P 31 (2002)).

loads. Bonneville argues that PacifiCorp must allocate Bonneville transmission rights that allow it to designate resources to serve its load, but PacifiCorp has failed to do so.¹²⁰

E. Comments Supporting the Complaint

77. UAMPS, Idaho Falls, BPA Customer Group, Public Power Council, and Northwest Requirements Utilities filed comments in support of the Complaint.

78. UAMPS and Idaho Falls state that, if any portion of Idaho Falls' scheduled Bonneville resource cannot be delivered to the city, UAMPS is responsible for covering the shortfall. These entities argue that, if the Complaint is not granted, Idaho Falls faces the possibility that Bonneville will not be able to deliver the preference power to which the city is entitled, and UAMPS faces the possibility that, due to transmission constraints in and around the Goshen bubble, it will not be able to provide default service to the city except through imbalance energy under PacifiCorp's Tariff.

79. BPA Customer Group asserts that Bonneville is asking for rights on the AMPS North to South path that are no greater than what is currently used today by PacifiCorp to serve the Bonneville preference load in the Goshen bubble. BPA Customer Group cites *PJM Interconnection, L.L.C., et al. v. Public Service Electric, Gas Company, et al.*¹²¹ as instructive on the rights of existing transmission customers to perpetuate transmission rights formerly provided under an exchange agreement. BPA Customer Group explains that this order approved a settlement in which grandfathered exchange agreements were rolled over into open access transmission tariff service using non-conforming agreements and transmission rights over certain constrained and commercially valuable paths were retained by the original load-serving entities under the legacy agreements.

80. BPA Customer Group further contends that granting Bonneville's relief would preserve the terms of the agreement that is being rolled over and ensure that the service contemplated in the agreement is being replaced with similarly reliable service. It cites section 10 of the Exchange Agreement as evidence that, if the agreement continued, transmission rights and the need for additional transmission reinforcement to serve load in the Goshen bubble would have been apportioned in relation to the customer's loads and traditional cost causation principles. BPA Customer Group then argues that PacifiCorp is proposing to change the allocation of costs contemplated in the Exchange Agreement such that Bonneville is fully responsible for either constructing new

¹²⁰ *Id.* at 5-6.

¹²¹ 132 FERC ¶ 61,221 (2010), *reh'g denied*, 135 FERC ¶ 61,018 (2011), *petition for review denied sub nom. NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013).

transmission into the area, or paying a third party provider to obtain access to serve the same existing load.

81. BPA Customer Group also asserts that the degradation of service that will result if Bonneville's requested relief is not granted will expose the group's load serving members and Bonneville to additional imbalance payments under the newly formed Energy Imbalance Market in the PacifiCorp balancing authority areas. The group argues that PacifiCorp Energy is the largest owner of Energy Imbalance Market Participating Resources, and thus PacifiCorp Energy is the likely beneficiary of any imbalance shortfalls incurred by Bonneville as a result of limited capabilities to supply load within the Goshen bubble.

82. Public Power Council asserts that the Commission's current open access transmission policy should preclude a transmission provider from refusing to provide transmission capability on a path to a transmission customer that is rolling over a transmission contract when that path was previously used to provide transmission service to that customer's loads. Public Power Council further argues that, if a transmission provider is allowed to allocate transmission capacity to its merchant affiliate that was used under a legacy agreement to serve a load, then the transmission provider will be permitted to choose the most economically valuable paths and retain them for its merchant.

83. Northwest Requirements Utilities asserts that PacifiCorp has historically used all three paths in the Goshen bubble area – including AMPS North to South – to serve Bonneville's network load in the area. Northwest Requirements Utilities also maintains that the rollover of transmission capacity that Bonneville requests will in no way change the power flows on any of the three paths used to serve the Goshen bubble. Northwest Requirements Utilities states that the power flows will be unaffected by Bonneville serving the Goshen area load rather than PacifiCorp because Bonneville would utilize the same Point of Receipt, Transmission Path, and Point of Delivery as PacifiCorp is using.

F. Comments Opposing the Complaint and Protest

84. The Idaho Commission argues that Bonneville's claims are inconsistent with the provisions of the Exchange Agreement and commitments made in the original 1989 proceeding in which the Exchange Agreement was approved. The Idaho Commission explains that it intervened in the Commission's 1989 proceeding in which PacifiCorp was seeking Commission approval of the Exchange Agreement and initially expressed concerns that the Exchange Agreement would adversely affect PacifiCorp's ability to serve its customers in Idaho.¹²² The Idaho Commission states that it ultimately withdrew

¹²² Idaho Commission Comments at 3 (citing *PacifiCorp, d/b/a Pacific Power & Light Co. and Utah Power & Light Co.*, Notice of Intervention of Idaho Public Utilities Commission, Docket No. ER89-356 (dated May 11, 1989)).

its protests based on PacifiCorp's assurances that the language of section 10 of the Exchange Agreement would protect PacifiCorp's customers. The Idaho Commission argues that section 10 of the Exchange Agreement puts both PacifiCorp and Bonneville on notice that the transmission capacity which is the subject of the agreement may be needed to serve future PacifiCorp native load and that Bonneville would need to pay for any incremental upgrade of transmission facilities if PacifiCorp's facilities were insufficient to serve future loads. The Idaho Commission contends that this is exactly the situation today, where the transmission capacity is needed to serve PacifiCorp's native load customers.

85. The Idaho Commission also expresses concern that the Bonneville's request would strand the Colstrip and Big Fork base load generating facilities because PacifiCorp's recent Integrated Resource Plan contemplates that these facilities would be available to serve native load.

86. Mr. Knudsen argues that the Commission should dismiss Bonneville's Complaint without prejudice because it has not complied with the proper procedures for requesting and effecting continuation of existing service under section 2.2 of the PacifiCorp Tariff. Mr. Knudsen asserts that the Transfer Agreement and the Exchange Agreement do not, as Bonneville asserts, provide for bundled power and transmission service provided by PacifiCorp to Bonneville's preference customers. He contends that, instead, these agreements are pure network integration transmission service agreements pursuant to which PacifiCorp provides transmission service for delivery of Bonneville's generation through redispatch of PacifiCorp's resources. Mr. Knudsen claims that this transmission service using redispatch is what PacifiCorp is obligated to rollover under section 2.2 of its Tariff.

87. Mr. Knudsen argues that Bonneville has not made a request to roll over this transmission service because all of Bonneville's formal rollover requests to PacifiCorp have been requests for new network resources delivered at new points into the PACE system, not for the continued designation of currently declared network resources (Bonneville's generation) delivered into the PACW system, where PacifiCorp's Oregon loads are located. He further argues that, if Bonneville were to request rollover of the same network resources specified under the existing Exchange Agreement delivered at the same points of delivery identified in the current Exchange Agreement, then PacifiCorp presumably would comply and Bonneville would have no need to request an allocation of transmission service across the AMPS North to South path, or any specific transmission line or path in the PacifiCorp transmission system.

88. In its answer, Bonneville states that, under Mr. Knudsen's interpretation of the Exchange Agreement, PacifiCorp is not using its resources to serve Bonneville's loads; rather, it is using Bonneville generation through the network integration transmission service of redispatch. Bonneville acknowledges that it considered the approach advocated by Mr. Knudsen when discussing ways of requesting service from PacifiCorp under its Tariff, but decided against the approach because it relied on an uncertain

application of Commission precedent. Bonneville asserts that it opted to recognize how PacifiCorp Energy has actually provided service under the Exchange Agreement (i.e. using PacifiCorp resources to serve Bonneville's load), which was a view that Bonneville asserts was less aggressive and more costly to Bonneville. Bonneville argues that Mr. Knudsen's approach would scuttle what has been a mostly cooperative process between Bonneville and PacifiCorp.

G. Comments Regarding Clarifications to Record

89. Large Public Power Council and American Public Power Association, and National Rural Electric Cooperative filed comments seeking to clarify statements in PacifiCorp's answers regarding the options available to non-public utilities to satisfy the obligations imposed upon them by virtue of the reciprocity provision in the open access transmission tariffs of jurisdictional utilities from which they take transmission service. Specifically, these parties assert that PacifiCorp is mistaken that a non-public utility may only satisfy the reciprocity condition by providing service under a Commission-approved reciprocity tariff, and that failure to do so amounts to a failure to maintain reciprocity. These parties assert that instead, the Commission has found that there are several paths available to non-public utilities to satisfy the reciprocity condition. Bonneville states that it agrees with these comments.¹²³

IV. Discussion

A. Procedural Matters

90. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene of Idaho Power, Public Power Association of New Jersey, the Idaho Commission, Large Public Power Council and American Public Power Association, and National Rural Electric Cooperative, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.¹²⁴

¹²³ Bonneville January 5 Answer at 8.

¹²⁴ The Utah Commission is not a party to this proceeding because it did not file a motion to intervene out-of-time. *See* 18 C.F.R. § 385.214(a)(2); 214(d).

91. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers in this case because they provided information that assisted us in our decision-making process.

B. Substantive Matters

92. We find that the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set the Complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA.

93. More specifically, based on the record, it is not clear that it is just and reasonable and consistent with Order Nos. 888 and 890 for PacifiCorp to deny Bonneville's request to designate network resources across the AMPS North to South path to serve Bonneville's designated network load and this matter is best examined at an evidentiary hearing where an ALJ can determine the relevance of all proffered evidence and all parties will have an opportunity to cross-examine witnesses. In this regard, our analysis indicates that the following issues, in addition to any others deemed appropriate by the presiding judge, warrant further exploration: (1) the basis for PacifiCorp's determination that Bonneville could not designate a network resource that would have needed to use the AMPS North to South path to serve Bonneville's designated network loads in the Goshen bubble; (2) the existing transmission commitments for the AMPS North to South path during the term of Bonneville's NITSA's and when and by what means those transmission commitments were established; and (3) whether PacifiCorp's future load growth in the PACE service territory justifies PacifiCorp Energy's reservation of the entire available transfer capability across the AMPS North to South path for its own use.

94. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹²⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹²⁶ The settlement judge

¹²⁵ 18 C.F.R. § 385.603 (2014).

¹²⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience. (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

95. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,¹²⁷ we will establish the refund effective date at the earliest date possible, i.e., October 30, 2014.

96. Section 206(b) of the FPA requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by April 30, 2016. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by February 28, 2017.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning this Complaint, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

¹²⁷ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date in Docket No. EL15-13-000, established pursuant to section 206(b) of the FPA, is October 30, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.