ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 2, 2017)

1. On October 28, 2016, as amended on December 14, 2016, PacifiCorp filed revisions to its Open Access Transmission Tariff (OATT) under section 205 of the Federal Power Act (FPA)\(^1\) to: (1) update PacifiCorp’s stated rates for ancillary service Schedules 3 (Regulation and Frequency Response Service), 3A (Generator Regulation and Frequency Response Service), 5 (Operating Reserve – Spinning Reserve Service), and 6 (Operating Reserve – Supplemental Reserve Service); and (2) make minor clarifying revisions to Schedule 11 (Unauthorized Use of Transmission Service). As discussed below, we will accept PacifiCorp’s filing and suspend the revisions to Schedules 3 and 3A for a five-month period to be effective July 13, 2017, subject to refund. In addition, we will accept the revisions to Schedules 5 and 6 to be effective February 13, 2017, subject to refund. Moreover, because PacifiCorp is proposing a rate decrease for services provided under Schedules 5 and 6 and a further decrease may be warranted, we will institute an investigation pursuant to section 206 of the FPA\(^2\) in Docket No. EL17-27-000 to determine whether PacifiCorp’s proposed rate decreases are just and reasonable, and we establish a refund effective date. We will establish hearing and settlement judge procedures for Schedules 3, 3A, 5, and 6 and consolidate the instant proceedings for purposes of hearing and settlement judge procedures. Finally, we will

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accept the revisions to Schedule 11, effective February 13, 2017, without suspension or hearing.

I. Background

2. PacifiCorp states that its current ancillary service schedules went into effect as part of a “black box” settlement of a transmission rate case that was originally filed in 2011 and made effective on March 1, 2013. According to PacifiCorp, since those rates went into effect, changes to several North American Electric Reliability Corporation reliability standards resulted in PacifiCorp changing the way that it holds and provides operating reserves (i.e., regulation, spinning, and supplemental reserves). In particular, PacifiCorp contends that the adoption of reliability standard BAL-001-2 (Real Power Balancing Control Performance), in July 2016, impacts the amount of regulation reserve PacifiCorp must hold on its system for Schedules 3 and 3A. In addition, the adoption of reliability standard BAL-002-WECC-2 (Contingency Reserve), in October 2014, changed the level of contingency reserves (i.e., spinning and supplemental reserves) that PacifiCorp must carry under Schedules 5 and 6, respectively, in order to meet that reliability standard.

3. PacifiCorp also states that, since the current ancillary service rates went into effect, the Commission, in Order No. 764, recognized that variable energy resources (VERs) may impose a greater impact on overall system variability than other generating resources, which would require the transmission provider to hold a greater amount of regulation reserves for VERs than for load or other resources. PacifiCorp notes that the currently effective rates for Schedules 3 and 3A were designed using identical cost and

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3 PacifiCorp Transmittal Letter at 1-2 (citing PacifiCorp, 144 FERC ¶ 61,135 (2013)).

4 Id. at 2.

5 Id. at 4 (citing Integration of Variable Energy Resources, Order No. 764, FERC Stats. & Regs. ¶ 31,331, at P 210, order on reh’g and clarification, Order No. 764-A, 141 FERC ¶ 61,232 (2012), order on clarification and reh’g, Order No. 764-B, 144 FERC ¶ 61,222 (2013)).
billing determinants and that the current rates do not differentiate between the types of customers (i.e., load, VERs, and non-VERs)\(^6\) taking service under those schedules.\(^7\)

II. PacifiCorp’s Filing

A. Summary

4. PacifiCorp explains that it applied a “units most likely” approach to analyze its portfolio of resources to identify which existing resources are likely to be used to provide each particular reserve service. After determining which resources would be used in providing the ancillary services at issue, PacifiCorp employed a non-levelized net plant methodology to calculate the costs of the identified units.\(^8\) In its filing, PacifiCorp seeks a rate change that would increase the amount of revenue it receives under Schedule 3 by approximately $26.7 million—an average increase of approximately 96 percent.\(^9\) PacifiCorp attributes the increase, in part, to its proposed change in rate structure that will assess Schedule 3 charges to both load and generation, rather than just load, as set forth in the current Schedule 3.\(^10\) PacifiCorp also proposes a similar rate change to Schedule 3A that would increase its revenues under that schedule by approximately $3.3 million, which, depending on the customer, could result in either a rate decrease or a rate increase.\(^11\) According to PacifiCorp, the driving factor for the increase in revenue under Schedule 3A varies by customer but is largely due to a combination of the change in the rate structure and the increase in the differentiated rates. For Schedule 5, PacifiCorp proposes a rate decrease that would decrease the amount of revenue it receives under the

\(^6\) Id. at 3, n.7, and n.8. PacifiCorp states that the “VERs” customer class includes resources that: (1) are renewable; (2) cannot be stored by the facility owner or operator; and (3) have variability that is beyond the control of the facility owner or operator. PacifiCorp states that the “Non-VERs” customer class is a mix of thermal and hydroelectric resources that includes all resources that are not VERs, and that do not provide either contingency or regulation reserve. See PacifiCorp 2016 Regulation Reserve Study, Exhibit No. PAC-14 at 7.

\(^7\) PacifiCorp Transmittal Letter at 6.

\(^8\) Id. at 12.

\(^9\) Exhibit No. PAC-15 at 15.

\(^10\) Id. at 15-16.

\(^11\) Id. at 16.
schedule by approximately $24.7 million; however, some customers under legacy agreements could see a rate increase of less than one percent.\(^{12}\) Lastly, PacifiCorp proposes a rate decrease for Schedule 6 that would decrease the amount of revenue it receives under the schedule by approximately $13.4 million, with network transmission customers seeing a revenue decrease of approximately 32 percent, while transmission customers under legacy agreements face a revenue increase of approximately 37 percent.\(^{13}\)

5. PacifiCorp seeks waiver of section 35.13 of the Commission’s regulations,\(^{14}\) including waiver of the full Period I and Period II data requirements of section 35.13(d) and any other filing requirements contained in Part 35 of the Commission’s regulations\(^{15}\) not met by the material included in PacifiCorp’s instant submittal.\(^{16}\) PacifiCorp requests a January 1, 2017 effective date for its proposed changes to Schedules 3, 3A, 5, 6, and 11. In the event that the Commission decides to set the filing for hearing, PacifiCorp requests a nominal suspension of the rates.\(^{17}\) PacifiCorp’s proposed ancillary service schedule revisions and rate proposals are described more fully below.

B. **Schedule 3 – Regulation and Frequency Response Service; and Schedule 3A – Generator Regulation and Frequency Response Service**

6. PacifiCorp argues that load, VERs, and non-VERs have different operational characteristics and that each customer group places different burdens on PacifiCorp’s system. PacifiCorp contends that, based upon a 2016 Regulation Reserve Study it conducted, load, VERs, and non-VERs warrant different transmission customer classes, which would allow regulation reserve requirements to be forecast more accurately and, in turn, permit PacifiCorp to allocate costs associated with providing regulation service to

\(^{12}\) *Id.* at 17.

\(^{13}\) *Id.* at 19.

\(^{14}\) 18 C.F.R. § 35.13 (2016).

\(^{15}\) 18 C.F.R., Pt. 35 (2016).

\(^{16}\) PacifiCorp Transmittal Letter at 19.

\(^{17}\) *Id.* at 16-17.
those customers based upon the obligations that the class of customers places on PacifiCorp’s system.\(^{18}\)

7. According to PacifiCorp, proposed Schedule 3 would continue to apply to network, point-to-point, and ancillary service transmission customers located within PacifiCorp’s Balancing Authority Areas (BAA). PacifiCorp proposes to charge both load and the generation (VERs and non-VERs) serving that load under Schedule 3, rather than continuing to charge only load. PacifiCorp proposes a different Schedule 3 rate for load at $3.046 per kW/year, VERs at $10.120 per kW/year, and non-VERs at $2.528 per kW/year.\(^{19}\) PacifiCorp states that Schedule 3A would continue to apply to point-to-point transmission service customers taking service in a PacifiCorp BAA to deliver to a load outside of PacifiCorp’s BAAs. PacifiCorp proposes to charge VERs and non-VERs the same rate in Schedule 3A as their respective customer class rates in Schedule 3.

8. In support of its proposal to quantify the amount of regulation reserves needed for each customer class, PacifiCorp states that it did not simply sum the reserve requirement for each customer class as measured in the 2016 Regulation Reserve Study. Rather, PacifiCorp explains that it accounted for the diversity benefit of each class by calculating the portfolio value of the class diversity and applying it proportionally to each class to determine the system requirement.\(^{20}\) Thus, PacifiCorp contends that it only proposes to recover the costs associated with the total regulation reserve requirement after accounting for diversity benefits. According to PacifiCorp, the proposed Schedule 3 rates would recover only the total coincident regulation reserve burden of the three customer classes, and the charge to a particular class would be proportionate to the reserve burden attributable to that class. In addition, PacifiCorp notes that it did not exclude any weather events from its data sets, and it incorporated the information provided by power production forecasts into its operations to more accurately estimate the regulation reserve needed in each hour, consistent with Order No. 764.\(^{21}\)

9. PacifiCorp notes that the Commission requires that transmission providers take into account the amount of intra-hour scheduling by customers when determining the rate

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\(^{18}\) Id. at 12-13.

\(^{19}\) PacifiCorp also offers monthly, weekly, daily (peak and off-peak), and hourly (peak and off-peak) versions of the rate.

\(^{20}\) PacifiCorp Transmittal Letter at 13.

\(^{21}\) Id. at 13, nn.64-65 (citing Order No. 764, FERC Stats. & Regs. ¶ 31,331 at PP 320-321).
design for VER and non-VER customers. PacifiCorp contends that customers on its system rarely use intra-hour scheduling; thus, that singular data element is not particularly useful for measuring a potential reduction in regulation reserves on PacifiCorp’s system. Nonetheless, PacifiCorp states that it has a large amount of five- and 15-minute operational data on VERs that are analogous to intra-hour scheduling data through its participation in the California Independent System Operator Corporation’s (CAISO) Energy Imbalance Market (EIM). PacifiCorp argues that it utilized the data from its EIM participation to calculate the potential benefit to its system from customers using intra-hour scheduling and reduced the amount of regulation reserves for load, VERs, and non-VERs accordingly. In addition, PacifiCorp proposes an additional 13.8 percent reduction in the rate for VERs under Schedules 3 and 3A to VERs willing to commit to submit transmission schedules on 15-minute intervals.\footnote{Id. at 14.}

10. PacifiCorp argues that the approach it is taking with respect to its calculation of the EIM participation benefit and rate discount for VERs willing to submit 15-minute schedules is similar to the approach taken by other utilities approved by the Commission.\footnote{Id. at 8-10 (citing Pub. Serv. Co. of Colo., 153 FERC ¶ 63,018 (2015), Puget Sound Energy, Inc., 142 FERC ¶ 61,018 (2013), Westar Energy, Inc., 130 FERC ¶ 61,215 (2010), order on reh’g, 137 FERC ¶ 61,142 (2011)).} PacifiCorp contends that its calculation of the EIM participation benefit reduces the regulation reserve burden for all customer classes, and provides this benefit to all regulation reserve rates, including for customers that continue to submit hourly schedules. Furthermore, PacifiCorp believes that the additional 13.8 percent rate reduction for VERs should provide an additional incentive for VERs to submit timely schedules and further reduce the amount of regulation reserves that PacifiCorp must carry.

C. Schedules 5 – Spinning Reserve Service; and 6 – Supplemental Reserve Service

11. PacifiCorp proposes to charge both load and generation for ancillary services under Schedules 5 and 6, rather than continuing to charge only load. PacifiCorp argues that to be in compliance with the new reliability standard, BAL-002-WECC-2, PacifiCorp’s BAAs must maintain a minimum amount of contingency reserve equal to the sum of three percent of hourly integrated load plus three percent of hourly integrated
According to PacifiCorp, the proposed charges under Schedules 5 and 6 would be calculated using the following billing determinants: (1) for load, the rates would be applied by charging a network customer the amount of that network customer’s hourly integrated load (including losses) coincident with PacifiCorp’s monthly coincident peak; and (2) for generation, the rates would be applied to customers by charging actual hourly generation delivered to PacifiCorp at the generator’s point of interconnection with PacifiCorp’s system. Under PacifiCorp’s proposal, the rate for Schedule 5 would decrease from $0.39 per MWh to $0.19 per MWh and the rate for Schedule 6 would decrease from $0.34 per MWh to $0.23 per MWh.

D. Schedule 11 – Unauthorized Use of Transmission Service

12. PacifiCorp proposes to make several minor clarifying changes to Schedule 11. PacifiCorp proposes to capitalize the defined terms Transmission Service, Reserved Capacity, and Ancillary Services. PacifiCorp also proposes to clarify that, for ancillary services billed by reserved capacity, a transmission customer that uses the transmission system in excess of what it has reserved would have to pay those ancillary services for the duration of the period of unauthorized use of the transmission system.

III. Notice of Filing and Responsive Pleadings

13. Notice of PacifiCorp’s filing was published in the Federal Register, 81 Fed. Reg. 76,575 (2016), with interventions and protests due on or before November 18, 2016. On November 8, 2016, the American Wind Energy Association (AWEA) filed a motion to extend the period for filing comments in this proceeding. On November 16, 2016, a Notice of Extension of Time was issued extending the comment deadline up to and including November 28, 2016.

14. The Public Power Council filed a timely motion to intervene. AWEA, Renewable Northwest Project, and Avangrid Renewables, LLC (collectively, Wind Parties), NextEra Energy Resources, Inc. (NextEra Resources), Bonneville Power Administration (BPA), Utah Associated Municipal Power Systems (UAMPS), Utah Municipal Power

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25 Id. at 15.

26 PacifiCorp, Transmission OATT and Service Agreements Tariff, OATT Volume No. 11, 8.0.0, Schedule 11, Unauthorized Use of Transmission Service, 3.0.0.

27 Avangrid Renewables, LLC filed a stand-alone motion to intervene, while AWEA and Renewable Northwest Project jointly filed a motion to intervene. Collectively, Wind Parties filed a protest.
Agency (UMPA), and Deseret Generation & Transmission Co-operative, Inc. (Deseret) filed timely motions to intervene, comments, protests, and requests for suspension, and deferred evidentiary hearing and settlement judge procedures. In addition to their own protests, both Deseret and UMPA also support, and adopt as their own, the arguments raised by UAMPS’ Protest. The Western Area Power Administration (WAPA) filed an out-of-time motion to intervene.

15. On December 14, 2016, PacifiCorp filed an answer that included updates to its case-in-chief, including updated Statements BG and BH. Notice of PacifiCorp’s filing was published in the Federal Register, 81 Fed. Reg. 92,812 (2016), with interventions and protests due on or before January 4, 2017. Deseret, BPA, UAMPS and UMPA submitted timely supplemental protests. On January 17, 2017, PacifiCorp filed an answer to the supplemental protests.

IV. Protests, Answer and Supplemental Protests

A. Protests

16. Protesters argue that PacifiCorp has not demonstrated that its proposed charges set forth in Schedules 3, 3A, 5, and 6 are just and reasonable and, on their face, appear to be egregiously excessive and unsupported. Accordingly, protesters request that the Commission set for hearing the proposed rate and tariff changes, suspend them for the maximum five-month period, subject to refund, and hold the hearing in abeyance and provide for settlement. In addition, Deseret and UAMPS request that the Commission institute a section 206 investigation of the proposed Schedule 5 and 6 rates in the likelihood that those rates should be lower than the rate decrease proposed by PacifiCorp. Deseret also seeks a section 206 investigation of the proposed Schedule 3 rate for load in case it is determined to be lower than the current rate.

17. Several protesters note that Statements BG (revenue data to reflect changed rates) and BH (revenue data to reflect present rates) in support of PacifiCorp’s Schedule 3, 3A, 5, and 6 do not set forth the billing determinants that comprise the revenue levels set forth

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28 Deseret Protest at 7; UMPA Protest at 8.

29 PacifiCorp Answer at 2-3.

30 Wind Parties Protest at 2; UMPA Protest at 1-2; NextEra Resources Comments at 2; BPA Protest at 17; Deseret Protest at 15-19; UAMPS Protest at 27.
in the Statements as required by the Commission’s rules and regulations. UMPA and UAMPS argue that PacifiCorp’s filing is deficient, absent the billing determinants, and inadequate to allow for a meaningful analysis of PacifiCorp’s proposed rate changes. In addition, UMPA contends that PacifiCorp appears to be using the wrong load value for UMPA in calculating the proposed ancillary service rates and also appears to be including the costs associated with UMPA’s ownership share of a jointly-owned generating station with PacifiCorp in the calculation of the proposed ancillary service rates. Deseret raises a similar concern with PacifiCorp’s treatment of its load in the calculation of the proposed Schedule 3 rate.

18. Both Deseret and UAMPS argue that PacifiCorp’s proposed changes to Schedules 3 and 3A conflict with the express terms of legacy transmission agreements and are not permitted. For example, UAMPS states that its legacy agreement does not permit the application of the proposed Schedule 3 rate to resources, whether VERs or non-VERs, while Deseret states that its legacy agreement explicitly excludes certain resources and loads from assessment of the Schedule 3 and 3A rate.

19. BPA and UAMPS argue that it is unclear from PacifiCorp’s filing how the benefits touted from PacifiCorp’s participation in the EIM translates to customers taking service under Schedules 3 and 3A, considering the magnitude of PacifiCorp’s proposed rate increase. In addition, BPA and UAMPS contend that PacifiCorp appears to have chosen the most expensive generating units or contracts on its system as the units most likely to provide service to ancillary service customers, in contrast to the EIM’s least cost dispatch principles. BPA and UAMPS assert that PacifiCorp’s selection of these expensive units and contracts to provide ancillary services under Schedules 3, 3A, 5, and 6 may result in excessive charges to PacifiCorp’s ancillary service customers.

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31 UMPA Protest at 6; UAMPS Protest at 5-12 (citing 18 C.F.R. § 35.13(h)(32) and (33) (2016)).

32 UMPA Protest at 6-8.

33 Deseret Protest at 13-14.

34 UAMPS Protest at 9; Deseret Protest at 8-10.

35 BPA Protest at 6-7; UAMPS Protest at 19-21.

36 BPA Protest at 10; UAMPS Protest at 21-26.
BPA also identifies a series of inadequacies in PacifiCorp’s filing that require additional information: (1) the use of one-year of data to develop the reserve requirement compared to the use of six years of data by BPA for its reserve requirement; (2) the removal or unexplained correction of irregularities from the data set, which further erodes the scope of the test year; (3) the use of five-minute EIM data to calculate the reserve requirement, when one-minute data are the standard under BAL-001-2; (4) the allocation of diversity benefits, which does not appear to follow the principle of cost causation; and (5) the use of different methodologies to calculate the different customer class reserve requirements.37 Lastly, BPA believes that PacifiCorp should be required to refile Schedules 3, 3A, 5, and 6 when PacifiCorp makes a new ancillary service Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service) filing due to the revenue credit that flows back from Schedule 2 to the other schedules.38

Wind Parties argue that there are a number of flaws in PacifiCorp’s calculation of reserve requirements and the allocation of those costs in the calculation of the proposed Schedule 3 and 3A rates. For instance, Wind Parties contend that PacifiCorp is using a rough linear approach to calculate its reserve levels that is a poor fit for the observed distribution pattern of actual VER reserve requirements.39 By introducing a quadratic function to more closely follow the normal distribution of wind output deviations, Wind Parties assert that PacifiCorp could maintain a greater degree of BAL-001-2 compliance with fewer reserves than claimed by PacifiCorp. In addition, Wind Parties state that, based upon PacifiCorp’s data, wind variability appears to be less of a factor in total system variability than acknowledged by PacifiCorp, which skews the results of PacifiCorp’s study and over-allocates the amount of reserves allocated to VERs.40

Wind Parties also take issue with PacifiCorp’s reserve requirement to meet a 99.99 percent variability standard when the industry norm is 95 percent.41 Wind Parties additionally find fault with PacifiCorp’s conservative interpretation of the BAL-001-2 reliability standard and PacifiCorp’s failure to account for the regional Area Control Error Diversity Interchange program in the calculation of its reserve requirement, all of

37 BPA Protest at 11-16.
38 Id. at 16.
39 Wind Parties Protest at 4-6.
40 Id. at 6.
41 Id. at 7-9.
which unnecessarily increases PacifiCorp’s reserve requirement and costs such that they are significantly higher than neighboring systems.\footnote{Id. at 9-13.}

23. Wind Parties assert that PacifiCorp’s benefits study appears to be inaccurate as it produces benefits that are significantly smaller than similar studies conducted by others. For example, Wind Parties note that CAISO’s EIM report calculates a 35 percent reduction in reserve requirements because of the diversity of the EIM footprint, while PacifiCorp only factors for a 14 percent reduction due to its participation in the EIM.\footnote{Id. at 16.} Furthermore, with the expansion of the EIM to neighboring systems in 2017 and 2018, Wind Parties and UAMPS argue that ancillary service rates based upon 2015 operating practices will greatly overstate future reserve requirements and rates.\footnote{Id. at 18; UAMPS Protest at 20-21.} In light of the planned expansion of the EIM, UAMPS requests that PacifiCorp be required to perform a triennial review and update of its proposed Schedule 3, 3A, 5, and 6 rates and billing determinants to ensure that EIM benefits are being passed along to customers.\footnote{UAMPS Protest at 21.}

24. Wind Parties note that studies conducted by entities analyzing the benefits of moving from hourly to 10-minute schedules concluded that regulation reserves could be reduced by 75 to 80 percent, which calls into question the validity of PacifiCorp’s benefit study.\footnote{Wind Parties Protest at 16-18.} Lastly, Wind Parties assert that PacifiCorp is not using best practices to integrate wind on its system, including better wind energy forecasts, to reduce the ancillary service Schedule 3 and 3A charges, per the requirements of Order No. 764.\footnote{Id. at 19-24.}

25. UAMPS argues that PacifiCorp’s cost-of-service filing in support of the proposed ancillary service rates contains numerous errors and flaws.\footnote{Wind Parties raise similar issues concerning discrete elements of PacifiCorp’s cost-of-service filing. Id. at 13-15.} While UAMPS supports PacifiCorp’s use of the previously-negotiated and Commission-accepted transmission formula rate template as a starting point for PacifiCorp’s production-related fixed charge

\footnote{Id. at 9-13.}

\footnote{Id. at 16.}

\footnote{Id. at 18; UAMPS Protest at 20-21.}

\footnote{UAMPS Protest at 21.}

\footnote{Wind Parties Protest at 16-18.}

\footnote{Id. at 19-24.}

\footnote{Wind Parties raise similar issues concerning discrete elements of PacifiCorp’s cost-of-service filing. Id. at 13-15.}
rate, UAMPS notes that PacifiCorp has not justified the treatment of certain Accumulated Deferred Income Taxes in the production fixed charge rate.\(^49\) UAMPS alleges that correcting for these errors would result in a 3.2 percent lower production fixed charge rate, which translates into lower Schedule 3, 3A, 5, and 6 rates.\(^50\) UAMPS also notes that PacifiCorp appears to have excluded potential revenue offsets to the production fixed charge rate (i.e., Account 456 – Other Electric Revenues) that, if properly included, would result in lower ancillary service rates.\(^51\)

**B. PacifiCorp’s Answer**

26. On December 14, 2016, PacifiCorp filed an answer to the protests, which, as noted above, amended its October 28, 2016 filing. Noting the errors in its filing raised by UMPA and Deseret in their respective protests, PacifiCorp has removed UMPA’s share of its power plant from the list of facilities that are likely to provide ancillary services as well as corrected the amount of Deseret’s peak load subject to Schedule 3 charges.\(^52\) According to PacifiCorp, correcting for UMPA’s power plant will reduce the proposed Schedules 3, 3A, 5, and 6 rates by approximately one percent and correcting the error in Deseret’s peak load will reduce the Schedule 3 load rate by 1.6 percent to $2.996/kW-year. PacifiCorp proposes to file updated ancillary service schedules in a future compliance filing to correct for these errors.

27. PacifiCorp contends that, contrary to arguments raised by protesters, it has adequately supported its proposed ancillary service rate changes, particularly the regulation reserve study it uses to support the level of regulation reserves charged to load, VERs, and non-VERs. PacifiCorp argues that it correctly interpreted the new reliability standard BAL-001-2 and that Wind Parties arguments to the contrary are without merit. PacifiCorp notes that it is justified in using a different study methodology in the instant filing from the one that it used in its 2013 filing as the reliability standard changed since the previous study and PacifiCorp’s participation in the EIM required different scheduling timeframes from those used in the 2013 study.\(^53\) PacifiCorp asserts that its most recent regulation reserve study results in a lower reserve requirement than the 2013

\(^{49}\) UAMPS Protest at 12-18.

\(^{50}\) Id. at 18.

\(^{51}\) Id.

\(^{52}\) PacifiCorp Answer at 4.

\(^{53}\) Id. at 12.
study by as much as 14 percent.\textsuperscript{54} PacifiCorp also takes exception to the arguments raised by Wind Parties that a 95 percent variability standard should be the standard for determining the proper reserve level. PacifiCorp notes that a 95 percent standard results in potential reserve shortfalls in 438 hours per year which would be a violation of the new BAL-001-2 reliability standard, which mandates 100 percent compliance.\textsuperscript{55} Finally, PacifiCorp highlights that Wind Parties fault PacifiCorp for not including the benefits associated with the Area Control Error Diversity Interchange program in its filing; however, PacifiCorp states that it currently does not participate in that program and has not done so since 2011.\textsuperscript{56}

28. Contrary to the arguments raised by BPA, PacifiCorp states that its use of a 2015 test year for analyzing its reserve requirements is appropriate as PacifiCorp’s participation in the EIM only began in November, 2014. In addition, the use of five-minute EIM data has been vetted for accuracy and the data reflects the flexibility and constraints experienced by PacifiCorp.\textsuperscript{57} Moreover, PacifiCorp disagrees with BPA’s concerns that the data corrections undertaken by PacifiCorp in its study undermine the accuracy of the deviation distributions relied upon to set the regulation reserve forecast. PacifiCorp also contends that Wind Parties misinterpreted the graph included in PacifiCorp’s study in arguing that PacifiCorp is using a rough linear approach to calculate the reserve margin.\textsuperscript{58} PacifiCorp notes that the graph does not measure the frequency of the values presented; therefore, the arguments raised by Wind Parties are without merit.

29. PacifiCorp dismisses arguments raised by protesters that its regulation reserve requirements and ancillary service rates should be revisited or reopened on a regularly scheduled basis to account for additional participation in the EIM.\textsuperscript{59} PacifiCorp argues that future EIM benefits are unknown and speculative and it would be unduly burdensome to reopen the ancillary service rates every three years. PacifiCorp states that if protesters are still concerned with PacifiCorp’s EIM benefits analysis, it would be

\textsuperscript{54} Id.

\textsuperscript{55} Id. at 14.

\textsuperscript{56} Id. at 15.

\textsuperscript{57} Id. at 18-19.

\textsuperscript{58} Id. at 21.

\textsuperscript{59} Id. at 26-27.
willing to explore the issue further in the context of the Commission’s settlement procedures.\textsuperscript{60} PacifiCorp also disagrees with arguments raised by BPA and UAMPS that it has skewed the pool of resources providing regulation reserves such that only the highest cost resources are included in the pool thereby inflating the ancillary service rates. PacifiCorp contends that the resources included in the pool are only those resources that are available to provide the regulation reserves and are priced accordingly.\textsuperscript{61}

30. PacifiCorp argues that it developed its production fixed charge rate methodology at the request of stakeholders modeled upon PacifiCorp’s approved transmission formula rate and that some of the modifications to the production fixed charge rate sought by protesters disrupt the balance of the rate structure.\textsuperscript{62} PacifiCorp asserts that the cost-of-service adjustments sought by protesters are unnecessary or inappropriate; however, PacifiCorp is willing to work with the protesters to discuss and review their accounting issues through the Commission’s hearing and settlement procedures.\textsuperscript{63}

31. Lastly, PacifiCorp argues that, contrary to the claims raised by UAMPS, Deseret and UMPA, PacifiCorp’s filing does not violate the terms and conditions of those customer’s legacy transmission agreements. PacifiCorp contends that nothing in the aforementioned customer’s legacy agreements prohibits PacifiCorp from proposing additional billing determinants for ancillary services and, again, PacifiCorp is willing to work with those customers on any issues requiring contract interpretation through the Commission’s hearing or settlement procedures.\textsuperscript{64} PacifiCorp requests that, if the Commission does suspend the rates either for a nominal period or for five-months, all of the ancillary service rates should be effective as of the same date, contrary to the request of protesters.\textsuperscript{65} PacifiCorp argues that it would be discriminatory to its customers to bifurcate the effectiveness of the rates as Schedules 5 and 6 rely upon the same calculations as Schedules 3 and 3A.

\textsuperscript{60} Id. at 30.

\textsuperscript{61} Id. at 31-34.

\textsuperscript{62} Id. at 35.

\textsuperscript{63} Id. at 40.

\textsuperscript{64} Id. at 49.

\textsuperscript{65} Id. at 52.
C. **Supplemental Protests**

32. Supplemental protests to PacifiCorp’s amended filing were submitted by Deseret, BPA, UMPA, and UAMPS. Protesters generally attempt to avoid repeating arguments they raised in PacifiCorp’s initial filing, but tend to cover the same issues. BPA notes that PacifiCorp has not addressed its concerns regarding the data and methodology used in PacifiCorp’s reserve study.  

Both BPA and UAMPS reiterate their arguments that PacifiCorp should make periodic updates to its ancillary service rates to reflect EIM benefits. In particular, UAMPS believes that PacifiCorp should be required to make a filing in three years to review its ancillary service, while BPA offers, in the alternative, that PacifiCorp should be required to adopt formula rates for Schedules 3, 3A, 5, and 6 rather than stated rates. In addition, both BPA and UAMPS argue that PacifiCorp still has not justified the use of PacifiCorp’s highest cost units in the reserve pool of resources providing the ancillary services.

33. Deseret and UMPA renew their arguments that PacifiCorp’s proposed ancillary service rates violates their respective legacy transmission service agreements, by unilaterally adding new billing determinants and charges to their agreements.

34. UAMPS repeats its arguments that PacifiCorp’s proposed rate increase is excessive and warrants the maximum five-month suspension. In addition, despite PacifiCorp’s explanation in its December 13 Answer, UAMPS states that PacifiCorp still has not resolved its issues regarding the treatment of Accumulated Deferred Income Taxes in the production fixed charge rate. Lastly, UAMPS, UMPA, and Deseret request that the Commission deny PacifiCorp’s request for waiver of the prior notice requirements and find that PacifiCorp’s filing was not complete until December 14, 2016,

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66 BPA Response at 4-9.

67 BPA Response at 9-10; UAMPS Supplemental Protest at 8-9.

68 BPA Response at 1-4; UAMPS Supplemental Protest at 9-11.

69 Deseret Supplemental Protest at 5-11; UMPA Supplemental Protest at 5-7.

70 UAMPS Supplemental Protest at 2-5.

71 Id. at 6-7.
which combined with a five-month suspension period, would set the effective date to July 12, 2017, subject to refund.\footnote{UAMPS Supplemental Protest at 14-15; UMPA Supplemental Protest at 7-8; Deseret Supplemental Protest at 13-15.}

V. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the 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) (2016), the Commission will grant WAPA’s late-filed motion to intervene given its’ interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

36. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. In this instance, PacifiCorp’s answer amended its case-in-chief, which was noticed for comment. Accordingly, we will accept PacifiCorp’s December 14, 2016 answer and the supplemental protests because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept the answer filed by PacifiCorp on January 17, 2017, and will, therefore, reject it.

B. Substantive Matters

37. We reject the arguments raised by Deseret, UAMPS, and UMPA that PacifiCorp’s proposal to revise Schedules 3, 3A, 5, and 6 essentially is prohibited because it would unilaterally modify their stand-alone transmission rate schedules. While the protesters’ transmission rate schedules incorporate by reference the rates of PacifiCorp’s ancillary service rate schedules, the protesters do not take transmission service under PacifiCorp’s OATT and nothing in their respective agreements prohibits PacifiCorp from modifying the rates, terms and conditions of its OATT. Rather, these legacy transmission customers take transmission service from PacifiCorp pursuant to their respective rate schedules and both PacifiCorp and its legacy transmission customers are bound by the terms and conditions of those agreements. We find the arguments raised by Deseret, UAMPS, and UMPA are beyond the scope of PacifiCorp’s filing and are best addressed when, and if, PacifiCorp files to modify those transmission rate schedules, or, if PacifiCorp does not file with the Commission to modify the rate schedule, but uses billing determinants that
differ from how PacifiCorp billed the customer in the past, then through a section 206 complaint by the customer.

38. We find PacifiCorp’s December 14, 2016 answer to be an amendment to its October 28, 2016 filing as PacifiCorp corrected several errors in its original filing that results in a change to the proposed rates. While PacifiCorp did not submit corrected tariff sheets in its answer, it did proffer to file corrected tariff sheets if directed to do so by the Commission in a future compliance filing. In addition, PacifiCorp’s acknowledged errors prompted PacifiCorp to submit revisions to Tables D, E, and F, which were attached to its witnesses’ testimony (Mr. Daniel J. MacNeil, Exhibit No. PAC-13); updated figures and tables to PacifiCorp’s regulation reserve study; updated cost support information for the proposed ancillary service rates; and updated Statements BG and BH, which include additional supporting information and explanation. In this instance, we find that PacifiCorp’s answer is a material change to PacifiCorp’s original filing that warrants a change to the original filing date in addition to a change in the effective date. Accordingly, we find that PacifiCorp amended its application on December 14, 2016 and the effective date of PacifiCorp’s application is 61 days from the date of filing, i.e., February 13, 2017.

39. PacifiCorp’s proposed revisions to Schedules 3, 3A, 5, and 6 raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

40. Our preliminary analysis indicates that PacifiCorp’s proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In West Texas, the Commission explained that, when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in West Texas, the Commission will generally impose a five-month suspension. In the instant proceeding, we find that the proposed rates, with the exception of Schedules 5, 6 and 11, may be substantially excessive. Therefore, we will accept PacifiCorp’s proposed Schedules 3 and 3A for filing, suspend them for five months, make them effective July 13, 2017, subject to refund, and set them for hearing and settlement judge procedures.

73 PacifiCorp Answer at 54.

74 18 C.F.R. § 35.17(b) (2016).

41. In addition, while PacifiCorp is proposing a rate decrease in Schedules 5 and 6, our review indicates that a further decrease may be warranted. Therefore, we will accept the proposed Schedule 5 and 6 rates for filing, to become effective February 13, 2017, subject to refund, and we will also institute a section 206 investigation in Docket No. EL17-27-000 with respect to the justness and reasonableness of PacifiCorp’s proposed rate decreases. We will direct PacifiCorp to submit a compliance filing within 30 days of the date of this order correcting the rates set forth in Schedules 3, 3A, 5 and 6 as proposed in its answer. PacifiCorp is directed to use the effective dates for its corrected tariff sheets as set forth in this order.

42. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission’s initiation of its investigation in the Federal Register, and no later than five months after the publication date. Consistent with our general policy of providing maximum protection to customers, we will establish the refund effective date to at the earliest date possible, i.e., the date the initiation of the investigation in Docket No. EL17-27-000 is published in the Federal Register.

43. Section 206(b) also 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 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by February 10, 2018. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately nine months of the filing of briefs on and opposing exceptions, or by January 31, 2019.

44. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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. If the parties desire, they may,

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by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges’ availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order 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.

45. In light of the common issues of law and fact presented in Docket Nos. ER17-219-000 and EL17-27-000, we will consolidate the two proceedings for purposes of settlement, hearing, and decision.

46. We deny PacifiCorp’s request for waiver of Part 35.13 of the Commission’s regulations. While PacifiCorp characterizes its filing as a proposed formula rate, the fact remains that PacifiCorp’s proposal is a stated rate based upon a production cost template which is modeled after PacifiCorp’s transmission cost formula rate. Accordingly, PacifiCorp’s filing does not warrant similar treatment of the filing requirements that the Commission has provided formula rate proposals. We direct the presiding judge to determine how much additional time PacifiCorp may need to augment its case-in-chief.

78 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 Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges’ availability. 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).

79 PacifiCorp Transmittal Letter at 19.

80 See Exhibit No. PAC-15 at 7.

47. Finally, with respect to PacifiCorp’s proposed changes to Schedule 11, we find that the changes are ministerial in nature and that PacifiCorp has shown them to be just and reasonable. Accordingly, we will accept PacifiCorp’s proposed Schedule 11, effective February 13, 2017, without suspension or hearing.

The Commission orders:

   (A) PacifiCorp’s proposed revisions to Schedules 3 and 3A are hereby accepted for filing and suspended for five months, to be effective July 13, 2017, subject to refund, as discussed in the body of this order.

   (B) PacifiCorp’s proposed revisions to Schedules 5 and 6 are hereby accepted for filing to be effective February 13, 2017, subject to refund, as discussed in the body of this order.

   (C) PacifiCorp’s proposed revisions to Schedule 11 are hereby accepted for filing to be effective February 13, 2017, without suspension or hearing, as discussed in the body of this order.

   (D) PacifiCorp is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

   (E) PacifiCorp’s requested waiver of section 35.13 of the Commission’s regulations is hereby denied, as discussed in the body of this order.

   (F) 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 sections 205 and 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 the justness and reasonableness of PacifiCorp’s proposed Schedules 3, 3A, 5, and 6. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (G) and (H) below.

   (G) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2016), 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 the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.
(H) 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.

(I) 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 this proceeding 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.

(J) Docket Nos. ER17-219-000 and EL17-27-000 are hereby consolidated for the purposes of settlement, hearing, and decision.

(K) The Secretary shall promptly publish in the Federal Register a notice of the Commission’s initiation of section 206 proceedings in Docket No. EL17-27-000.

(L) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (K) above.

(M) Any interested person desiring to be heard in Docket No. EL17-27-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2016)) within 21 days of the date of issuance of this order.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.