

151 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket Nos. ER15-223-001
ER15-227-003

California Independent System
Operator Corporation

Docket No. ER15-322-001

ORDER DENYING REHEARING

(Issued June 22, 2015)

1. In this order, we deny requests for rehearing of the Commission's order issued in these proceedings on December 29, 2014.¹ In the December 29 Order, the Commission accepted a notice of termination of the Comprehensive Agreement between Pacific Gas and Electric Company (PG&E) and the State of California Department of Water Resources State Water Project (DWR), and a number of replacement agreements that PG&E filed to provide for the continued interconnection of DWR's pumping loads and generation to PG&E's transmission system.² The Commission also accepted certificates of concurrence to the two Large Generator Interconnection Agreements (LGIA) submitted by the California Independent System Operator Corporation (CAISO).

¹ *Pac. Gas and Elec. Co.*, 149 FERC ¶ 61,276 (2014) (December 29 Order).

² We note that the December 29 Order also included the Commission's acceptance of PG&E's proposed revisions to the Pine Flat and Midway-Wheeler Ridge Agreements to reflect the termination of the Comprehensive Agreement (submitted in Docket Nos. ER15-231-000 and ER15-231-001).

I. Background

2. As explained in the December 29 Order, in 1983, DWR and PG&E entered into the Comprehensive Agreement, under which PG&E provided interconnection of all State Water Project plants and facilities in PG&E's service territory and firm physical transmission service to DWR. The Comprehensive Agreement expired by its own terms on December 31, 2014. In this proceeding, PG&E proposed various replacement agreements to address the rates, terms and conditions for DWR's continued interconnection service to PG&E's transmission system after the expiration of the Comprehensive Agreement.

3. Under the Comprehensive Agreement, DWR's generation plants and water pumping loads were subject to certain remedial action scheme curtailment arrangements, which terminated upon the expiration of the Comprehensive Agreement.³ These remedial action schemes were also at issue in a complaint proceeding in Docket No. EL14-44-000 (Complaint Proceeding) in which Transmission Agency of Northern California (TANC) alleged an anticipatory breach of PG&E's obligations under a separate agreement, i.e., the Owners Coordinated Operation Agreement (Operation Agreement)⁴ between the owners of the California-Oregon Intertie.⁵ In the Complaint Order, the Commission

³ DWR's participation in the remedial action schemes supported the daily operating limits of north to south imports through the California-Oregon Intertie, the primary interconnection between Northern California and Oregon. The California-Oregon Intertie is the northern part of a three-line transmission system, which is comprised of (1) two Pacific AC Intertie lines between Malin Substation in southern Oregon and Round Mountain Substation in northern California, and (2) the California-Oregon Transmission Project between Captain Jack Substation in southern Oregon and the Olinda Substation in Northern California. The California-Oregon Intertie is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central California. The two Pacific AC Intertie lines are owned by PacifiCorp, PG&E and the Western Area Power Administration. The California-Oregon Transmission Project is majority owned by TANC, which is the project manager.

⁴ The Operation Agreement governs coordinated operation, maintenance and planning of the California Oregon Intertie. PG&E, TANC, Western and PacifiCorp are parties to the Operation Agreement.

⁵ *Transmission Agency of Northern California v. Pac. Gas and Electric Co.*, 148 FERC ¶ 61,150 (2014) (Complaint Order), *reh'g denied*, 150 FERC ¶ 61,133 (2015),

(continued...)

denied TANC's complaint, finding that the clear and unambiguous language of the Operation Agreement, does not require PG&E to replace the remedial action schemes upon cancellation or termination of the Comprehensive Agreement and does not require PG&E alone to replace any remedial action provided thereunder, including substituting some other means of achieving the same objective as the remedial action scheme.⁶

A. Underlying Filings

1. Notice of Termination of the Comprehensive Agreement

4. In Docket No. ER15-223-000, PG&E filed a notice of termination of the Comprehensive Agreement. In support of the filing, PG&E noted that at the time CAISO market operations commenced, the Commission permitted existing, bilateral contracts, such as the Comprehensive Agreement, reflecting firm physical transmission rights, to expire in accordance with their terms in order to preserve the parties' then-existing electric transmission service arrangements.⁷ Upon expiration of existing transmission contracts, customers transition to transmission service under the CAISO Tariff.

2. Load, Generator Interconnection and Maintenance Agreements

5. In Docket Nos. ER15-227-000, ER15-227-001 and ER15-227-002, PG&E filed ten agreements with DWR as service agreements under PG&E's Transmission Owner Tariff. Specifically, the agreements consist of a Load Interconnection Agreement (IA),⁸ six related transmission facilities agreements,⁹ a maintenance agreement,¹⁰ and two non-

petition for review pending, Transmission Agency of Northern California, et al. v. FERC, D.C. Cir. No. 15-1057 (Complaint Order).

⁶ See Complaint Order, 148 FERC ¶ 61,150 at P 62.

⁷ These contracts are generally referred to as existing transmission contracts.

⁸ The Load IA is a wires-to-wires agreement governing the interrelationship between PG&E's and DWR's systems, under which PG&E agrees to provide interconnection service to DWR's loads at various points of interconnection. Among other things, the Load IA specifies obligations DWR has to participate in underfrequency load shedding required to maintain reliability of the grid and reflects an agreement to reduce DWR's participation in the Southern Island Load Tripping Plan (Tripping Plan).

⁹ The six transmission facilities agreements describe the parties' interconnection facilities at each of DWR's load-only points of interconnection. These agreements, among other things, reflect charges DWR must pay for PG&E's ongoing cost of owning,

(continued...)

conforming LGIAs.¹¹ PG&E explained that these replacement agreements provided for the continued interconnection of DWR's pumping loads and generation to PG&E's transmission system and replace similar provisions of interconnection service from the expiring Comprehensive Agreement.

3. CAISO Certificates of Concurrence

6. In Docket No. ER15-322-000, CAISO filed certificates of concurrence to the two non-conforming LGIAs filed by PG&E in Docket No. ER15-227-000, *et al.*

B. The December 29 Order

7. The December 29 Order accepted PG&E's notice of termination of the Comprehensive Agreement, the proposed replacement agreements, and CAISO's certificates of concurrence. The Commission rejected TANC's assertions that PG&E is obligated to hold TANC or other third parties harmless upon termination of the Comprehensive Agreement, finding that TANC's arguments constituted an improper request for rehearing of the Complaint Order and were an impermissible collateral attack.¹² The Commission also found that the Comprehensive Agreement, an existing transmission contract, was intended to expire in accordance with its terms with service transitioning to competitive electricity markets.¹³ The Commission then accepted the replacement agreements, finding their rates, terms and conditions to be just and reasonable.¹⁴ In accepting the LGIAs, the Commission found that since they pertained to

operating and maintaining direct assignment facilities that are used for the sole purpose of interconnecting DWR's pumping plants to PG&E's system.

¹⁰ The maintenance agreement provides for PG&E to perform maintenance on communication equipment installed at DWR's San Luis pumping-generating plant that is related to DWR's participation in the Tripping Plan.

¹¹ The non-conforming LGIAs, among DWR, PG&E and CAISO, govern the interconnection of DWR's Oroville and San Luis facilities. Because CAISO's *pro forma* LGIA does not contain provisions that meet the unique requirements of DWR as a California state agency, the proposed LGIAs contain minor non-conforming provisions.

¹² December 29 Order, 149 FERC ¶ 61,276 at PP 62-66.

¹³ *Id.* PP 67, 68.

¹⁴ *Id.* P 69.

existing generators, system impact studies were not necessary.¹⁵ Finally, the Commission rejected a request by the Western Area Power Administration (Western) that an alleged ambiguity in Appendix B of the Load IA be clarified.¹⁶

II. Requests for Rehearing, Motion to Lodge and Responsive Pleadings

8. On January 28, 2015, the Balancing Authority of Northern California (BANC), the City of Redding, California and the M-S-R Public Power Agency (Redding/M-S-R), Modesto Irrigation District (Modesto), TANC, and Western filed requests for rehearing of the December 29 Order. On February 12, 2015, DWR filed a motion for leave to answer and answer to Western's request for rehearing. On February 25, 2015, Western filed an answer to DWR's answer.

9. On January 28, 2015, TANC filed public and privileged versions of a motion to lodge. By its motion to lodge, TANC seeks to supplement the record in the proceeding with CAISO's Operating Procedure 6110 and the associated California Simultaneous Import Nomogram (CASI) 6010 Flowchart for 2014 and as updated for 2015. These documents specify, among other things, system operating limits and provide procedures to apply during normal and contingency operations for the California-Oregon Intertie. TANC contends that this information is material to the Commission's reliance on CAISO's representations in this proceeding that termination of the Comprehensive Agreement and acceptance of the replacement agreements would result in "*de minimis* economic impacts."¹⁷

10. On February 12, 2015, CAISO filed public and privileged versions of its answer to TANC's motion to lodge. CAISO asserts that TANC has misconstrued the nature and evidence with which it proposes to supplement the record, and that the evidence does not warrant a different outcome from that which the Commission reached in this proceeding and the Complaint Proceeding. CAISO contends that TANC's claimed "new evidence" constitutes nothing more than a pretext to keep the remedial action scheme in place.¹⁸ On March 10, 2015, TANC filed a motion for leave to file an answer and answer to CAISO's

¹⁵ *Id.* PP 70-73.

¹⁶ *Id.* P 74.

¹⁷ TANC Motion to Lodge at 1-2 (citing December 29 Order, 149 FERC ¶ 61,276 at P 55).

¹⁸ CAISO Answer at 2-3.

answer. TANC reiterates its argument that CAISO is in error when it asserts that the loss of DWR's participation in the remedial action scheme will only have *de minimis* impacts.

11. As a general matter, BANC, Redding/M-S-R, and Modesto have adopted the specifications of error and arguments that TANC set forth in its request for rehearing.

III. Procedural Matters

12. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014) prohibits an answer to a request for rehearing. Accordingly, we reject DWR's February 12, 2015 answer and Western's February 25, 2015 answer to DWR's answer.

13. While we do not find that the additional information affects our decision, we nevertheless grant TANC's motion to lodge.

IV. Discussion

A. Loss of Remedial Action

14. In the December 29 Order, the Commission restated its position in the Complaint Order that PG&E alone is not required under the terms of the Operation Agreement to replace or mitigate the expected loss of DWR's participation in the remedial action schemes.¹⁹ Specifically, the Commission found that under section 8.6.3 of the Operation Agreement, PG&E is not required to replace DWR's participation in remedial action schemes upon termination of the Comprehensive Agreement, such as by "substituting some other means of achieving the same objective as the remedial action schemes."²⁰ The Commission recognized the importance of preserving the import capability of the California-Oregon Intertie, and encouraged parties to continue to "work on a collaborative basis to implement a mutually agreeable solution" to the regional transmission planning concerns.²¹

¹⁹ December 29 Order, 149 FERC ¶ 61,276 at P 63 (citing Complaint Order, 148 FERC ¶ 61,150 at PP 60-62).

²⁰ *Id.* (citing Complaint Order, 148 FERC ¶ 61,150 at P 62).

²¹ *Id.* P 66 (citing Complaint Order, 148 FERC ¶ 61,150 at P 69).

1. Argument

15. TANC argues that the Commission failed to address TANC's showing of operational and economic harm to TANC and its members caused by the termination of the Comprehensive Agreement (and the loss of remedial action) combined with the approval of the Load IA and LGIAs with DWR.²² TANC states that it demonstrated in its protests that interconnection of DWR generation, without remedial action, will directly cause large reductions in the import capability of the California-Oregon Intertie and California-Oregon Transmission Project, which will in turn cause significant financial and operational harm to TANC, its members, and other entities in the Pacific Northwest.²³ Specifically, TANC contends that purchasing replacement transmission service for TANC and its members would cost between \$21.6 million (183 MW in 2015) to \$52.3 million (443 MW in 2023) annually, and that replacing its lost California Oregon Transmission Project transfer capability with generation would similarly yield an annual cost between \$21.6 million (183 MW in 2015) to \$52.3 million (443 MW in 2023).²⁴

16. TANC states that the Commission erroneously relied on *dicta* from the Complaint Order regarding the appropriateness of the termination of the Comprehensive Agreement. TANC also states that any reliance the Commission placed upon CAISO's assertions that the impact would be *de minimis* or that the hours of impact are extremely small is in error.²⁵ TANC contends that, in addition to the impacts demonstrated in its protest, CAISO's transfer limits for the California-Oregon Intertie for Spring 2015 (issued after

²² TANC Rehearing Request at 6-14.

²³ *Id.* at 7-8; *see also* TANC Protest in Docket No. ER15-223-000 at P 32 and Figure No. 1; TANC Protest in Docket No. ER15-227-000 at P 20 and Figure No. 1. TANC notes that its protest showed expected California-Oregon Transmission Project reductions for 2015 summer of 210 MW, for 2018 summer of 307 MW, and for 2023 summer of 510 MW to 520 MW, with impacts on California-Oregon Intertie three times these amounts. TANC also states that it performed preliminary studies based on 2014 summer nomogram cases, which indicated that changing the interconnection point for only one of the PG&E loads (rather than for both loads) could increase the impacts on the California-Oregon Intertie due to the loss of the PG&E remedial action scheme by up to 600 MW during spring conditions assuming the northern California hydroelectric generation is operating at 90 percent of its installed capacity (*see* TANC Protest in Docket Nos. ER15-223, *et al.*, Exhibit TNC-7 at P 43).

²⁴ TANC Rehearing Request at 9.

²⁵ *Id.* at 10-11.

the December 29 Order), and CAISO's 2015 Operating Procedures,²⁶ further demonstrate that the impacts will be significant, even during low hydro conditions.²⁷

17. BANC reiterates TANC's arguments, and adds that it is particularly troubled that the Commission relied on CAISO's statements that impacts on the California-Oregon Intertie and California-Oregon Transmission Project would be *de minimis* and would occur at low frequency, without examining the merits of TANC's studies.²⁸ According to BANC, CAISO's Operating Procedures show a substantial loss of import capability in certain conditions, and much of the burden will fall on BANC members, leading to a real and significant impact on the operation of the BANC balancing authority area.²⁹

18. Western contends that if not reversed, the December 29 Order may have a significant impact on a transmission owner's obligation to properly maintain system capability at interconnection points with neighboring utilities. Western contends that, while PG&E may not be required to replace the remedial action scheme, the Commission's decision in this case essentially authorizes PG&E to obviate its duty to maintain its system to support the interconnection in the absence of a remedial action scheme. As a result, Western contends that this case may have wide ranging consequences and may set adverse precedent throughout the industry.³⁰

2. Commission Determination

19. We will deny rehearing on this issue. Repeated arguments regarding the alleged operational or economic harm caused by the termination of the Comprehensive Agreement combined with the approval of the Load IA and LGIAs with DWR are not persuasive. Contrary to TANC's assertions, the Commission considered TANC's analysis on the impacts on the loss of remedial action schemes resulting from the termination, and the corresponding reduction in the California-Oregon Intertie and California Oregon Transmission Project import capability. The determinations in the December 29 Order were based on a number of factors, which included the finding that

²⁶ CAISO's 2015 Operating Procedures were submitted as a supplement in TANC's Motion to Lodge.

²⁷ TANC Rehearing Request at 11-13; TANC Motion to Lodge at 1-3.

²⁸ BANC Rehearing Request at 3.

²⁹ *Id.* at 4.

³⁰ Western Rehearing Request at 14-15.

the Comprehensive Agreement, an existing transmission contract, was intended to expire in accordance with its terms with service transitioning to competitive electricity markets.³¹ The Commission further considered the merits of CAISO's studies, which demonstrated that termination of the DWR remedial action schemes would not reduce the path rating³² of the California-Oregon Intertie, and would have *de minimis* economic impacts.³³ The Commission relied on these factors when determining that the termination of the Comprehensive Agreement was just and reasonable.

20. We also reject Western's assertion that the December 29 Order allows PG&E to shirk any duties in providing system support. The December 29 Order found that upon expiration of the Comprehensive Agreement PG&E is not *solely* responsible for replacing the DWR remedial action schemes, and that the costs of any future remedial action necessary in the absence of the Comprehensive Agreement will be shared by the owners on a *pro rata* basis.³⁴ Nothing in the December 29 Order relieves PG&E of any obligations that remain upon expiration of the Comprehensive Agreement.

21. We reiterate that in both the December 29 Order and the Complaint Order, the Commission encouraged parties to address issues that may result from the termination of the Comprehensive Agreement, and "work on a collaborative basis to implement a mutually agreeable solution" to the regional transmission planning concerns.³⁵ We

³¹ *Id.* P 67 (citing Complaint Order, 148 FERC ¶ 61,150 at P 63).

³² CAISO Answer at 7, 25, Attachment 2 at 4. CAISO states that the California-Oregon Intertie has a path rating of 4,800 MW of transmission capacity. We note that the path rating is distinct from the transfer capability, which CAISO states may be reduced in some circumstances following the removal of PG&E's remedial action schemes.

³³ December 29 Order, 149 FERC ¶ 61,276 at P 55 (citing CAISO Answer, Attachment 1 at 5-8) (CAISO transmission planning studies demonstrate that the termination of DWR participation in remedial action schemes would not adversely affect reliability of the CAISO controlled grid and provided no basis for revisiting the path rating (which is a maximum achievable flow rating) for Path 66, i.e., the California-Oregon Intertie).

³⁴ December 29 Order 149 FERC ¶ 61,276 at P 63; Complaint Order, 148 FERC ¶ 61,150 at PP 65-66.

³⁵ December 29 Order 149 FERC ¶ 61,276 at 66 (citing Complaint Order, 148 FERC ¶ 61,150 at P 69).

continue to encourage PG&E, TANC, Western, and all other parties to work toward a mutual resolution in this respect.

B. Whether the LGIAs Require System Impact Studies

22. In the December 29 Order, the Commission disagreed with the proposition that PG&E and CAISO should have performed system impact studies prior to entering into the replacement LGIAs, finding that CAISO's generator interconnection procedures do not require system impact studies for existing generators, such as the Oroville and San Luis facilities, that remain substantially unchanged.³⁶ The Commission stated that existing generating units do not require system impact studies pursuant to the interconnection procedures in the CAISO Tariff unless the generators will be modified with a resulting increase in total capacity or substantial change in electrical characteristics. The Commission found that neither of those criteria applies to DWR's facilities, which have been interconnected with PG&E's system for decades.³⁷

1. Argument

23. TANC and Western argue that the Commission erred in finding that DWR's generating units remain substantially unchanged and in not requiring a system impact study before approving the LGIAs.³⁸ TANC contends that the Commission's finding overlooks the fact that the electrical characteristics of the generator and the interconnection at issue will be materially different under the LGIAs. TANC states that an essential element of the prior interconnection of DWR's generation and load to PG&E's electric system was DWR's participation in the remedial action scheme, which will not be available to support the new interconnection with PG&E and CAISO.³⁹ TANC argues that the remedial action permitted the interconnection of DWR's resources without causing overloads on the PG&E electric system, and that the December 29 Order does not address TANC's evidence that the proposed interconnection of DWR generators without the remedial action constitutes a change in electrical characteristics.⁴⁰

³⁶ *Id.* P 72.

³⁷ *Id.*

³⁸ TANC Rehearing Request at 14-20; Western Rehearing Request at 10-13.

³⁹ TANC Rehearing Request at 15.

⁴⁰ *Id.* at 16.

24. TANC and Western contend that the fact that DWR's generators have been interconnected with PG&E's system for decades has no bearing on whether there is a change in electrical characteristics that would make a system impact study necessary.⁴¹ They argue that DWR's generators were subject to remedial action, or its equivalent, for the entire time that they were interconnected, allowing for them to be curtailed when necessary to support PG&E's electric system, and that the absence of some form of remedial action substantially changes the electrical impact of DWR's generators on the grid.

25. Western states that it has recently received information from various sources, including Peak Reliability, the reliability coordinator of the Western Interconnection, which indicates that the impacts of the termination of the remedial action will be more significant than represented by PG&E and CAISO.⁴² Western argues that rather than summarily deciding this issue, the Commission should have required the parties to present the result of studies and, if necessary, allow parties to seek discovery to fully understand the impact on the operation or the reliability of the transmission system.⁴³

2. Commission Determination

26. We will deny rehearing on this issue. First, we note that the LGIAs at issue do not implicate new interconnections, but rather reflect a change in the contractual relationships among the parties in light of the expiration of the Comprehensive Agreement. As previously explained, the generator interconnection procedures in section 25 of the CAISO Tariff make clear that a system impact study requirement does not apply to an existing generating unit unless it will be modified to increase total capacity,⁴⁴ or will be modified with a change in electrical characteristics such that its re-energization may violate reliability criteria.⁴⁵ CAISO Tariff section 25.1.2 provides that the owner of a generator transitioning from a pre-existing interconnection agreement to an LGIA shall

⁴¹ *Id.* at 18-19; Western Rehearing Request at 11-12.

⁴² Western Rehearing Request at 12 & n.23 (citing Draft Spring California-Oregon Intertie, Pacific DC Intertie, Path 26 and SCIT Paths Systems Operating Limit Study Report 2015).

⁴³ *Id.* at 13.

⁴⁴ CAISO, CAISO eTariff, § 25.1(b), Interconnection Of Generating Units And Facilities/Applicability (5.0.0).

⁴⁵ *Id.* § 25.1(c).

submit an affidavit to CAISO representing that the total generating capability and electrical characteristics of the generating unit are substantially unchanged. CAISO and the applicable Participating Transmission Owner also have the right to verify the information.⁴⁶ DWR submitted the required affidavits and additional technical information for its Oroville and San Luis generating facilities, representing that total capacity and electrical characteristics remained substantially unchanged, and CAISO and PG&E confirmed those representations.⁴⁷ Accordingly, the parties satisfied the procedural requirements in the CAISO Tariff for transitioning DWR's generating units to LGIAs.

27. TANC and Western argue that that the proposed interconnection of DWR generators without the remedial action scheme constitutes a change in electrical characteristics. We disagree. The CAISO Tariff does not specifically define the term "electrical characteristics," but it is reasonable to interpret the phrase as referring to the physical components of a generator and how the generator produces electricity. A remedial action scheme is a contingency operating procedure designed to detect predetermined system conditions and automatically take corrective actions that may include, but are not limited to, curtailing or tripping generation, curtailing or tripping load, or reconfiguring the system. In this case, the remedial action scheme implements procedures to allow for the tripping of generators and pumps off-line during system disturbances, but these procedures are not a physical component of discrete generators.⁴⁸ In the Complaint Proceeding, TANC argued that the loss of the remedial action scheme constituted a Modification to the system which resulted in an adverse impact. The Commission disagreed, concluding that the loss of the remedial action scheme does not fit the Operation Agreement's definition of a Modification, which is restricted in scope to physical changes to facilities.⁴⁹ We come to the same conclusion here, i.e., the loss of DWR's participation in the remedial action scheme is not a physical change to the generating units. Therefore no physical change to the generating unit exists that would constitute a change in electrical characteristics to trigger the requirement to perform a system impact study.

⁴⁶ *Id.* § 25.1.2, Interconnection Of Generating Units And Facilities/Affidavit Requirement (7.0.0).

⁴⁷ *See* December 29 Order, 149 FERC ¶ 61,276 at P 47.

⁴⁸ The Operation Agreement defines remedial action schemes as "The procedures that are required to maintain reliable operation of the System after a disturbance on the interconnected Electric Systems." (Operation Agreement, section 4.49).

⁴⁹ Complaint Order, 148 FERC ¶ 61,150 at P 67.

28. We find Western's new allegation suggesting that the impacts of the termination of the remedial action may be more significant than previously represented by PG&E and CAISO to be unsupported. Western bases its assertion on information received by Peak Reliability, including a 2015 study report, but Western did not provide the report to the Commission. Moreover, Western notes that the study, upon which it relies, is in draft form and has not been finalized. We will not alter our decision in the underlying order based on unsubstantiated information that is not part of the record. Finally, the matter of the loss of the DWR remedial action schemes on a regional basis has already been addressed in the Complaint Proceeding.⁵⁰

C. Collateral Attack

29. In the December 29 Order, the Commission concluded that TANC's request for relief with respect to the Load IA and LGIAs raised the same issues that were already litigated in the Complaint Order. The Commission therefore found it to be an inappropriate request for rehearing of, and an impermissible collateral attack on the Complaint Order.

1. Argument

30. TANC argues that the Commission erred in finding that TANC's request for relief under the Operation Agreement for the effects from the Load IA and LGIAs was an inappropriate request for rehearing and a collateral attack.⁵¹ TANC contends that the issue in this proceeding, PG&E's interconnection of DWR generation and load in combination with the loss of the remedial action that was provided under the Comprehensive Agreement, was not addressed in the Complaint Proceeding and the relief sought here cannot be considered to have been argued and decided in that proceeding.⁵²

31. TANC states that the Complaint Proceeding addressed the loss of remedial action due to the termination of the Comprehensive Agreement and its relationship to section 8.6.3 of the Operation Agreement. TANC contends that the interconnection arrangements with DWR do not implicate section 8.6.3 of the Operation Agreement, but instead present different factual and legal issues. Specifically, TANC asserts that under sections 8.7.2.2 and 12.1 of the Operation Agreement, PG&E may not unduly burden the interconnected systems of other parties and must avoid adverse impacts to the import

⁵⁰ *Id.* PP 62-63, 68-69.

⁵¹ TANC Rehearing Request at 20-27.

⁵² *Id.* at 21.

capability of the electric system.⁵³ TANC also argues that, although the Commission found that PG&E's loss of remedial action did not constitute a Modification, PG&E's interconnection with DWR generation and load presents a different issue than addressed in the Complaint Proceeding and squarely meets the definition of a Modification under the Operation Agreement.⁵⁴

32. TANC contends that PG&E has recognized its obligations under section 12 of the Operation Agreement for prior generator interconnections. For example, TANC states that when PG&E interconnected the Colusa Generating Station and Hatchet Ridge power plant, PG&E provided mitigation to the other affected California-Oregon Intertie owners for the impacts of interconnecting those generators. TANC also states that when another generation project, the Calpine Sutter Energy Center was in the CAISO interconnection queue, PG&E supported the use of remedial action to curtail the generation or, alternatively that upgrades be developed to mitigate the impact of the project.⁵⁵ TANC thus asserts that its requests in this proceeding with respect to the Load IA and LGIAs are consistent with PG&E's previous recognition of its obligation to avoid adverse impacts resulting from generator interconnections and are not a collateral attack on a prior Commission ruling.⁵⁶

2. Commission Determination

33. We will deny rehearing on this issue. The Commission continues to find that TANC's arguments constitute an impermissible collateral attack on the Commission's prior decision in the Complaint Order, which found, among other things, that under the Operation Agreement, PG&E alone is not responsible to mitigate for the loss of DWR's participation in remedial action schemes. Specifically the Commission found that under section 8.6.3 of the Operation Agreement, PG&E is not required to replace DWR's participation in remedial action schemes upon termination of the Comprehensive Agreement, "including substituting some other means of achieving the same objective as the remedial action schemes."⁵⁷

⁵³ *Id.* at 22-24.

⁵⁴ *Id.* at 25 (citing Operation Agreement, section 4.27, definition of Modification ("The connection of generating facilities, loads, ...")).

⁵⁵ *Id.* at 24-25.

⁵⁶ *Id.* at 26.

⁵⁷ Complaint Order, 148 FERC ¶ 61,150 at P 62.

34. TANC attempts to differentiate the Commission's finding that section 8.6.3 of the Operation Agreement excuses PG&E from any obligation to replace DWR participation in remedial action schemes upon the termination of the Comprehensive Agreement,⁵⁸ from TANC's contention that, by entering into the replacement LGIAs, PG&E's obligation to mitigate the effects of the loss of DWR participation in remedial action schemes has now been resurrected. According to TANC, although the Commission has considered and decided that PG&E is under no obligation to replace DWR's participation in remedial action schemes and that the Comprehensive Agreement should expire by its express terms, the Commission has not considered the issue of whether PG&E, CAISO and DWR must enter into new agreements with terms essentially the same as the Comprehensive Agreement and with something effectively the same as the remedial action scheme. We reject this assertion.

35. As discussed herein, the LGIAs are replacement agreements to continue the existing interconnection arrangements for DWR's generators that had been provided for under the expired Comprehensive Agreement. By excusing PG&E from singular responsibility for replacing DWR participation in remedial action schemes upon the termination of the Comprehensive Agreement, section 8.6.3 necessarily excuses PG&E from the same responsibility for replacing DWR participation in remedial action schemes upon entering into replacement arrangements for the Comprehensive Agreement. The replacement arrangements are contingent upon and necessitated by the termination of the Comprehensive Agreement. Any other position would nullify the meaning of section 8.6.3.

36. We consider TANC's arguments in this proceeding to be an impermissible attempt to reverse our finding in the Complaint Order that "it is now appropriate for the Comprehensive Agreement to terminate pursuant to its express terms, rather than to extend or amend it."⁵⁹ Indeed, TANC largely repackaged its arguments that the Commission rejected in the Complaint Proceeding. For example, in its November 20, 2014 protest to PG&E's termination of the Comprehensive Agreement in Docket No. ER15-223-000 (TANC termination protest), TANC simply reattached the same six affidavits it included in its complaint from the Complaint Proceeding (with the exception of one "supplemental affidavit" from its consultant). TANC has not raised new issues in this case.

37. Further, the Commission found in the Complaint Order that loss of DWR participation in remedial action schemes and the termination of the Comprehensive

⁵⁸ *Id.* PP 60-62

⁵⁹ *See id.* P 63.

Agreement did not implicate the requirement of Operation Agreement section 12.1 to avoid adverse impacts when making a Modification to the system because that circumstance did not constitute a Modification as defined in the Operation Agreement.⁶⁰ While PG&E may have provided mitigation for adverse impacts, as cited by TANC, regarding the interconnection of the Colusa Generating Station, the Hatchet Ridge power plant and the Calpine Sutter Energy Center,⁶¹ we find no inconsistency. Rather than demonstrating PG&E's failure to abide by its obligations under Operation Agreement regarding the replacement LGIAs, these cited instances demonstrate that when adverse impacts have resulted from *actual* Modifications to PG&E's system, PG&E has met its obligations with respect to section 12. As replacement agreements for existing facilities, the LGIAs do not constitute Modifications to the PG&E system. We reject TANC's argument on this issue. Accordingly, we deny rehearing.

D. Legal Standard Applied

38. The Commission, in the December 29 Order, found that it was appropriate for the Comprehensive Agreement to terminate pursuant to its express terms, and that the termination of the Comprehensive Agreement had been shown to be just and reasonable.⁶²

1. Argument

39. TANC contends that the Commission's failure to use the legal standard it has applied for the review of notices of termination, or to sufficiently explain its deviation from that standard, was arbitrary and capricious. TANC asserts that, prior to approving a notice of termination, section 205 of the Federal Power Act requires the Commission to "examine what the proposed termination does, and what harm, if any, it causes."⁶³ TANC argues that the Commission erroneously found that it did not have to examine the

⁶⁰ *Id.* P 67.

⁶¹ *See id.* P 48 & n.78.

⁶² December 29 Order, 149 FERC ¶ 61,276 at PP 67-68.

⁶³ TANC Rehearing Request at 27 (citing *Cinergy Services Inc.*, 93 FERC ¶ 61,308, at 62,059 (2000)).

harm that the termination of the Comprehensive Agreement could cause on the affected parties because it was expiring by its own terms.⁶⁴

2. Commission Determination

40. We will deny rehearing on this issue. On rehearing, TANC mischaracterizes the Commission's findings in the December 29 Order. TANC had argued that termination of the Comprehensive Agreement had not been shown to be just and reasonable, relying on *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,038, at P 6 (2013) (*MISO*).⁶⁵ In response, the Commission explained why *MISO* was inapposite.⁶⁶ In distinguishing *MISO*, the Commission did not, as TANC asserts, "conclude[] that the 'harm' legal standard does not apply to the termination of the Comprehensive Agreement."⁶⁷ Rather, as reflected in its previous orders, the Commission properly evaluated the termination of the Comprehensive Agreement under the applicable legal standard, explaining at length what termination meant and what harm, if any, would result therefrom.

41. First, the Commission had previously found, based on its review of the record, that continuation of the Comprehensive Agreement, an existing transmission contract, was intended only as a transitional matter in moving to competitive electricity markets, and that it is now appropriate for the Comprehensive Agreement to terminate pursuant to its express terms, rather than to extend or amend it.⁶⁸ Moreover, several similar contracts

⁶⁴ *Id.* at 28-29 (citing *Cheyenne Light, Fuel and Power Company v. PacifiCorp*, 94 FERC ¶ 61,103 (2001); *Kentucky Utilities Co.*, 140 FERC ¶ 61,039, at P 28 (2012) ("We need to examine what the proposed termination does, and what harm, if any, it causes.") (citation omitted); *Pac. Gas and Elec. Co.*, 120 FERC ¶ 61,113, at P 22 (2007) ("Section 205 requires us to examine potentially harmful effects of a proposed termination of service.") (citation omitted); *Interstate Power Co.*, 68 FERC ¶ 61,178, at 61,877 (1994) ("[W]e are concerned at this preliminary stage that Blue Earth could suffer irreparable harm if the notice of termination becomes effective . . .").

⁶⁵ TANC Termination Protest at 14.

⁶⁶ *See* December 29 Order, 149 FERC ¶ 61,276 at P 68 (distinguishing *MISO*'s unilateral request for early termination versus the Comprehensive Agreement expiring by its express terms).

⁶⁷ TANC Rehearing Request at 28.

⁶⁸ Complaint Order, 148 FERC ¶ 61,150 at P 63 (citing *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order

(continued...)

have expired, and those transmission customers that remained in the CAISO Balancing Authority Area have transitioned to service consistent with the CAISO Tariff.⁶⁹

42. As to assessing potential impacts of termination, with regard to reliability, the Commission considered record evidence with respect to reliability⁷⁰ and was cognizant of the financial impacts.⁷¹ Moreover, TANC has shown no tangible evidence of irreparable harm. The parties to the Comprehensive Agreement understood that the Comprehensive Agreement would expire, by its own terms, at the end of 2014, and that DWR's participation in the remedial action scheme would end. It is logical that CAISO would then make changes to the way that it manages congestion after the expiration of the Comprehensive Agreement, and some of those changes are reflected in the 2015 Operating Procedure for the California-Oregon Intertie that TANC submitted in its Motion to Lodge. Nevertheless, the contingencies outlined in the 2015 CAISO Operating Procedure are just that – theoretical emergency contingencies that CAISO must plan for as part of prudent planning and good utility practice and do not support a different outcome with respect to PG&E's replacement of remedial action upon termination of the Comprehensive Agreement. TANC's allegations of harm were, and remain, speculative. For the foregoing reasons, we deny rehearing.

No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,665 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *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) (“if a customer's existing bundled service (transmission and generation) contract or transmission only contract expires, and the customer takes any new transmission service from its former supplier, the terms and conditions of the Final Rule tariff would then apply to the transmission service that the customer receives.”)).

⁶⁹ See *Pac. Gas & Elec. Co.*, 100 FERC ¶ 61,233 (2002) (Northern California Power Agency and Silicon Valley Power 2002 transition); *Pac. Gas & Elec. Co.*, 109 FERC ¶ 61,255, at P 95 (2004), *reh'g denied*, 111 FERC ¶ 61,175 (2005), *review denied sub nom. Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797 (D.C. Cir. 2007) (Western 2005 transition); *id.* PP 58, 70 (Sacramento Municipal Utility District EHV Agreement and the DWR EHV Agreement 2005 termination); *Pac. Gas & Elec. Co.*, 120 FERC ¶ 61,163 (2007) (Trinity Public Utilities District 2007 transition); *Pac. Gas & Elec. Co.*, 129 FERC ¶ 61,129 (2009) (Turlock Irrigation District 2009 transition).

⁷⁰ December 29 Order, 149 FERC ¶ 61,276 at P 65 & n.95.

⁷¹ See *id.* PP 62-66.

E. Opportunity to Address Representations Concerning Rebuilt Generators

43. In the December 29 Order, the Commission addressed TANC's assertion that replacing nearly 50 year-old generation with modern components necessitates a change in the electrical characteristics of the power plant, which must be studied to ensure the reliable interconnection of the facility.⁷² TANC also asserted that PG&E relied on unfiled DWR affidavits stating that the total capacity of the generating units will remain substantially unchanged to conclude that the LGIA does not require an interconnection study. TANC further argued that since those affidavits were not filed, TANC was not afforded the opportunity to review this evidence.⁷³

44. On December 4, 2014, DWR filed a pleading in response to the TANC LGIA protest, attaching the affidavits in question. In a subsequent answer, TANC requested the opportunity to review and respond to the affidavits.

45. In the December 29 Order, the Commission found that replacing old generation with new equipment does not result in a change in electrical characteristics that necessitates the generator to re-enter the interconnection queue and study process, noting that DWR submitted affidavits to CAISO and PG&E stating that the Oroville and San Luis Facilities total capacity and electrical characteristics remained substantially unchanged, and CAISO and PG&E agreed.⁷⁴

1. Argument

46. TANC contends that the Commission erred in failing to afford TANC the opportunity to address evidence the Commission relied upon in concluding that damaged and out of service DWR generation would be rebuilt in such a way as to avoid the need for a system impact study. TANC states that PG&E represented to the Commission that DWR's generation would be unchanged from that served under the Comprehensive Agreement; however the affidavits were not submitted until after the time allotted to TANC for comment.⁷⁵ TANC contends that the Commission did not grant TANC's

⁷² See TANC November 19, 2014 protest of PG&E's proposed replacement agreements in Docket No. ER15-227-000, *et al.* (TANC LGIA protest) at 27.

⁷³ *Id.* at 27-28.

⁷⁴ December 29 Order at P 73.

⁷⁵ TANC Rehearing Request at 32 & n.98 (citing DWR's December 4, 2014 Answer at Exhibit DWR-3).

request for the opportunity to comment on DWR's affidavits.⁷⁶ TANC asserts that the Commission erroneously relied on allegations of the contents of DWR's affidavits for its finding that the total capacity and electrical characteristics of DWR's generation remained substantially unchanged. TANC argues that the Commission's failure to provide it the opportunity to comment on this critical evidence denied TANC the fundamental right of due process.⁷⁷

2. Commission Determination

47. We will deny rehearing on this issue. DWR submitted its affidavits and further technical information, pursuant to section 25.1.2 of the CAISO Tariff,⁷⁸ stating that the total capacity and electrical characteristics of its generating units remain substantially unchanged. Section 25.1.2.1⁷⁹ provides that if CAISO and the applicable Participating Transmission Owner confirm that the electrical characteristics are substantially unchanged, the request will not be placed into the interconnection queue.

48. Further, the Commission did not solely rely on the affidavits in rendering its determinations. As to the substance of the underlying assertion itself – that the total capacity and electrical characteristics of DWR's generators remained substantially unchanged – TANC had every opportunity to address, and did in fact address the issue and was not deprived of its due process rights in this regard. The Commission, in its December 29 Order rejected TANC's arguments and reached its conclusion based on the entirety of the record, not the affidavits alone.⁸⁰

49. We affirm the finding in the December 29 Order that replacing old generation with new equipment does not result in a change in electrical characteristics that necessitates the generator to re-enter the interconnection queue and study process. The damage to DWR's Oroville facility, which was the result of a fire in November 2012, is unrelated to the termination of the Comprehensive Agreement and its replacement with the LGIAs.

⁷⁶ *Id.* at 32 and n.99 (citing the Commission's rules that do not provide participants the right to respond to an answer, 18 C.F.R. § 385.213 (2014)).

⁷⁷ *Id.* at 33-34 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

⁷⁸ CAISO, CAISO eTariff, § 25.1.2, Interconnection Of Generating Units And Facilities/Affidavit Requirement (7.0.0).

⁷⁹ *Id.* § 25.1.2.1.

⁸⁰ December 29 Order, 149 FERC ¶ 61,276 at PP 72-73.

DWR has provided CAISO with a proposed construction schedule to replace the damaged generation within the three-year timeline established by CAISO in order to retain the original installed capacity.⁸¹

50. Section 7 of CAISO's Business Practice Manual for Generator Management sets forth the requirements for the repowering of a generating unit. In relevant part, section 7.2 states:

The CAISO will consider changes to be "substantial" if there is a proposed change in fuel source or they are found to have an adverse impact on the transmission system, either of which would require the project to be evaluated pursuant to the CAISO's [Generator Interconnection and Deliverability Allocation Procedures]. Adverse impacts to a transmission system include increasing the power flow during normal or contingency conditions, any increase in the short circuit duty impacts, or adverse angular or voltage stability impacts, as compared to the impacts associated with the original Generating Unit.

51. Restoration of the damaged generator to its original capacity will not involve a change in its fuel source, and no party has identified any adverse impact that would result from restoring the generator to its former capacity. In addition, CAISO noted that it will continue to study DWR's repowering proposal, and any increase in capacity or change in electrical characteristics created by the change may trigger the requirement for a system impact study.⁸²

F. Appendix B of the Load IA

52. In the December 29 Order, the Commission accepted the Load IA as filed, and disagreed with Western's contention that the Load IA is ambiguous as it relates to certain interconnection points owned by DWR and the Bureau of Reclamation as identified in Appendix B.⁸³

⁸¹ CAISO, December 5, 2014 Answer at 15-16.

⁸² *Id.* at 19-20.

⁸³ December 29 Order, 149 FERC ¶ 61,276 at PP 39, 74.

1. Argument

53. Western contends that the Commission erred in failing to require PG&E to modify footnotes 2 and 6 in Appendix B of the Load IA to reflect that DWR does not jointly own certain capacity and facilities within the United States Bureau of Reclamation. Western states that, while the United States Bureau of Reclamation originally executed the 1961 Agreement,⁸⁴ the contract is between DWR and the United States of America, acting by and through the Bureau of Reclamation. Western contends that references to the Bureau of Reclamation owning electric interconnection facilities and capacity are inaccurate because Congress transferred these facilities and functions to Western under the Department of Energy Organization Act (DOE Organization Act).⁸⁵ While the title of the facilities and agreements remain with the United States, according to Western, Congress' action works to transfer the administrative control of such facilities from the Bureau of Reclamation to Western. Western requests that the Commission require PG&E to amend the footnotes in Appendix B to reflect that the capacity is under the jurisdiction of the United States instead of a particular agency.

54. Western argues that, while both the law and the 1961 Agreement provide DWR with rights to the use of the joint capacities, neither provide DWR with ownership of the capacity or the electrical interconnection facilities constructed by the United States. Western requests that the Commission require PG&E to modify the Load IA to state that DWR has a "right to use" capacity, but does not "own" the capacity.⁸⁶

2. Commission Determination

55. We will deny rehearing on this issue. We reiterate our finding that there is no ambiguity necessitating Commission action with respect to Appendix B of the Load IA as it relates to certain interconnection points owned by the United States.⁸⁷

⁸⁴ See December 29 Order, 149 FERC ¶ 61,276 at n.68. The "1961 Agreement" is the "Agreement Between the United States of America and the Department of Water Resources of the State of California for the Construction and Operation of the Joint-Use Facilities of the San Luis Unit," dated December 30, 1961.

⁸⁵ Western Rehearing Request at 6 (citing 42 U.S.C. 7152 (a) (1) (D)).

⁸⁶ *Id.* at 10.

⁸⁷ December 29 Order, 149 FERC ¶ 61,276 at PP 39, 74.

56. With respect to Western's argument that Congress transferred the facilities and functions in question to Western under the DOE Organization Act, Western fails to recognize that this legislation included a savings clause, which states, in relevant part:

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective by... any Federal department or agency or official thereof... in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with... the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.”⁸⁸

Based on the record developed in this proceeding, we conclude that none of the aforementioned actions have been taken on the 1961 Agreement, and therefore the current terms and conditions to the 1961 Agreement remain in place. Hence, the Bureau of Reclamation retains ownership by virtue of the terms of the 1961 Agreement, and we find that no revisions to the Load IA are necessary.

57. With respect to Western's argument that DWR does not “own” the capacity in question, the 1961 Agreement does not specify ownership rights to the capacity at the San Luis and Dos Amigos plants, but rather permits the joint-use of the capacities of the facilities between the two parties. Contrary to Western's assertion, the 1961 Agreement does not state, or even indicate, that DWR does not in fact own portions of the capacity. Therefore we deny Western's request that the Commission require PG&E to modify the Load IA to state that DWR has a “right to use” capacity, but does not “own” the capacity.

58. In any event, we note that the Load IA is an agreement between PG&E and DWR; Western is not a party. Even if there were some ambiguity in the Appendices to the Load IA, Western has no privity of contract with respect to that agreement, and its terms do not affect Western's rights. Western does not have standing to request changes to the Load IA.⁸⁹

⁸⁸ 42 U.S.C. § 7295 (a)(1) and (2).

⁸⁹ See *North Star Steel Company, LLC v. Arizona Public Service Co.*, 116 FERC ¶ 61,022 (2006) (dismissing a complaint where there was no privity of contract).

The Commission orders:

The rehearing requests are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.