

148 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transmission Agency of Northern
California

v.

Docket No. EL14-44-000

Pacific Gas and Electric
Company

ORDER DENYING COMPLAINT

(Issued August 28, 2014)

1. On April 30, 2014, the Transmission Agency of Northern California (TANC), filed a complaint against Pacific Gas and Electric Company (PG&E) pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² requesting fast track processing (Complaint).

2. In its Complaint, TANC alleges an anticipatory breach of PG&E's obligations under the 2012 Owners Coordinated Operation Agreement (Operation Agreement) – the rate schedule providing for the coordinated operation of the high voltage alternating current (AC) interconnection between California and the Pacific Northwest known as the California-Oregon Intertie.³ Specifically, TANC asserts that PG&E has failed to

¹ 16 U.S.C. §§ 824e and 825e (2012).

² 18 C.F.R. § 385.206 (2014).

³ The California-Oregon Intertie is the northern part of a three-line system, which is comprised of (1) the more easterly two-line Pacific AC Intertie between Malin Substation and Round Mountain Substation and (2) the California-Oregon Transmission Project between Captain Jack Substation and Olinda Substation on the west. *See*

(continued...)

adequately prepare to meet its obligations under the Operation Agreement upon expiration of a separate agreement – the Comprehensive Agreement – between PG&E and the California Department of Water Resources (DWR). The Comprehensive Agreement, which provides for DWR’s participation in remedial action schemes that support the import and export capabilities across the California-Oregon Intertie,⁴ terminates on December 31, 2014.

3. The Complaint requests that the Commission order PG&E to take specific measures to mitigate the loss of the DWR remedial action schemes after the Comprehensive Agreement expires. TANC asserts that, as this dispute involves construction of the Operation Agreement, a filed rate that is subject to Commission jurisdiction, the Commission may invoke its discretion to exercise primary jurisdiction over this dispute.⁵ As discussed below, we find that section 8.6.3 of the Operation Agreement (for convenience, referred to as the Duties Proviso) does not require PG&E to replace DWR participation in remedial action schemes, and we therefore deny TANC’s Complaint.

I. Background

A. The California-Oregon Intertie, the Operation Agreement and the Parties

4. An understanding of the two filed agreements is essential to the resolution of the Complaint. TANC’s Complaint is based primarily upon an alleged anticipatory breach of the Operation Agreement.⁶ The current parties to that agreement are TANC, PG&E, the

Complaint, Appendix A, Diagram of Pacific AC Intertie and California-Oregon Transmission Project.

⁴ Remedial action schemes, as defined in the Operation Agreement, are “[t]he procedures that are required to maintain reliable operation of the System after a disturbance on the interconnected Electric Systems.” Operation Agreement, section 4.33 (Definitions). *See* P 14 *infra*.

⁵ Complaint at 8 (citing *U.S. v. W. Pac. R.R. Co.*, 352 U.S. 59 (1956); *AEP Generating Co.*, 32 FERC ¶ 61,364 (1985), *reh’g granted on other grounds*, 36 FERC ¶ 61,226 (1986)).

⁶ Complaint, Appendix B, Operation Agreement, PG&E Rate Schedule FERC No. 229.

Western Area Power Administration (Western) and PacifiCorp (collectively, Owners).⁷ The second agreement that is central to the dispute (and will be more fully discussed below) is the Comprehensive Agreement between PG&E and DWR,⁸ which contains remedial action schemes whereby PG&E may automatically interrupt the operation of various DWR pumping loads and generation facilities during certain system contingencies.⁹

5. TANC is a joint powers agency existing under the laws of California and is a “municipality” as defined in the FPA.¹⁰ Among TANC’s purposes is the provision of electric transmission facilities and services for the use of its members.¹¹ TANC owns an 87 percent interest in, and is the project manager of, the California-Oregon Transmission Project.¹² TANC is a party to the Operation Agreement.¹³

6. PG&E is a vertically-integrated public utility operating in central and northern California, and is subject to the jurisdiction of the Commission.¹⁴ PG&E owns the largest

⁷ Each of the Owners own transmission facilities in northern California that are subject to the Operation Agreement.

⁸ Complaint, Appendix C, Comprehensive Agreement.

⁹ Complaint at 10 (citing Ex. No. TNC-2 at P 10 (Larsen)).

¹⁰ 16 U.S.C. § 796(7) (2012).

¹¹ Complaint at 9. TANC’s members are the California cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah; the Sacramento Municipal Utility District (SMUD); the Modesto Irrigation District (Modesto); and the Turlock Irrigation District (Turlock). The Plumas-Sierra Rural Electric Cooperative is an associate member of TANC.

¹² Completed in 1993, the California-Oregon Transmission Project is a 340-mile, 500 kV alternating current transmission line between southern Oregon and central California.

¹³ Complaint, Ex. TNC-1 at PP 13-14 (Griess).

¹⁴ 16 U.S.C. § 824(e) (2012).

portion of the Pacific AC Intertie and is a party to the Operation Agreement, and is a counterparty to the Comprehensive Agreement with DWR.¹⁵

7. Western is a power marketing administration within the United States Department of Energy, created to market and transmit wholesale electricity from multi-use water projects. Western owns a 94-mile segment (from the Malin-Round Mountain substations) of the Pacific AC Intertie and has an ownership interest in the California-Oregon Transmission Project.

8. PacifiCorp is a vertically-integrated public utility operating in six western states and is subject to the jurisdiction of the Commission.¹⁶ PacifiCorp also owns a 47-mile segment of the Pacific AC Intertie.

9. The Operation Agreement governs the coordinated operation of the portion of the two-line Pacific AC Intertie between Malin Substation (in southern Oregon) and Tesla Substation (in central California)¹⁷ and the one-line California-Oregon Transmission Project. The northern part of this three-line System is referred to as the California-Oregon Intertie.¹⁸ In addition, transmission lease or exchange agreements govern transmission rights over certain of these facilities.

10. The purpose of the Operation Agreement is to ensure that the three transmission lines comprised of the Pacific AC Intertie and the California-Oregon Transmission Project, including the California-Oregon Intertie, operate and function as a closely coordinated system,¹⁹ which is needed for the power imported from the Pacific Northwest into California and exported from California to the Pacific Northwest. The Western Electricity Coordinating Council (WECC) recognizes the California-Oregon Intertie as one of the most important transfer paths in the Western Interconnection and has formally

¹⁵ In 1998, as part of California's electric industry restructuring, PG&E transferred operational control of its transmission system to the California Independent System Operator Corporation (CAISO), which operates and controls these facilities under the CAISO's Open Access Transmission Tariff (CAISO Tariff). CAISO establishes and implements procedures for the scheduling of power within PG&E's balancing authority area.

¹⁶ 16 U.S.C. § 824(e) (2012).

¹⁷ See Operation Agreement, section 4.33.

¹⁸ See note 3 *supra*.

¹⁹ See Operation Agreement, sections 2.11 and 4.52.

designated it “Path 66,” with an existing rating of 4,800 MW north to south and 3,675 MW south-to-north.²⁰

11. Through the coordinated operation of this three-line system under the Operation Agreement, the Owners maintain reliability at the California-Oregon Intertie and maximize the California-Oregon Intertie’s rating to a greater extent than would otherwise occur if each of the three lines were operated independently.²¹ Coordination of operations provide the four Owners with reliable operation and benefits such as sharing curtailments on the California-Oregon Intertie in the event of facility outages, coordinated action regarding loop flows and counter scheduling.²² The Operation Agreement and prior predecessor agreements have provided for the coordinated operation of the three-line system for over 20 years.²³

B. DWR, Remedial Action Schemes and the Comprehensive Agreement

12. DWR is a utility engaged in the operation of the State Water Resources Development System, whose purpose is the conservation and distribution of water throughout the State for the benefit of California’s citizens.

13. In 1983, DWR and PG&E entered into the Comprehensive Agreement, under which PG&E has provided, among other things, interconnection of all State Water Project plants and facilities in PG&E’s service territory and firm physical transmission service with maximum simultaneous usage of 1,300 MW to DWR.

14. The Comprehensive Agreement addresses DWR’s need to transmit large amounts of power across Path 15.²⁴ In sections 6.3.5 and 6.11 of the Comprehensive Agreement, PG&E and DWR agreed that a Los Banos – Midway Reinforcement project might become necessary to continue to provide firm transmission service to and from Midway

²⁰ See PG&E June 17, 2014 Answer (PG&E Answer) at 7.

²¹ *Id.*, Ex. PGE-1 at 18.

²² *Id.*

²³ Complaint at 11; PG&E Answer at 8.

²⁴ PG&E Answer at 10. Path 15 is an 84-mile portion of the north-south power transmission corridor in California. It forms a part of the Pacific AC Intertie and the California-Oregon Transmission Project.

Substation across Path 15.²⁵ Ultimately, transmission studies indicated that remedial action schemes, which would include a commitment by DWR to take remedial actions, were the most cost-effective alternative to the Midway-Los Banos reinforcements.²⁶ Therefore, the Comprehensive Agreement was amended in 1991 to incorporate remedial action schemes which provide PG&E with the right to interrupt the operation of DWR's pumps and generation facilities under defined conditions affecting the Pacific AC Intertie. Specifically, PG&E may interrupt DWR generation and/or load during unplanned simultaneous or near simultaneous outages of the two Diablo Canyon Nuclear Generation Plant units, or the unplanned simultaneous or near simultaneous outages of the Pacific AC Intertie lines.²⁷ PG&E's ability to interrupt DWR generation and load pursuant to Amendment No. 4 to the Comprehensive Agreement directly supports the two Pacific AC Intertie lines and is part of the PG&E remedial action schemes approved by WECC.²⁸ The Comprehensive Agreement is due to expire by its own terms on December 31, 2014.²⁹

II. TANC's Complaint

15. TANC states that the Operation Agreement is governed by California law.³⁰ TANC then sets forth its burden, stating that a party alleging breach of contract under California law must establish: (1) the existence of a contract, (2) the complaining party's

²⁵ Complaint at 14; PG&E Answer at 10. In the event the project became necessary, DWR agreed to advance the funds for such a project, and under Section 12.4.5 of the Comprehensive Agreement PG&E would return to DWR the advanced amount over a period of time.

²⁶ Complaint at 15; PG&E Answer at 11. The remedial action schemes were memorialized on September 19, 1991 in Amendment No. 4 to the Comprehensive Agreement.

²⁷ *Id.*, Appendix B, Events that Initiate Automatic Interruption.

²⁸ Complaint at 15-16; PG&E Answer at 11-12.

²⁹ Complaint, Appendix C, Comprehensive Agreement, section 4.4. As will be discussed more fully *infra*, CAISO recognizes the Comprehensive Agreement as one of PG&E's Existing Transmission Contracts (ETC).

³⁰ *Id.*, section 21.

own performance or excuse for nonperformance, (3) the other party's breach, and (4) resulting damages suffered by the complaining party.³¹

16. TANC explains that it has filed this Complaint for anticipatory breach of the Operation Agreement precipitated by PG&E's alleged failure to ensure that the Pacific AC Intertie will be capable of transmitting its full rated capability after the termination of the Comprehensive Agreement, particularly in the critical spring and summer seasons.³² TANC asserts that through its reliance on the Comprehensive Agreement, which provides for DWR's participation in the PG&E remedial action schemes, PG&E has been able to satisfy the standards established in the Operation Agreement, despite deficiencies in its northern California transmission facilities.³³ According to TANC, as a result of PG&E's failure to replace the benefits of its soon-to-expire DWR remedial action schemes, with transmission upgrades or other alternatives, PG&E will fail to meet three specific obligations that are set forth in the Operation Agreement.

A. The Alleged Contract Violations

17. First, TANC asserts that PG&E's failure to sufficiently upgrade its portion of the system (or otherwise support the import capability of the Pacific AC Intertie) will render PG&E incapable of meeting its obligation under section 8.7.2.2 of the Operation Agreement to, "in accordance with Prudent Utility Practice and Applicable Requirements ... avoid imposing undue burdens on the interconnected Electric Systems of other Parties."³⁴

18. TANC explains that PG&E will violate section 8.7.2.2 by causing a significant reduction in import capability following the loss of the DWR remedial action schemes. TANC states that without the remedial action schemes, the PG&E transmission system is incapable of supporting imports up to the current rated capability of the Pacific AC Intertie because outages on the Pacific AC Intertie could cause certain of PG&E's sub-

³¹ Complaint at 18 (citing *Oasis W. Realty, LLC v. Goldman*, 250 P.3d 1115, 1121 (2011); *Sonic Mfg. Tech., Inc. v. AAE Sys., Inc.*, 126 Cal. Rptr. 3d 301, 307 (2011); *Munoz v. MacMillan*, 124 Cal.Rptr. 3d 664, 670 (2011); *Hamilton v. Greenwich Investors XXVI, LLC*, 126 Cal.Rptr. 3d 174, 183 (2011)).

³² *Id.* at 1, 5, 18-26 (citing Ex. No. TNC-2 at PP 17-18 (Larsen)).

³³ *Id.* at 1-2, 5 (citing Ex. No. TNC-1 at PP 21-22, 59 (Griess); Ex. No. TNC-2 at PP 10-15 (Larsen)).

³⁴ See Operation Agreement, section 8.7.2.2.

500 kV facilities to overload.³⁵ TANC asserts that because PG&E has failed to: (1) upgrade its portion of the facilities; (2) enter into a new agreement with DWR to continue the remedial action scheme; or (3) develop an alternative to the expiring remedial actions, PG&E will be in violation of the Operation Agreement beginning on January 1, 2015, the day after the Comprehensive Agreement expires.³⁶

19. Second, TANC alleges that PG&E will violate the requirement to avoid adverse impacts from “Modifications”³⁷ in accordance with section 12 of the Operation Agreement, which specifies that each party to the agreement has the right to modify a portion of its system.

12.1 Avoiding Adverse Impacts to [Rated System Transfer Capability]

The Modifying Party, at its own expense, may make Modifications to any portion of the System that it owns or to its Electric System. In so doing, the Modifying Party shall avoid adverse impacts, including adverse impacts that would reduce [rated system transfer capability], materially reduce [available system transfer capability] or cause increased risk of Curtailments, and to the extent it does not avoid such adverse impacts shall fully compensate affected Parties. Removal from service of a facility that is not a part of the System shall not be considered a Modification for purposes of this Section 12.³⁸

20. TANC explains that this provision requires the Owners to protect available system transfer capability by requiring that any modifications a party makes to its portion of the system will not adversely impact other Owners’ use of the system. TANC argues that PG&E’s loss of DWR remedial action schemes upon termination of the Comprehensive Agreement, without making provision to mitigate that loss, constitutes a Modification

³⁵ Complaint, Ex. No. TNC-2 (Larsen) at P 10.

³⁶ Complaint at 5, 9, 12, 17, 19, 45-47.

³⁷ The Operation Agreement defines Modification as the connection of generating facilities, loads, substation equipment or transmission lines to, or modifications of, any portion of the System or a Party’s Electric System, which may include improvements, additions, extensions, expansions, replacements, substitutions or removals. *See* Operation Agreement, section 4.27.

³⁸ *See id.*, section 12.1.

that will result in a material reduction in available system transfer capability, thus constituting a violation of the Operation Agreement.³⁹

21. Finally, TANC alleges that PG&E will fail to meet the Operation Agreement's specific requirement under section 9 to maintain available system transfer capability.

9 Rated System Transfer Capability

The Parties are individually responsible for establishing and maintaining the rating and re-rating of their portions of System facilities, as well as those additional facilities relied upon to obtain the [rated system transfer capability]. The Parties, acting through the Administrative Committee, are collectively responsible for maintaining and, as may be agreed, enhancing the [rated system transfer capability]. The Administrative Committee may establish and revise procedures to coordinate compliance with the WECC ratings process, if applicable.⁴⁰

TANC alleges that PG&E is obligated to satisfy the requirements of sections 9 and 12.1 of the Operation Agreement for the loss of DWR's remedial action. In particular, TANC contends that PG&E is obligated to avoid adverse impacts that would materially reduce system transfer capability.⁴¹

B. Alleged Harm

22. TANC claims that the loss of potentially thousands of megawatts of import capability from the Pacific Northwest to California during critical periods will significantly impact California-Oregon Intertie owners and users in both regions.⁴² TANC also alleges that capacity and energy from the Pacific Northwest typically relied upon by California will no longer be available, particularly in the important spring and summer seasons, due to the loss of transmission capability on the California-Oregon Intertie, which will result in significant economic harm for both the owners and users of

³⁹ Complaint at 3, 5, 17, 31, 35-40, 44, 48-56.

⁴⁰ See Operation Agreement, section 9.

⁴¹ Complaint at 5, 19, 29, 31-33, 35, 43-44, 55-58.

⁴² *Id.* at 5-6, 17, 22-28 (citing Ex. No. TNC-1 at PP 7-10, 66, 71 (Griess)).

the facility.⁴³ Additionally, TANC claims that violation of the Operation Agreement will reduce operational flexibility, limit opportunities for reserve sharing, restrict access to carbon-free resources, and impose unnecessary costs on TANC and its members, other Owners, the California Oregon Transmission Project participants, and others in the California and Pacific Northwest regions, and will shift additional cost to ratepayers.⁴⁴

23. TANC explains that it studied the impact of PG&E's decision to forego replacement of DWR remedial action schemes based upon the major assumptions used by CAISO as path operator for the California-Oregon Intertie in developing operating procedures for the California-Oregon Intertie. TANC states that it studied the impact of 70 to 90 percent hydropower production in northern California on the California-Oregon Intertie and the California-Oregon Transmission Project for the 2015, 2018, and 2023 summer periods. It explains that its studies are based on summer peak power flow cases developed by the CAISO for use in its 2013-2014 transmission planning process.⁴⁵

24. TANC claims that its studies demonstrate the impacts are greater in the later years and at higher hydro levels. TANC states that its studies demonstrate that California-Oregon Transmission Project import capability could be reduced from as much as 210 MW in 2015 to up to 520 MW in 2023.⁴⁶

C. TANC's Interpretation of the Duties Proviso

25. TANC argues that, instead of devoting resources to upgrading its portion of the system or developing an alternative to replace its expiring DWR remedial action rights, PG&E has interpreted the Duties Proviso (section 8.6.3 of the Operation Agreement) to not require it to take such measures. TANC concedes that under the Duties Proviso, PG&E is not required to replace the remedial action schemes after the expiration of the Comprehensive Agreement; nevertheless, TANC contends that the Duties Proviso does not absolve PG&E of its other obligations under the Operation Agreement and insists that

⁴³ *Id.* (citing Ex. No. TNC-1 at PP 9, 67, 70-71 (Griess), Ex. No. TNC-4 at PP 7, 14-19 (Kasarjian) and Ex. No. TNC-5 at PP 5-10 (Gilbertson)).

⁴⁴ *Id.* at 6, 9, 26 (citing Ex. No. TNC-4 at PP 7, 14, 16-17 (Kasarjian); Ex. No. TNC-5 at PP 8-10 (Gilbertson)).

⁴⁵ *Id.* at 24-26.

⁴⁶ *Id.*

PG&E must take some other action to mitigate the effects of the termination of the Comprehensive Agreement on the operation of the California-Oregon Intertie.⁴⁷

26. The Duties Proviso states:

Each Party shall operate, maintain and replace its Remedial Action Facilities, and shall provide and maintain such control and communication access to its switchable equipment and facilities, as is necessary to maintain the capability to support [rated system transfer capability] and [available system transfer capability] of its [remedial action schemes] existing as of the Effective Date, provided that PG&E shall not be required to replace any Remedial Action or element thereof provided under its Comprehensive Agreement with [DWR], PG&E Rate Schedule FERC No. 77, upon cancellation or termination of that agreement. The capital and operating costs and responsibility for Remedial Actions of additional [remedial action schemes] agreed upon by the Parties after the Effective Date shall be shared by the Parties pro rata in relation to [rated system transfer capability] Shares unless otherwise agreed in writing.⁴⁸

27. TANC argues that the first component of the Duties Proviso obligates the parties to maintain existing remedial action schemes necessary to support rated system transfer capability and available system transfer capability, without exception. TANC states that the next portion of the first sentence, which states, “provided that PG&E shall not be required to replace any Remedial Action or element thereof provided under its Comprehensive Agreement with [DWR] ... upon cancellation or termination of that agreement,” constitutes a limited, narrowly drawn exception to address the manner by which PG&E meets its obligations after the termination of the Comprehensive Agreement. According to TANC, the clause is limited to the remedial action schemes by affirmatively exempting PG&E from the obligation to continue purchasing remedial action from DWR under an existing or new agreement. However, TANC argues that the

⁴⁷ Complaint at 31-44; Ex. No. TNC-1 at PP-44-51 (Griess); Ex. No TNC-3 at PP 12-17 (Jobson).

⁴⁸ *Id.* at 32 (citing Operation Agreement, section 8.6.3).

proviso clause does not extend to other terms of the Operation Agreement, which require PG&E to support the California-Oregon Intertie's rated transfer capability.⁴⁹

28. TANC states that the final sentence of the Duties Proviso concerns cost responsibility (on a *pro rata* basis) of additional remedial action schemes that are mutually agreed upon by the Owners. TANC contends that since it has not agreed to any additional remedial action schemes, PG&E alone must bear the cost of maintaining rated system transfer capability and available system transfer capability under the Operation Agreement. TANC contends that while PG&E is free to implement other remedial action besides purchasing from DWR (or alternative to remedial action), the expiration of the Comprehensive Agreement does not excuse PG&E from maintaining transfer capability under the Operation Agreement.⁵⁰

D. Requested Relief

29. TANC requests that the Commission order PG&E to ensure that the California-Oregon Intertie can import the current rated capability after the termination of the Comprehensive Agreement or, in the alternative, direct PG&E to hold TANC and the other California-Oregon Transmission Project participants harmless from any reduction in import capability by requiring PG&E to absorb any such reduction in transfer capability upon expiration of the Comprehensive Agreement. Should the Commission fail to impose either of these remedies, TANC requests that the Commission order PG&E to provide monetary compensation to the other California-Oregon Transmission Project participants and Owners for the period that available system transfer capability over the California-Oregon Intertie falls below the rated capability of the system.⁵¹

⁴⁹ *Id.* (citing *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1234 (9th Cir. 2013) (“[T]he rule of construction *expressio unius est exclusio alterius*; i.e., that mention of one matter implies the exclusion of all others” is “an aid to resolve the ambiguities of a contract.”) (citation omitted); *Panhandle E. Pipe Line Co.*, 74 FERC ¶ 61,109, at 61,416 (1996) (stating contracts must be read giving preference to an interpretation that gives a “reasonable, lawful, and effective meaning to all the terms of a contract.”) (citation omitted); also citing *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089, at 61,166 (1984) (“In construing what a tariff means, certain general principles apply. One looks first to the four corners of the entire tariff, considers the entire instrument as a whole, giving effect so far as possible to every word, clause and sentence, and attributes to the words used the meaning which is generally used, understood, and accepted.”) (internal citations omitted)).

⁵⁰ *Id.* at 40-43.

⁵¹ *Id.* at 4, 7, 21, 59-60 (citing Ex. No. TNC-1 at P 98 (Griess)).

III. Notice of Filing and Responsive Pleadings

30. Notice of TANC's Complaint was published in the *Federal Register*, 79 Fed. Reg. 26,747 (2014), with interventions, comments, and protests due on or before May 20, 2014. The Commission then extended the Comment Date until June 17, 2014.⁵² Timely motions to intervene raising no substantive issues were filed by Calpine Corporation; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California; the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency; DATC Path 15, LLC; Metropolitan Water District of Southern California; NextEra Energy Resources, LLC; PacifiCorp; Portland General Electric Company (Portland General); Public Utility District No. 1 of Snohomish County, Washington; Puget Sound Energy, Inc.; SMUD; State Water Contractors; and Western. Timely interventions with comments were filed by the Balancing Authority of Northern California (BANC); Bonneville Power Administration (Bonneville); DWR; Iberdrola Renewables, LLC; Modesto; Powerex Corp. (Powerex); and Turlock. CAISO filed timely comments. The California Public Utilities Commission filed a notice of intervention. PG&E filed an Answer (and Errata) to the Complaint.

31. On June 25, 2014, PG&E filed a response to the comments of the third-party intervenors. Subsequently, a number of intervenors filed answers and replies to various pleadings.

IV. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

33. We accept PG&E's initial Answer⁵³ and the timely intervenor comments (summarized below). However, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the later-filed answers and/or replies of PG&E, Western, TANC, Modesto, Turlock or Powerex and will, therefore, reject them.

⁵² See *Transmission Agency of Northern Cal.*, Docket No. EL14-44-000 (May 14, 2014) (Commission Notice of Extension of Time).

⁵³ See 18 C.F.R. §§ 206(f) and 385.213(a)(1) (2014).

B. Parties' Comments**1. PG&E's Answer****a. Jurisdiction and Ripeness**

34. As a preliminary matter, PG&E acknowledges in its Answer that: (1) the Commission has jurisdiction over this dispute; (2) it does not intend to unilaterally replace remedial action schemes upon expiration of the Comprehensive Agreement with DWR or mitigate the impacts ensuing therefrom; and (3) it believes the dispute is ripe for Commission consideration and decision.⁵⁴

b. PG&E's Interpretation of the Duties Proviso

35. PG&E contends that TANC's claims rely upon a fundamental misreading of the Duties Proviso. Whereas TANC asserts that the Duties Proviso obligates PG&E to replace the effect of DWR's participation in remedial action schemes upon expiration of the Comprehensive Agreement, PG&E maintains that this provision provides an explicit exemption and does not require it to do so.⁵⁵ PG&E contends that its interpretation is consistent with the "plain, unambiguous meaning" of the Duties Proviso.⁵⁶

36. PG&E argues that, under standard principles of contract interpretation, the Duties Proviso's specific exemption, "provided that PG&E shall not be required to replace any Remedial Action or element thereof provided under its Comprehensive Agreement with the [DWR]," takes precedence over the general obligation set forth in section 8.7.2.2 to avoid unduly burdening the other parties to the agreement.⁵⁷ PG&E also emphasizes that testimony supporting a party's intention that conflicts with a contract's express terms is irrelevant.⁵⁸ Thus, PG&E contends that the affidavits submitted by TANC's witness, Mr. Jobson, offering his account of what TANC position is immaterial given the plain reading of the provision.⁵⁹

⁵⁴ PG&E Answer at 19.

⁵⁵ *Id.* at 2, 20-29.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 3-4, 20-23 (emphasis added).

⁵⁸ *Id.* at 21.

⁵⁹ *Id.*

37. PG&E posits that the Duties Proviso expressly uses the term “replace” and the dependent phrase “any Remedial Action or element thereof” to cover all possible ways PG&E might otherwise be obligated to supply a substitute for the remedial action schemes provided under the Comprehensive Agreement. Consequently, PG&E contends that the Duties Proviso “means what it says on its face,” that PG&E is not required to substitute some other means of achieving the same objective as DWR’s participation in remedial action schemes, to “maintain the capability to support [rated system transfer capability] and [available system transfer capability].”⁶⁰

38. PG&E contends that, by contrast, TANC would have the Commission understand that, contrary to its usual meaning, the phrase “to replace” means only that PG&E was not required to continue to obtain from DWR the remedial action schemes (or element thereof) provided under the Comprehensive Agreement. PG&E understands TANC to claim that general obligations set forth in sections 8.7.2.2 and 12.1 of the Operation Agreement supersede the specific exemption of the Duties Proviso. PG&E contends that TANC’s position artificially constrains the phrase “to replace.” PG&E states that nothing in the four corners of the Operation Agreement supports TANC’s construction. Moreover, argues PG&E, TANC’s interpretation would render the exclusion in the Duties Proviso unnecessary.⁶¹

39. PG&E explains that, under standard principles of contract interpretation, the *specific* exemption under the Duties Proviso takes precedence over the *general* obligation under section 8.7.2.2 to avoid unduly burdening the other parties to the agreement and the *general* obligation under section 12.1 to avoid adverse impacts when making a Modification to the system.

40. PG&E adds that, in drafting the Operation Agreement, the parties anticipated the future termination of the Comprehensive Agreement and therefore included the specific exemption for PG&E to maintain the rated system transfer capability and available system transfer capability associated with the remedial action scheme. In any event, PG&E argues that the elimination of the remedial action scheme is not a modification contemplated by section 12.1, because the Operation Agreement’s definition of modification is restricted in scope to physical changes to facilities.⁶²

⁶⁰ *Id.* at 3, 21.

⁶¹ *Id.* at 3, 21-22 (emphasis added).

⁶² *Id.* 24-25 (citing Operation Agreement section 4.27).

41. PG&E argues that when an earlier iteration of the Operation Agreement was first negotiated and approved by the Commission in 2004, TANC agreed to the inclusion of the Duties Proviso, and PG&E has relied upon that understanding. Further, PG&E states that since at least 2004, TANC has been aware of the forthcoming termination of DWR's participation in remedial action under the Comprehensive Agreement and the Duties Proviso which absolves PG&E from the obligation to replace it. PG&E contends that TANC could have acted to avoid any perceived impacts from that termination.⁶³

42. Finally, PG&E argues that with the Commission's implementation of the 1992 Energy Policy Act and the signing of California Assembly Bill 1890 in 1996, California's electric industry has been restructured.⁶⁴ PG&E states that while the Comprehensive Agreement has been significantly revised over the last 30 years to accommodate various regulatory and operational changes, its terms and conditions for service pre-date CAISO markets. PG&E states that, when the Commission authorized CAISO to commence operations, the Commission permitted previously existing, bilateral contracts reflecting firm physical transmission rights, such as the Comprehensive Agreement, to run their course to preserve the parties' then-existing electric transmission service arrangements. PG&E explains that these grandfathered contracts are generally referred to as ETCs (existing transmission contracts).⁶⁵ PG&E contends that continuation of ETCs was intended only as a transitional matter in moving to competitive electricity markets.⁶⁶

43. PG&E states that, to the extent that ETCs provide for long-term, firm physical transmission service, CAISO is obligated to set aside a portion of the capacity of the transmission system under its control to ensure that physical transmission service under the ETCs is available for the respective ETC customers.⁶⁷ PG&E explains that the transmission capacity that is set aside for firm physical transmission service under an ETC is defined as an "Encumbrance" on the CAISO-controlled grid. If an Encumbrance is not fully exercised, phantom congestion could occur, reducing the efficiency of the

⁶³ *Id.* at 22-23.

⁶⁴ *Id.* at 12 (citing Ex. No. PGE-1 at 37).

⁶⁵ *Id.* (citing *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122, at 61,470-473 (1997)).

⁶⁶ *Id.*

⁶⁷ *Id.* at 13 (citing Ex. No. PGE-1 at 38).

operation of the transmission system and increasing costs to other transmission customers.⁶⁸

44. PG&E states it cannot offer to extend an Encumbrance beyond an ETC's termination date without prior consent from CAISO.⁶⁹ PG&E states that customers with expiring ETCs are to transition to open-access, non-discriminatory transmission service under the CAISO Tariff. As such, PG&E argues that it is appropriate to allow the Comprehensive Agreement (an ETC listed as a PG&E Encumbrance in the Transmission Control Agreement, Appendix B) to terminate pursuant to its express terms, rather than to extend or amend it.⁷⁰

c. Cost Sharing for "Additional" Remedial Action

45. PG&E argues that last sentence of the Duties Proviso anticipates that the cost of mitigation measures undertaken to avoid a loss of transfer capability after the expiration of the Comprehensive Agreement must be shared by all Owners, not borne by PG&E alone. While PG&E concedes that the loss of DWR remedial action schemes may cause a loss of transfer capability at the California-Oregon Intertie, although to a much lesser degree than claimed by TANC, PG&E states that it is willing to discuss with TANC, the other Owners and CAISO, mitigation measures that could be undertaken to avoid a loss of transfer capability. However, PG&E argues that last sentence of the Duties Proviso anticipates that the cost these mitigation measures must be shared by all the Owners, and not borne entirely by PG&E.⁷¹

46. PG&E contends that TANC's requested relief would obligate PG&E alone to implement mitigation measures that would substitute for DWR's participation in remedial action schemes beginning in 2015. PG&E argues that such remedial actions, applied on a unilateral basis, are clearly prohibited under the Duties Proviso, which requires that the

⁶⁸ *Id.*

⁶⁹ *Id.* (citing section 4.4.3 of the Transmission Control Agreement (CAISO Electric Tariff No. 7), which states, "No Participating TO shall create any new Encumbrance or (except as permitted by Section 16 of the CAISO Tariff) extend the term of an existing Encumbrance over any lines or associated facilities or Entitlements forming part of its transmission network (as determined in accordance with Section 4.1.1) without the CAISO's prior written consent.").

⁷⁰ *Id.* (citing Ex. No. PGE-1 at 39-40).

⁷¹ *Id.* at 28.

costs of additional agreed-upon remedial action schemes or other mitigation measures be shared by the Owners.⁷²

47. Finally, PG&E claims that if the loss of the DWR remedial action schemes is determined to cause a reduction in available system transfer capability, and if the Owners do not agree to replace DWR remedial action schemes with an alternative remedial action scheme, then section 11.2.1 of the Operation Agreement dictates that the available system transfer capability be allocated on a *pro rata* basis. PG&E or other users of the CAISO grid must not, as TANC recommends, bear any lost import capability on the California Oregon Interties entirely on their own.⁷³

d. Maintenance of the System

48. PG&E states that it will continue to fulfill its Operation Agreement responsibilities, including the operation and maintenance of remedial action scheme facilities.⁷⁴ PG&E further states that it has fulfilled its obligations when adverse impacts have resulted from actual Modifications to PG&E's system.⁷⁵ PG&E further contends that it has consistently completed projects on its system that have maintained California-Oregon Intertie transfer capability.⁷⁶

⁷² *Id.*

⁷³ *Id.* at 28-29.

⁷⁴ *Id.* at 29.

⁷⁵ *Id.* at 30. PG&E cites the recent interconnections of the Hatchett Ridge power plant and the Colusa generating station. With respect to the Hatchett Ridge power plant, PG&E notes that studies had shown that the interconnection of this wind generator could, under certain conditions, reduce transfer capability at the California-Oregon Intertie. PG&E states that as a result, in 2010 PG&E and CAISO agreed that when limits to California-Oregon Intertie resulting from Hatchett Ridge generation occurred, CAISO would either reduce Hatchett Ridge's output or absorb the reduction in California-Oregon Intertie transfer capability. Likewise, in 2011, when planning studies identified the possibility of similar adverse impacts on the California-Oregon Intertie due to the interconnection of the Colusa gas generating station, PG&E states that a special protection scheme was installed to reduce Colusa's output when necessary.

⁷⁶ *Id.* at 30-31 (citing Ex. No. PGE-3 (Pandey) at 15-19). PG&E points to the Palermo-Rio Oso Reconductor Project, which improves California-Oregon Intertie import capability during the spring and summer months when hydroelectric generation in northern California is high. PG&E states that this provides benefit to all the Owners.

49. PG&E notes that it has been discussing the termination of DWR's participation in remedial action with the other Owners, including TANC, in an attempt to resolve these issues. PG&E states that it is still attempting to work with the parties to perform joint studies assessing the impacts of the termination of the Comprehensive Agreement and attempting to identify potential short and long term solutions that the parties could jointly implement.⁷⁷

e. TANC's Requested Remedies

50. PG&E concludes by stressing that the remedies sought by TANC would violate the Duties Proviso, as discussed above. Under the Operation Agreement, PG&E reiterates that it has no obligation to replace DWR's participation in remedial action, yet each of TANC's remedies seeks to shift the entire burden of replacing DWR's remedial actions onto PG&E. PG&E asserts that even if the Commission were to ignore the plain language of the Duties Proviso, and decide that PG&E alone should replace DWR's participation in remedial action, PG&E states that TANC has provided insufficient evidence for the Commission to determine whether TANC's requested remedies are just and reasonable.⁷⁸

2. Intervenor Comments

51. Bonneville states that it coordinates operation of the Pacific Northwest – Pacific Southwest AC Intertie⁷⁹ with CAISO. Bonneville notes that TANC's and CAISO's initial studies have differing conclusions about the impact of removing the DWR remedial action scheme on the transfer capability of the California-Oregon Intertie, and states that additional analysis is required.⁸⁰ Bonneville contends that a coordinated interregional study and analysis is necessary to ensure that removal of the DWR remedial action scheme does not impact transfer capability of the California-Oregon Intertie and Northwest AC Intertie. Bonneville argues that it will be directly affected and could experience significant harm by any actions that result in a reduction of the California-Oregon Intertie's transfer capability. It also notes that the Pacific Northwest – Pacific

⁷⁷ *Id.* at 31 (citing Ex. No. PGE-2 (Kozlowski) at 54-68).

⁷⁸ *Id.* at 31-35.

⁷⁹ Bonneville, Portland General and PacifiCorp are the asset owners of the Northeast AC Intertie located in Oregon. The combination of the Northeast AC Intertie and the California-Oregon Intertie is referred to as the Pacific Northwest – Pacific Southwest AC Intertie. *See* Bonneville Comments at 1 n.1, 2.

⁸⁰ *Id.* at 3, 6-7.

Southwest AC Intertie represents a major energy market hub in the west and is a critical transmission path for moving federal and non-federal generation into California markets.⁸¹ Bonneville also notes that any reduction in the California-Oregon Intertie's transfer capability will exacerbate planned temporary operational limitations necessary to interconnect a new reliability project on Bonneville's system.⁸² Accordingly, Bonneville asserts, that any decision by the Commission should ensure that the operation of the interconnection and the Northwest AC Intertie is not adversely affected by changes in the operation of the California-Oregon Intertie.

52. Turlock and Modesto, both members of TANC, contend that, in addition to the harm stated in TANC's complaint, elimination of DWR's participation in the remedial action schemes will exacerbate the overloads on Modesto's and Turlock's systems caused by certain generators interconnecting to PG&E's system.⁸³ Moreover, both Turlock and Modesto assert that they each have a separate interconnection agreement with PG&E that will be implicated by removing DWR's participation under the remedial action schemes. According to Turlock and Modesto, disarming or materially altering a remedial action scheme is a "Long-Term Change To Operations" under the interconnection agreements, and, if such action may reasonably result in an adverse impact (as defined in the interconnection agreements), PG&E must take actions to protect Turlock's and Modesto's systems.⁸⁴ Turlock also notes that the Pacific Direct Current Intertie line is planned to be de-rated and/or taken out of service for a year and contends that, as a result, a reduction in available system transfer capability on the California-Oregon Intertie and the Pacific Direct Current Intertie will increase reliability risk in the region.⁸⁵ Accordingly, Turlock urges the Commission to grant the relief request in TANC's complaint.

53. Iberdrola takes no position on the particulars of the contract dispute in this proceeding. However, it contends that this case has the potential to affect countless third parties in California and the Pacific Northwest who depend on the California-Oregon Intertie and who would suffer harm from any reduction in the transfer capability of the

⁸¹ *Id.* at 4-5.

⁸² *Id.* at 6.

⁸³ Turlock Comments at 2, 5-6; Modesto Comments at 5.

⁸⁴ Turlock Comments at 5; Modesto Comments at 5.

⁸⁵ Turlock Comments at 2, 7-8. The Pacific Direct Current Intertie is a 500 kV direct current transmission line located between the Celilo Converter Station in Oregon and the Sylmar Converter Station in California.

California-Oregon Intertie. Accordingly, Iberdrola urges the Commission to direct a timely resolution that maintains interregional transfer capability between California and the Pacific Northwest in order to protect reliability and prevent significant potential harm to third parties in both regions.⁸⁶

54. BANC states that the reduction in available transfer capability that will result from the termination of the Comprehensive Agreement will limit the scheduling flexibility to support a variety of bilateral transactions within its balancing authority area. BANC explains that, aside from the California-Oregon Transmission Project interconnects, its interconnections are with CAISO, and CAISO's markets do not provide equivalent substitutes for reduced access to Pacific-Northwest-based transactions. It further explains that the existing markets operated by CAISO do not allow adequate replacement of lost capacity for BANC, or BANC members, after the close of CAISO's day-ahead market. BANC states that the operation flexibility afforded by the California-Oregon Transmission Project allows BANC to react to changing load and resource conditions in a flexible manner to better ensure reliable system operation.⁸⁷

55. In addition, BANC argues that elimination of DWR's participation in the remedial action schemes should be studied through a regional collaborative process to understand the full regional impact. BANC contends that additional interregional impact could occur in the near term due to upcoming upgrades to the northern portion of the Pacific Direct Current Intertie and, consequently, a reduction of the California-Oregon Intertie transfer capability could exacerbate the impact of the Pacific Direct Current Intertie project.⁸⁸

56. Powerex states that it takes no position with respect to the interpretation of the Duties Proviso. Nevertheless, it agrees with TANC that the loss of the remedial action schemes may significantly reduce the capacity of the California-Oregon Intertie, which will result in higher energy prices, as California will have to rely on higher-cost gas-fired internal resources during periods of California-Oregon Intertie congestion, when there may be abundantly available lower-cost resources in the Pacific Northwest. Powerex further argues that the Commission should be mindful that the public interest here is not only maintaining, but also expanding reliable transmission capacity between the Pacific Northwest and California.⁸⁹

⁸⁶ Iberdrola Comments at 3-5.

⁸⁷ BANC Comments at 3-4.

⁸⁸ *Id.* at 5-6.

⁸⁹ Powerex Comments at 2-4.

57. DWR states that it takes no position on the contract dispute between TANC and PG&E. It recognizes, however, that the analysis provided by TANC indicates that DWR's participation in the remedial action schemes provides considerable benefit to the grid, and that DWR's participation would be a relatively low-cost and low-impact method to increase system reliability and avoid the loss of valuable available transfer capability on the California-Oregon Intertie. Notwithstanding the foregoing, DWR states that its participation has attendant costs. It contends that the operation of the remedial action schemes poses some risk of damage to equipment vital to DWR's water management responsibilities and that it is obligated to ensure that it obtains value for the benefits its facilities provide to the grid, especially when those services are outside of its primary water management mission. DWR further states that it has told all parties that it is willing to continue to participate in the remedial action schemes subject to contractual terms establishing appropriate compensation. However, DWR states that if no entity believes that its contribution to the remedial action schemes is more cost-effective than other potential solutions, then its participation will terminate with the Comprehensive Agreement.⁹⁰

58. CAISO contends that its transmission planning studies show that loss of the DWR remedial action schemes on January 1, 2015 will not cause any reliability problems on the CAISO controlled grid and results in only *de minimis* congestion on the California-Oregon Intertie.⁹¹ CAISO further states that its operating studies, which assessed northern California hydropower conditions from 60 to 100 percent in 10 percent increments, showed that the termination of the DWR remedial action schemes would not reduce the path rating of the California-Oregon Intertie. CAISO's studies indicate that termination of the DWR remedial action scheme only results in three hours of congestion on California-Oregon Intertie for 2018, with an expected cost of three thousand dollars, and no congestion for 2023. CAISO explains that it therefore determined that there was no reliability or economic basis to justify: (1) retention of the DWR remedial action scheme; (2) construction of additional transmission facilities (beyond those already planned); or (3) the incurrence of other costs by CAISO ratepayers to offset the loss of the DWR remedial action schemes. CAISO states that, because no mitigation measures are needed or justified, the final transmission plan does not discuss mitigation measures for the loss of the DWR remedial action schemes.⁹²

⁹⁰ *Id.* at 9-10.

⁹¹ CAISO states that at this time it does not seek intervention in this proceeding because TANC is not seeking relief from CAISO or disputing the outcome of CAISO's 2013-2014 transmission planning process. CAISO Comments at 1-2.

⁹² *Id.* at 5-7.

59. With respect to TANC's studies, CAISO also explains that it examined the actual impact of hydropower production in northern California on the California-Oregon Intertie from January 1, 2000 to December 31, 2013, and notes that its data showed that 90 percent or greater hydropower production occurred in approximately one-half of one percent of the hours over that 14 year period, 80 percent or greater hydropower production in occurred in approximately three percent of the hours during that same period, and 70 percent or greater hydropower production occurred in approximately 8 percent of the hours over that period. CAISO states that its data reflects that: (1) at 90 percent or greater hydropower production, approximately an eleven percent (summer) or seventeen percent (spring) reduction in available system transfer capability in about one-half of one percent of hours annually (i.e., 43.8 hours over spring and summer); and (2) at 80 percent or greater hydropower production, approximately a nine percent (spring) or three percent (summer) reduction in available system transfer capability in about three percent of hours annually.⁹³

C. Commission Determination

60. This case turns on the proper interpretation and scope of the Duties Proviso. The parties primarily dispute the meaning of the word "replace" in the provision, which states that, "PG&E shall not be required to *replace* any Remedial Action or element thereof provided under its Comprehensive Agreement ... upon cancellation or termination of that agreement." TANC argues that this stipulation should be read very narrowly so as to provide PG&E a limited exception excusing PG&E from the obligation to continue purchasing remedial action from DWR under an existing or new agreement. TANC argues that, while PG&E is not obligated to replace the remedial action scheme, the section does not absolve PG&E of its other obligations under the Operation Agreement, and PG&E must take some other action to mitigate the effects of the termination of the Comprehensive Agreement. Conversely, PG&E argues that the provision does not require PG&E to renew the Comprehensive Agreement with DWR or to replace the remedial action with another means to achieve the same objective.

61. We find that the Operation Agreement is governed by California law or federal law, as applicable.⁹⁴ "The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. If contractual language is clear and explicit, it

⁹³ *Id.* at 5-8.

⁹⁴ Operation Agreement, section 22. "This Agreement is made and entered into in the State of California. Interpretation of this Agreement, and performance and enforcement thereof, shall be determined in accordance with California law or federal law as applicable."

governs.”⁹⁵ “Where the language used is clear and unambiguous, its interpretation needs no extrinsic evidence as to intent, previous interpretation, or history.”⁹⁶ Testimony as to a party’s intention that conflicts with a contract’s express terms is irrelevant.⁹⁷

62. Operating under these principles, we will deny TANC’s Complaint. We find that, based on the clear and unambiguous language of the Operation Agreement, the Duties Proviso 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 schemes.

63. We also note that under the circumstances presented here, it seems reasonable to conclude that continuation of the Comprehensive Agreement, an ETC, 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.⁹⁸

⁹⁵ See *Bank of the West v. Superior Court*, 833 P.2d 545, 552 (Cal. 1992) (quotations omitted).

⁹⁶ *Columbia Gas Transmission Corp.*, 27 FERC at 61,166.

⁹⁷ See, e.g., *Duquesne Light Co.*, 138 FERC ¶ 61,111, at P 25 (2012) (citing *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 547 (D.C. Cir. 2010) (when a contract is unambiguous, that language controls and the court “must give effect to the unambiguously expressed intent of the parties”); *Pac. Gas & Elec. Co.*, 107 FERC ¶ 61,154, at P 19 (2004) (stating “when the language of a contract is explicit and clear . . . then the court may ascertain the intent from its written terms and not go further”); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) (stating when a contract’s terms are clear, it is to be construed according to its literal terms and extrinsic evidence cannot be used to alter or contradict the contract’s express terms)); *accord Christian Bionghi v. Metropolitan Water District of So. Cal.*, 83 Cal. Rptr. 2d 388, 395 (1999) (rejecting “testimony of intention which is contrary to a contract’s express terms . . . does not give meaning to the contract: rather it seeks to substitute a different meaning.”) (quotations omitted).

⁹⁸ See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 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.*

(continued...)

64. The plain meaning of the term “to replace,” found in the Duties Proviso, is to substitute or use one thing instead of another. We find that the use of the word “replace” and the dependent phrase “any Remedial Action or element thereof” applies not only to the replacement of the DWR remedial action, but also to any action PG&E might otherwise be obligated to take to substitute for DWR remedial action provided under the Comprehensive Agreement. As we endeavor to give meaning to all words and clauses of a contract, we cannot accept TANC’s suggested interpretation of the Duties Proviso, as that would render the exclusion unnecessary.

65. Further, under standard principles of contract interpretation, we find that the *specific* exemption of the Duties Proviso takes precedence over *general* obligations in section 8.7.2.2 to avoid imposing undue burdens on other parties to the agreement.⁹⁹ Thus, upon the expiration of the Comprehensive Agreement, we find that PG&E is not solely responsible for replacing the DWR remedial action schemes.

66. Moreover, we find the plain reading of the last clause of the Duties Proviso stipulates that the cost and responsibility for any additional remedial actions (including remedial action necessary in the absence of the remedial action under the Comprehensive Agreement) agreed upon by the Owners will be shared by the Owners on a *pro rata* basis in relation to rated system transfer capability shares unless otherwise agreed in writing.

67. We find no merit in TANC’s assertion that the loss of the remedial action schemes would violate section 12.1 of the Operation Agreement to avoid adverse impacts when making a Modification to the system, because we conclude that the loss of the remedial action schemes does not fit the Operation Agreement’s definition of a Modification, which is restricted in scope to physical changes to facilities.

68. Given our decision to deny the Complaint, we need not address the impact of the expiration of the Comprehensive Agreement on transfer capability in this order. It is important to note that the record indicates that the termination of the DWR remedial action schemes does not appear to raise reliability concerns. Specifically, CAISO, the

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.”).

⁹⁹ See, e.g., *National Ins. Underwriters v. Carter*, 551 P.2d 362, 365-366 (Cal. 1976) (“[W]hen general and particular provisions are inconsistent, the latter is paramount to the former.”).

path operator for the California-Oregon Intertie, concluded that the termination of the DWR remedial action schemes would not adversely affect reliability of the CAISO controlled grid. No party disputes this conclusion.

69. Apart from the issue of system reliability, TANC and other parties have raised concerns regarding a potential reduction in import capability that could follow the discontinuation of the DWR remedial action schemes. We recognize the importance of preserving the import capability over these facilities and the associated benefits of accessing economic capacity and energy and coordinating actions regarding curtailments, loop flows and counter scheduling. Therefore, we expect the Owners to address any such reduction resulting from the termination of the DWR remedial action schemes and to work on a collaborative basis to implement a mutually agreeable solution.

70. The record shows that, prior to the filing of the Complaint, the Owners attempted to jointly resolve issues resulting from the termination of the Comprehensive Agreement. However, negotiations apparently stalled because the Owners were unable to agree on the proper interpretation of the Duties Proviso. We strongly encourage the Owners to continue to discuss all of the possible resolutions to the termination of the Comprehensive Agreement, including additional remedial action schemes, and we offer the assistance of the Commission's Dispute Resolution Division (DRD) in that regard to identify potential short and long term solutions that the parties may jointly implement.¹⁰⁰

The Commission orders:

For the reasons discussed herein, the Commission hereby denies TANC's Complaint.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰⁰ The DRD can be contacted as follows: Toll Free Help Line: 1-877-337-2237; to contact a DRD staff member directly visit DRD online: www.ferc.gov/legal/adr.asp; DRD e-mail: ferc.adr@ferc.gov.