

150 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transmission Agency of Northern
California

v.

Docket No. EL14-44-001

Pacific Gas and Electric
Company

ORDER DENYING REHEARING

(Issued February 24, 2015)

1. In this order, we deny requests for rehearing of the Commission's August 28, 2014 order in the underlying docket.¹ In the Complaint Order, the Commission denied the April 30, 2014 complaint (Complaint) filed by the Transmission Agency of Northern California (TANC) that alleged anticipatory breach by Pacific Gas and Electric Company (PG&E) of its obligations under the 2012 Owners Coordinated Operation Agreement (Operation Agreement)² – 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

¹ *Transmission Agency of Northern California v. Pacific Gas & Elec. Co.*, 148 FERC ¶ 61,150 (2014) (Complaint Order).

² See Complaint, Appendix B, Operation Agreement, PG&E Rate Schedule No. 229.

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...)

I. Background

2. As explained in the Complaint Order, two filed agreements are relevant to this proceeding, the first of which is the Operation Agreement.⁴ 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, known as the California-Oregon Intertie, operate and function as a closely coordinated system,⁵ to import power from the Pacific Northwest into California and export power from California to the Pacific Northwest. 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 path's rating to a greater extent than would otherwise occur if each of the three lines were operated independently.⁶ The Operation Agreement and prior predecessor agreements have provided for the coordinated operation of the three-line system for over 20 years.

3. The second relevant agreement is the Comprehensive Agreement between PG&E and the California Department of Water Resources (DWR), which was originally entered in 1983.⁷ The Comprehensive Agreement addressed DWR's need to transmit large amounts of power across Path 15.⁸ Under the terms of the Comprehensive Agreement, PG&E provided, among other things, interconnection of all State Water Project plants and facilities in PG&E's service territory and firm transmission service with maximum simultaneous usage of 1,300 MW to DWR. The Comprehensive Agreement was amended in 1991 to incorporate remedial action schemes which provided PG&E with the

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

⁴ The current parties to that agreement are TANC, PG&E, the Western Area Power Administration (Western) and PacifiCorp (collectively, Owners). Each of the Owners own transmission facilities in northern California that are subject to the Operation Agreement.

⁵ See Operation Agreement, sections 2.11 and 4.52.

⁶ See Complaint, Ex. PGE-1 at 18.

⁷ See *id.*, Appendix C, Comprehensive Agreement.

⁸ 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.

right to interrupt the operation of DWR's pumps and generation facilities under specifically defined conditions affecting the Pacific AC Intertie.⁹ PG&E's ability to interrupt DWR generation and load (pursuant to Amendment No. 4 to the Comprehensive Agreement) supported the import capability of two Pacific AC Intertie lines and was part of the PG&E remedial action schemes approved by the Western Electricity Coordinating Council (WECC). The Comprehensive Agreement expired by its own terms on December 31, 2014.¹⁰

4. In brief, TANC's Complaint alleged that PG&E would breach the Operation Agreement by failing to replace the participation of DWR in remedial action schemes upon termination of the Comprehensive Agreement between PG&E and DWR. TANC maintained that the loss of DWR's participation in the remedial action scheme would have a detrimental impact on the transfer capability of the California-Oregon Intertie, which would breach the Operation Agreement.

5. The Commission denied the Complaint finding, among other things, that "[t]his case turns on the proper interpretation and scope of the Duties Proviso."¹¹ The Commission then explained 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."¹² Given its denial of the Complaint, the Commission did not address the impact of the lack of DWR participation in the remedial action scheme on the transfer capability of the

⁹ Specifically, PG&E could 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. *See* Amendment No. 4 to the Comprehensive Agreement, Appendix B, Events that Initiate Automatic Interruption.

¹⁰ The Commission accepted PG&E's notice of termination of the Comprehensive Agreement effective December 31, 2014 and accepted various replacement agreements (effective January 1, 2015) that transition DWR to transmission service under the California Independent System Operator Corporation (CAISO) tariff while allowing DWR continued access PG&E's transmission system. *See Pacific Gas and Elec. Co.*, 149 FERC ¶ 61,276 (2014), *requests for rehearing pending*.

¹¹ Complaint Order, 148 FERC ¶ 61,150 at P 60. "Duties Proviso" refers to section 8.6.3 of the Operation Agreement. *See id.* P 3.

¹² *Id.* P 62.

California-Oregon Intertie, but noted that “the record indicates that the termination of the DWR remedial action schemes does not appear to raise reliability concerns.”¹³

II. Requests for Rehearing and Motions to Lodge

6. On September 26, 2014, Western filed a request for rehearing of the Complaint Order. On September 29, 2014, TANC filed its request for rehearing. On the same day, TANC also filed a motion to lodge. By its motion to lodge, TANC sought to supplement the record in this proceeding with a slide presentation made at the July 9, 2014, WECC Remedial Action Scheme Reliability Subcommittee (RASRS) meeting.

7. Also on September 29, 2014, requests for rehearing were filed by the Balancing Authority of Northern California (BANC); the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (collectively Cities/M-S-R); Modesto Irrigation District (Modesto); and Turlock Irrigation District (Turlock).

8. On October 14, 2014, PG&E filed an opposition to the motion to lodge, arguing that the presentation was unattributed, repetitive of evidence already submitted in this proceeding, and irrelevant to the Commission’s decision-making process. However, PG&E offered in its pleading to lodge evidence of the final decision of the WECC RASRS when available. On December 18, 2014, PG&E filed its own unopposed motion to lodge containing the final decision of the WECC RASRS.

III. Procedural Matters

9. While we do not find the additional information affects our decision, we nevertheless grant the motions to lodge of both TANC and PG&E.

IV. Discussion

10. As a general matter, BANC, Cities/M-S-R, Modesto and Turlock have adopted the specifications of error and arguments of TANC in its request for rehearing. For convenience, we will attribute the arguments adopted by these aligned parties to TANC and will address these alleged errors seriatim. Where parties have raised unique issues, we will address those issues separately.

¹³ *Id.* P 68.

A. The Interpretation of the Duties Proviso

11. 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.¹⁴

1. Argument

12. TANC and Western contend that the Commission erred in ruling that the above-italicized language in the Duties Proviso (referred to herein as “the exclusion”) excuses PG&E not only from maintaining or adding certain remedial action provided under the Comprehensive Agreement, but from any other mitigation measures.¹⁵ They argue that while the Commission recognized the need to “give meaning to all words and clauses of a contract,” it failed to do so.¹⁶

¹⁴ Operation Agreement, section 8.6.3 (emphasis added).

¹⁵ TANC Rehearing Request at 2-3, 20-25; Western Rehearing Request at 4, 8-14 (citing Complaint Order, 148 FERC ¶ 61,150 at PP 62, 64).

¹⁶ TANC Rehearing Request at 20; Western Rehearing Request at 10 (citing Complaint Order, 148 FERC ¶ 61,150 at P 64).

a. Scope and Import of the Duties Proviso

13. TANC disagrees with the Commission's finding that "TANC's suggested interpretation ... would render the exclusion [in the Duties Proviso] unnecessary."¹⁷ According to TANC, the more reasonable interpretation of the phrase "to replace" in the Duties Proviso, 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, but PG&E nevertheless had to take some other action to satisfy its other obligations under the Operation Agreement once the Comprehensive Agreement expired.¹⁸ In support, TANC first contends that PG&E is capable of meeting its other obligations under the Operation Agreement without retaining the existing (or obtaining additional) remedial action following the termination of the Comprehensive Agreement and its loss of the DWR remedial action.¹⁹ Second, TANC argues that, according to its preferred interpretation, PG&E benefits by being freed to pursue other (potentially less costly) options to meet its other Operation Agreement obligations. Accordingly, TANC maintains that the interpretation of the Duties Proviso adopted in the Complaint Order is not supported by the conclusion that a more narrow interpretation would render the exception a nullity.²⁰

b. Rules of Construction

14. Next, TANC and Western argue that the Commission erred in its interpretation of the Duties Proviso in the context of the entire Operation Agreement.²¹ TANC contends that the Commission misapplied applicable rules of construction. TANC argues, first, that the Commission failed to recognize that the terms of an exception – the Duties Proviso – must be construed narrowly to preserve the primary operation of the provision.²² Second, TANC states that the Commission failed to interpret the Duties

¹⁷ TANC Rehearing Request at 21 (citing Complaint Order, 148 FERC ¶ 61,150 at P 64).

¹⁸ *Id.* at 21-22.

¹⁹ *Id.* at 22.

²⁰ *Id.* at 24-25.

²¹ *Id.* at 25-37; Western Rehearing Request at PP 8-14 (citing *Mastrobuono v. Shearson Lehman Hutton (Mastrobuono)*, 514 U.S. 52, 63 (1995)).

²² TANC Rehearing Request at 26 (citing *Comm'r of Internal Revenue v. Clark*, 489 U.S. 726, 739 (1989)).

Proviso consistent with the surrounding language.²³ Third, TANC contends that the Commission failed to review the entire agreement, giving effect so far as possible to all of its terms.²⁴

15. TANC also notes that the Complaint Order determined that the word “replace” means “to substitute or use one thing instead of another.”²⁵ However, TANC states that there are alternative definitions that the Commission could have used instead that would produce a different interpretation of the Duties Proviso. For instance, the Complaint Order could have used the definition, “to restore to a former condition,” or “to supplant with substitute or equivalent,”²⁶ or “to restore to a previous place or position”²⁷ that would lead to a different interpretation of the word “replace.”

16. TANC next claims that the Complaint Order fails to reflect the fact that the Duties Proviso constitutes an exception to the general provision regarding remedial action schemes under section 8.6.3, and as such should be interpreted narrowly.²⁸ Further, TANC states that the Commission failed to consider the scope and purpose of section 8.6.3 in determining the meaning of the Duties Proviso. TANC states that section 8.6.3 defines the parties’ duties with respect to remedial action schemes and that the Duties Proviso solely addresses PG&E’s obligation with respect to one component of its remedial action scheme.²⁹ According to TANC, the DWR remedial action comprises a portion, but not all, of the measures available under the remedial action scheme PG&E maintains and operates for the Pacific AC Intertie, and that PG&E’s loss of the DWR

²³ *Id.* (citing *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)).

²⁴ *Id.* (citing *Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,109, at 61,416 (1996)).

²⁵ *Id.* at 21 (citing Complaint Order, 148 FERC ¶ 61,150 at P 64).

²⁶ *Id.* at 27 (citing *Black’s Law Dictionary* (6th ed. 1990) (citations omitted)).

²⁷ *Id.* (citing *The Oxford English Dictionary*, 3rd ed. 2009, *OED Online*, Oxford University Press, 29 September 2014, available at <http://www.oed.com/view/Entry/162819#eid25829306>).

²⁸ *Id.* at 29-30 (citing *Comm’r of Internal Revenue v. Clark*, 489 U.S. 726, 739 (1989), *City of N.Y. v. Beretta U.S.A. Corp.*, 524 F.3d 384, 403 (2d Cir. 2008), *United States v. Fort*, 472 F.3d 1106, 1123 (9th Cir. 2007) (internal citation omitted)).

²⁹ *Id.* at 31-33.

remedial action upon termination of the Comprehensive Agreement does not eliminate the PG&E remedial action scheme. Therefore, TANC concludes that the Commission erred finding that the Duties Proviso broadly excused PG&E from “any action PG&E might otherwise be obligated to take to substitute for DWR remedial action provided under the Comprehensive Agreement.”³⁰

17. Further, contrary to the Commission’s recognition that its interpretation of the Duties Proviso must “give meaning to all words and clauses” of the Operation Agreement, TANC maintains that the Commission’s interpretation does not have that effect.³¹ TANC claims that general obligations set forth in Operation Agreement sections 8.7.2.2 (to avoid imposing undue burdens on other parties to the Operation Agreement) and section 12.1 (to avoid adverse impacts when making a Modification to the system) supersede the specific exclusion of the Duties Proviso.

18. Western avers that when the United States is a party to a contract dispute, federal law controls its interpretation and that under federal contract law, when the contract provisions are clear and fit the case, they should be given their plain and ordinary meaning.³² TANC and Western assert that Commission’s interpretation fails to adhere to “the cardinal principle of contract construction [] that a document should be read to give effect to all its provisions and to render them consistent with each other.”³³

19. Accordingly, TANC and Western request that the Commission grant rehearing and adopt the interpretation of the Duties Proviso as originally advocated by TANC in its Complaint.

2. Commission Determination

20. The Commission reaffirms its interpretation of the Duties Proviso. PG&E’s ability or inability to mitigate the loss of DWR remedial action participation after the termination of the Comprehensive Agreement is not relevant to the initial and

³⁰ *Id.* at 33 (citing Complaint Order, 148 FERC ¶ 61,150 at P 64).

³¹ *Id.*

³² Western Rehearing Request at 8 (citing *United States v. Seckinger (Seckinger)*, 397 U.S. 203, 209-210 (1970)).

³³ TANC Rehearing Request at 35-37; Western Rehearing Request at 8, 10 (citing *Mastrobuono*, 514 U.S. at 63).

determinative question of whether PG&E is obligated, under the terms of the Operation Agreement, to do so at all. We have found 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.³⁴

Because PG&E alone is not required to replace any remedial action, PG&E's capabilities for mitigation are irrelevant.

21. Similarly, TANC's argument that its interpretation frees PG&E to pursue potentially less costly alternatives to mitigate the loss of DWR remedial action participation is also beside the point. The parties placed no obligation on PG&E to replace DWR's participation upon termination of the Comprehensive Agreement remedial action, therefore mitigation costs (or cost savings) to PG&E are not germane.

22. Next, we disagree with TANC and Western regarding our interpretation of the Duties Proviso given the rules of construction. As we stated in the Complaint Order, under the applicable law, "[t]he fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. If contractual language is clear and explicit, it governs."³⁵

23. TANC takes issue with the Commission's interpretation with the word phrase "to replace" as used in the Duties Proviso. In the Complaint Order, the Commission found that:

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

³⁴ Complaint Order, 148 FERC ¶ 61,150 at P 62.

³⁵ *Id.* P 61 (citing *Bank of the West v. Superior Court*, 833 P.2d 545, 552 (Cal. 1992) (quotations omitted)).

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.³⁶

24. TANC argues that the Commission misinterpreted the word “replace.” We disagree. First, the Commission’s interpretation of “replace” is a commonly used and reasonable definition of the word.³⁷ Second, at least one of TANC’s suggested alternatives, to wit, “to supplant with substitute or equivalent” would lead to the same conclusion that the Commission already reached. Finally, as the Commission endeavored to give meaning to all words and clauses of the contract, we do not accept TANC’s suggested interpretation of the Duties Proviso, as it would render the exclusion superfluous.³⁸

25. Next, we disagree with TANC’s argument that, since the exclusion is an exception to the general provision regarding remedial action schemes under section 8.6.3 of the Operation Agreement, the Commission should have interpreted it more narrowly. In this case, the exception reflected in the Duties Proviso is not a narrow one. The parties anticipated the termination of the Comprehensive Agreement as is evidenced by the Duties Proviso’s recognition of the termination. It is also reasonable to assume that the parties understood that the Comprehensive Agreement, an existing transmission contract, was intended only as a transitional matter in moving to competitive electricity markets, and that upon its termination (by its own terms) on December 31, 2014, meant that it would not be extended or amended.³⁹ This expectation is consistent with the

³⁶ *Id.* P 64.

³⁷ *See, e.g.*, <http://www.vocabulary.com/dictionary/replace>.

³⁸ Complaint Order, 148 FERC ¶ 61,150 at P 64.

³⁹ *Id.* 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 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.”)).

Commission's treatment of other existing transmission contracts where the Commission permitted the contracts to continue, in accordance with their terms, until they reached their expiration dates, as encumbrances on the CAISO system, but as those contracts expired over time, they were not renewed. Several such contracts have expired and those transmission customers that remained in the CAISO Balancing Authority Area have transitioned to service under the CAISO tariff.⁴⁰

26. Moreover, our reading of the last clause of the Duties Proviso lends further context and support for our interpretation of the scope of the exclusion. The last clause states:

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.⁴¹

Thus, this part of the Duties Proviso establishes that it was reasonable for the parties to anticipate that the cost of mitigation measures undertaken to avoid any loss of transfer capability after the expiration of the Comprehensive Agreement must be shared by all Owners, not borne by PG&E alone.⁴²

⁴⁰ See *Pacific Gas & Elec. Co.*, 100 FERC ¶ 61,233 (2002) (Northern California Power Agency and Silicon Valley Power 2002 transition); *Pacific 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 Extra High Voltage Agreement and the DWR Extra High Voltage Agreement 2005 termination); *Pacific Gas & Elec. Co.*, 120 FERC ¶ 61,163 (2007) (Trinity Public Utilities District 2007 transition); *Pacific Gas & Elec. Co.*, 129 FERC ¶ 61,129 (2009) (Turlock Irrigation District 2009 transition).

⁴¹ Operation Agreement, section 8.6.3.

⁴² Complaint Order, 148 FERC ¶ 61,150 at P 66. 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.

27. We are also unpersuaded by TANC's assertion that the Commission failed to give meaning to all words and clauses of the Operation Agreement, namely, section 8.7.2.2 (to avoid imposing undue burdens on other parties to the Operation Agreement) and section 12.1 (to avoid adverse impacts when making a Modification to the system). As will be discussed in more detail below, neither of these Operation Agreement provisions takes precedence over the exclusion in the Duties Proviso.

28. We also reject Western's contention that we improperly failed to interpret the Operation Agreement under applicable federal law. First, Western disregards the language of the Operation Agreement that declares that it is governed by California law or federal law, as applicable.⁴³ Thus, by the contract's own terms, federal law or state law may be appropriate. Second, Western has also disregarded TANC's own representation that the Operation Agreement is governed by California law.⁴⁴ Third, Western has not demonstrated that the outcome would have been different if the Operation Agreement had relied exclusively on federal contract law. Finally, assuming *arguendo* that Western is correct, our conclusions are in accord with federal contract law.

29. Under the federal common law of contracts, "[i]t is customary, where Congress has not adopted a different standard, to apply to the construction of government contracts the principles of general contract law."⁴⁵ This holding supports the concept that federal and state common law contract interpretation principles are similar. This construct is further evidenced by the fact that the Restatement of Contracts is regularly referenced, and used as support, in both federal and state settings.⁴⁶ To further demonstrate the

⁴³ Operation Agreement, section 21. "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."

⁴⁴ See Complaint at 18 (citing Operation Agreement, section 21).

⁴⁵ *In Re Peanut Crop Ins. Litigation*, 524 F.3d 458, 470 (4th Cir. 2008) (quoting *Long Island Sav. Bank, FSB v. United States*, 503 F.3d 1234, 1245 (Fed. Cir. 2007) (internal quotation marks omitted)).

⁴⁶ *Id.* ("The Restatement of Contracts reflects many of the contract principles of federal common law.") (quoting *Long Island Sav. Bank, FSB*, 503 F.3d at 1245 (internal quotation marks omitted)); *U.S. v. Volvo Powertrain Corp.*, 854 F.Supp.2d 60, 64 (D.D.C. 2012) ("The Restatement (Second) of Contracts is an appropriate source from which to fashion such federal common law rules.") (citing *Bowden v. United States*,

(continued...)

significant overlap between federal and state common law contract interpretation principles, courts also have held that it is appropriate for federal common law to borrow from state contract law to fashion contract interpretation rules.⁴⁷ In any case, as discussed above, we have acted in accordance with federal contract law in that we interpreted the Duties Proviso according to its plain and ordinary meaning⁴⁸ and have given effect to all the Operation Agreement's provisions so as to render them consistent with each other.⁴⁹

30. For the foregoing reasons, we deny rehearing as to the meaning of the Duties Proviso.

B. Whether Duties Proviso Takes Precedence Over Section 8.7.2.2 of the Operation Agreement

1. Argument

31. TANC argues that the Commission erred in finding that the exclusion in 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.⁵⁰ TANC contends that *National*, which the Commission cited in the Complaint Order, is inapplicable to this dispute because these two Operation Agreement sections are not inconsistent with each other.⁵¹ TANC states that the provisions differ as to the events and as to the location of

106 F.3d 433, 439 (D.C. Cir. 1997); *Donovan v. RRL Corp.*, 27 P.3d 702, 716 (Cal. 2001) (“Because the . . . Restatement (Second) of Contracts . . . is consistent with our previous decisions, we adopt the rule as California law.”).

⁴⁷ *Transitional Learning Comm. at Galveston, Inc. v. U.S. Office of Personnel Management*, 220 F.3d 427, 431 (5th Cir. 2000) (citing *Todd v. AIG Life Insur. Co.*, 47 F.3d 1448, 1451 (5th Cir. 1995) (internal quotation marks omitted)).

⁴⁸ *Seckinger*, 397 U.S. at 209-210.

⁴⁹ *Mastrobuono*, 514 U.S. at 63.

⁵⁰ TANC Rehearing Request at 2-3, 37-44 (citing Complaint Order, 148 FERC ¶ 61,150 at P 65 (citing *National Ins. Underwriters v. Carter (National)*, 551 P.2d 362, 365-366 (Cal. 1976) (“[W]hen general and particular provisions are inconsistent, the latter is paramount to the former.”))).

⁵¹ *Id.* at 37-39 (citing *Arena Energy, LP v. Sea Robin Pipeline Co.*, 133 FERC ¶ 61,140, at P 42 (2010)).

such an event, such that each provision addresses situations that are not contemplated in the other.⁵²

32. TANC states that, even if the Commission finds the two provisions are inconsistent, the principle of contract interpretation that a specific provision trumps a general one should not be applied in this case. First, TANC asserts that the principle is not a mandatory rule but only a “guiding principle.”⁵³ Second, TANC reiterates its argument that a contract must be interpreted as a whole, giving meaning to all provisions if at all possible. In this case, TANC insists the contract as a whole evinces the clear intent of the parties to maintain the import capability of the California-Oregon Intertie, and ensuring the appropriate interpretation of the Operation Agreement is more important than strict adherence to a non-binding principle of contract interpretation that yields an unfair result.⁵⁴

33. Accordingly, TANC requests that the Commission grant rehearing and find that the “general vs. specific” principle of contract interpretation is inapplicable to this dispute because Operation Agreement sections 8.6.3 (Duties Proviso) and 8.7.2.2 (Undue Burdens) and 12.1 (Modifications) are not inconsistent with one another. TANC also asks that the Commission find that PG&E has violated Operation Agreement sections 8.7.2.2 and 12.1 because it failed to mitigate the loss of DWR remedial action.

2. Commission Determination

34. We deny rehearing on this issue. TANC essentially argues that this proceeding is factually distinguishable from case precedent cited in the Complaint Order and that, regardless, those cases provide only guiding principles and are not binding here. Ultimately, however, TANC’s arguments do not undermine the validity of the principle that “when general and particular provisions are inconsistent, the latter is paramount to the former.”⁵⁵ Indeed, TANC acknowledges that contracts must be interpreted as a whole, to give meaning to all provisions if at all possible – an idea that is consistent with

⁵² *Id.* at 40 (citing Operation Agreement, sections 4.52 and 4.22 (Definitions)).

⁵³ *Id.* at 42 (citing *Chickasaw Nation v. United States*, 534 U.S. 84 (2001) (“[C]anons [of statutory construction] are not mandatory rules. They are guides that need not be conclusive.”)).

⁵⁴ *Id.* at 43-44. TANC additionally maintains that, for the same reasons set forth above, the Duties Proviso does not trump section 12.1.

⁵⁵ *National*, 551 P.2d at 365-366.

the above-quoted language and, in fact, part of the logic underlying the Complaint Order. In order to give effect to all provisions of the Operation Agreement, the Commission found that “the *specific* exemption of the Duties Proviso takes precedence over the *general* obligations in section 8.7.2.2 to avoid imposing undue burdens on other parties to the agreement.”⁵⁶ The Commission cannot adopt the opposite interpretation suggested by TANC without rendering meaningless the exclusion in the Duties Proviso.

35. We further note that when an earlier iteration of the Operation Agreement was first negotiated and accepted by the Commission in 2004,⁵⁷ TANC and the other signatories agreed to the inclusion of the Duties Proviso. As such, the parties to the Operation Agreement knew that the Comprehensive Agreement (an existing transmission contract) would terminate, and with this knowledge they specifically excused PG&E from the sole responsibility of mitigating the effect of the loss of DWR’s participation in remedial action.

C. The Meaning of “Modification” under the Operation Agreement

1. Argument

36. TANC argues that the Commission erred in determining “that the loss of remedial action schemes does not fit the Operation Agreement’s definition of a Modification, which is restricted in scope to physical changes in facilities.”⁵⁸ First, TANC contends that the definition of Modifications under the Operation Agreement is not restricted to physical changes.⁵⁹ TANC states that the terms “modification of, any portion of the System or a Party’s Electric System” and “removals” contained in the definition should

⁵⁶ Complaint Order, 148 FERC ¶ 61,150 at P 65.

⁵⁷ *See id.* PP 41, 63.

⁵⁸ TANC Rehearing Request at 2-3, 44-50 (citing Complaint Order, 148 FERC ¶ 61,150 at P 67).

⁵⁹ *Id.* at 45 (citing Operation Agreement section 4.27) which 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.

be read expansively to include the loss of DWR participation in the remedial action scheme.

37. Second, TANC states that even if the term “Modification” is restricted to physical changes, the Commission erred in assuming that PG&E’s loss of the DWR remedial action will not lead to physical changes to facilities on the system. According to TANC, PG&E’s loss of DWR remedial action will result in three distinct physical changes in facilities: (1) DWR’s loss of the contractual right to have its generation and load interconnected with the PG&E electric system; (2) the reduction in import capability of the Pacific AC Intertie; and (3) PG&E’s need to reprogram its remedial action scheme controllers. TANC urges the Commission to take a broad view of the meaning of “physical” and consider these three changes as “Modifications” under the Operation Agreement.⁶⁰

38. Accordingly, TANC requests that the Commission grant rehearing and find that PG&E’s loss of DWR remedial action constitutes a Modification under section 12.1 of the Operation Agreement. TANC also renews its request for the Commission to find that PG&E will be in violation of section 12.1, and the Commission should order relief pursuant to Section 12.1 of the Operation Agreement consistent with the relief TANC sought in its Complaint.

2. Commission Determination

39. We will deny rehearing on this point. We continue to find that the plain meaning of the definition of Modification under the Operation Agreement is restricted in scope to physical changes to facilities. Nevertheless, even assuming, *arguendo*, that PG&E’s loss of DWR remedial action will result in physical changes in facilities, the Operation Agreement’s definition of Modifications addresses direct physical modifications initiated by parties and not to secondary effects as enumerated by TANC. Further, even assuming that section 12.1 was implicated, we reiterate that for the reasons discussed above, PG&E is not required to mitigate the loss of DWR’s participation in remedial action upon termination of the Comprehensive Agreement.

D. Cost Responsibility for Mitigation

1. Argument

40. TANC asserts that the Commission erred in finding that the Operation Agreement provides that the parties to the Operation Agreement shall share *pro rata* in the cost of

⁶⁰ *Id.* at 47-50.

mitigating the impact of the loss of DWR remedial action.⁶¹ TANC states that the Commission mistakenly conflated the terms “remedial action” and “remedial action scheme.” To that end, TANC asserts that remedial action is different from remedial action schemes; DWR provides remedial action for use in PG&E’s remedial action scheme, which will not cease upon the termination of the Comprehensive Agreement; and the Duties Proviso only provides for the sharing of the cost of remedial action for additional remedial action schemes (to which the parties agree) not in existence at the time of the execution of the Operation Agreement.

41. TANC states that with these clarifications, it is evident that the Duties Proviso provides that the parties share *pro rata* the costs of remedial actions only for additional remedial action schemes (that are mutually agreed to), which does not include replacement of the remedial action provided by DWR for use in the PG&E remedial action scheme.

42. According to TANC, the termination of the Comprehensive Agreement does not result in the termination of PG&E’s remedial action scheme – it only ends DWR’s participation in that remedial action scheme through the provision of remedial action. Nevertheless, TANC maintains that PG&E is required by the Operation Agreement to maintain its remedial action scheme. TANC contends that the only exception provided to PG&E from maintaining its remedial action scheme is that provided in the Duties Proviso, which specifically permits PG&E to cease its procurement of remedial action from DWR after the termination of the Comprehensive Agreement. TANC emphasizes that PG&E explicitly stated in its answer that its remedial action scheme will continue after the termination of the Comprehensive Agreement.⁶²

43. Based on the foregoing, TANC submits that Commission should find that the Operation Agreement does not provide for the *pro rata* sharing of the cost of remedial action for remedial action schemes existing at the time of the execution of the Operation Agreement. TANC states that the Commission should further find that, as an *existing* remedial action scheme, the parties are not obligated to share in the cost of replacing remedial action in PG&E’s remedial action scheme.

⁶¹ *Id.* at 2-3, 50-56 (citing Complaint Order, 148 FERC ¶ 61,150 at P 66 (Commission finding that the last clause of the Duties Proviso contemplates cost sharing of additional remedial action)).

⁶² *Id.* at 53 (citing PG&E June 17, 2014 Answer at 25, Ex. PGE-4 at P 28).

2. Commission Determination

44. We disagree with TANC's interpretation of the Duties Proviso's *pro rata* cost assignment clause. As an initial matter, the Commission understands that: (1) DWR's participation in remedial action is a subset of the overall remedial action scheme; (2) the overall remedial action scheme will not cease upon the termination of the Comprehensive Agreement; and, (3) the Duties Proviso anticipates cost-sharing of additional remedial action schemes (to which the parties agree). However, PG&E alone is not required to replace or mitigate the expected loss of DWR's participation in remedial action schemes.⁶³

45. As previously discussed, the Commission finds that the cost-sharing clause of the Duties Proviso demonstrates that the Owners anticipated 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, and not borne by PG&E alone. If the loss of the DWR participation in remedial action is determined to cause a reduction in available system transfer capability, and if the Owners do not agree to pursue any alternative measures, then section 11.2.1 of the Operation Agreement dictates that the available system transfer capability be allocated on a *pro rata* basis. We therefore deny rehearing on this basis.

E. Termination of the Comprehensive Agreement

1. Argument

46. TANC argues that the Commission erred in stating that it was reasonable to terminate the Comprehensive Agreement.⁶⁴ As a preliminary matter, TANC states that the issue of whether it is appropriate for the Comprehensive Agreement to terminate was not before the Commission in this proceeding, and neither PG&E nor DWR requested such termination in this proceeding. Notwithstanding the foregoing, according to TANC, the Commission erred in stating that, because the Comprehensive Agreement is an existing transmission contract, it is appropriate for it to be terminated without taking into account the consequences of its termination and PG&E's failure to plan for mitigating measures. TANC contends that its Complaint and exhibits demonstrate the adverse effects that would befall TANC and its members without PG&E mitigating the loss of DWR participation in the remedial action scheme.

⁶³ Complaint Order, 148 FERC ¶ 61,150 at PP 60-62.

⁶⁴ TANC Rehearing Request at 2-4, 56-60 (citing Complaint Order, 148 FERC ¶ 61,150 at P 63).

47. Even if the Commission does not accept that PG&E is in violation of the Operation Agreement and responsible for these consequences, TANC maintains that consideration of the consequences of the termination of the Comprehensive Agreement must be examined before an existing transmission contract can be terminated. TANC maintains that these concerns were not addressed when the Commission concluded that it is now appropriate to terminate the Comprehensive Agreement.

48. Therefore, TANC requests that the Commission clarify that the justness and reasonableness of the termination of the Comprehensive Agreement is not at issue in this proceeding and will be addressed if and when it is brought before the Commission in a termination proceeding. In the alternative, TANC seeks rehearing regarding the conclusion that, because the Comprehensive Agreement is an existing transmission contract, it is appropriate for it to be terminated without taking into account the consequences of its termination and PG&E's failure to plan for mitigating measures.

2. Commission Determination

49. Even assuming, *arguendo*, that the issue of termination of the Comprehensive Agreement was not properly before the Commission in this proceeding, it has since been addressed in another proceeding, and we need not address it further in this docket.⁶⁵ We therefore deny rehearing on this basis.

F. Reliability Issues

1. Argument

50. BANC, TANC and Western argue that the Commission erred in finding that termination of DWR remedial action will not raise reliability concerns on the CAISO controlled grid.⁶⁶ Turlock also argues that the Commission erred in failing to ensure the reliability of the regional grid, including the reliability of the Turlock balancing area.⁶⁷ TANC maintains that the Commission failed to consider that the BANC and Turlock balancing areas, as well as balancing authorities in the Pacific Northwest, will face adverse reliability impacts from the termination of the Comprehensive Agreement.

⁶⁵ *See supra* note 10.

⁶⁶ BANC Rehearing Request at 3-7; TANC Rehearing Request at 2-4, 60-65; Western Rehearing Request at 4-8 (citing Complaint Order, 148 FERC ¶ 61,150 at P 68).

⁶⁷ Turlock Rehearing Request at 4-6 (citing Complaint Order, 148 FERC ¶ 61,150 at PP 52, 68).

According to TANC, unlike CAISO, the BANC and the Turlock balancing area authorities view “reliability” as more than the technical condition of a Reliability Standards violation. According to TANC, the concept of reliability encompasses the benefits of greater operational flexibility. Accordingly, TANC views a reduction of import capability in the Pacific Northwest as a reduction in reliability.⁶⁸

51. Based upon material submitted in the WECC RASRS, TANC next argues that PG&E will need to maintain at least a portion of the DWR remedial action to support the reliability of the Southern Island Tripping for the Northeast/Southeast Separation Scheme.⁶⁹ TANC maintains that this new evidence indicates that without DWR participation in the remedial action scheme, transfer capability may be adversely impacted. However, TANC notes that this issue was still under negotiation.⁷⁰

52. Western is concerned that a significant de-rating of the California-Oregon Intertie could result in an operational impact affecting imports from the Pacific Northwest. Western contends that there is insufficient information to determine whether the expiration of DWR’s participation in remedial action would impact the reliability of other parties’ systems. As a matter of policy, Western urges the Commission to consider the potential impacts on transmission owners obligated to maintain the import capability at interconnection points with neighboring transmission owners.⁷¹

53. Turlock reiterates its concern that, in addition to the harm stated in the 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. Turlock notes that it and Modesto each have an interconnection agreement with PG&E that will be implicated by removing DWR’s participation under the remedial action schemes. Turlock states that disarming or materially altering a remedial action scheme is a “Long-Term Change To Operations” under the interconnection agreements, and asserts that such action may reasonably result

⁶⁸ *Id.* at 61-63.

⁶⁹ As noted above, on September 29, 2014, TANC filed a Motion to Lodge the “PACI RAS Changes - CDWR” presentation made at the July 9, 2014 WECC RASRS Meeting, *available at*: <http://www.wecc.biz/committees/StandingCommittees/OC/RASRS/20140708/Lists/Presentations/1/PACI%20RAS%20Changes%20%E2%80%93%20CDWR.pdf>.

⁷⁰ TANC Rehearing Request at 61, 63-64.

⁷¹ Western Rehearing Request at 4-8.

in an adverse impact (as defined in the interconnection agreements). Turlock states that, although it will continue to meet with PG&E and try to address all issues that arise under the Turlock-PG&E Interconnection Agreement, separate and apart from this proceeding, the Commission should nevertheless recognize the impact of the elimination of the remedial action schemes not only on the CAISO balancing authority area, but also on the Turlock balancing authority area.

54. For the forgoing reasons, BANC, TANC, Turlock and Western request that the Commission grant rehearing and find that the termination of the DWR remedial action will raise reliability concerns that warrant full consideration in order to ensure the reliable operation of the electric grid, including all of the balancing authorities in northern California, not just CAISO, and the balancing authorities in the Pacific Northwest.

2. Commission Determination

55. BANC, TANC, Turlock and Western misconstrue the Commission's conclusions concerning reliability. While operational flexibility is related to reliability in a general sense, the concepts are not interchangeable.⁷² We reemphasize that there is a difference between impacts to reliability⁷³ and impacts to operational flexibility stemming from potential reductions in import capability. Given our decision to deny the Complaint, the Commission did not need to specifically address the impact of the expiration of the Comprehensive Agreement on transfer capability in the region as a whole.

56. On the issue of reliability, the Commission stated:

termination of the DWR remedial action schemes does not appear to raise reliability concerns. Specifically, CAISO, the path operator for the California-Oregon Intertie, concluded that

⁷² The additional evidence provided in TANC's motion to lodge is of the same character; TANC maintains that this new evidence indicates that without DWR participation in the remedial action scheme, *transfer capability* may be adversely impacted.

⁷³ See, e.g., CAISO Tariff, Appendix A (Master Definition Supplement), Reliability Criteria: Pre-established criteria that are to be followed in order to maintain desired performance of the CAISO Controlled Grid under Contingency or steady state conditions.

the termination of the DWR remedial action schemes would not adversely affect reliability of the CAISO controlled grid.⁷⁴

57. Regarding concerns that the record contained insufficient evidence to conclude whether there would be an adverse impact on reliability, we note that the October 2014 Report of the WECC RASRS indicates that that subcommittee approved PG&E's proposed changes to the Pacific AC Intertie remedial action scheme. The Commission has accepted into the record and considered this information regarding reliability impacts in WECC following the termination of DWR's participation in the remedial action scheme.

58. We also note that, in the Complaint Order, the Commission recognized the importance of preserving the import capability of the California-Oregon Intertie. The Commission stated its expectation that the parties would "work on a collaborative basis to implement a mutually agreeable solution" to the regional transmission planning concerns.⁷⁵ We continue to encourage the parties to work toward a mutually agreeable resolution.

59. As to Turlock's concerns regarding whether termination of DWR's participation in remedial action might constitute a "Long-Term Change To Operations" under the separate interconnection agreements they have with PG&E, we do not find it appropriate to resolve that issue in this proceeding. For the foregoing reasons, we will deny rehearing with respect to the reliability issue.

G. Financial Impacts

1. Argument

60. Next, TANC asserts that the Commission erred in failing to address the financial consequences of the loss in import capability on the California-Oregon Intertie.⁷⁶ TANC states that despite the Commission's expectation that the parties will work on a collaborative basis to implement a mutually agreeable solution, TANC asserts that if it were possible to resolve this dispute without the involvement of the Commission, the Owners would have done so a year ago. TANC maintains that the Commission narrowly

⁷⁴ Complaint Order, 148 FERC ¶ 61,150 at P 68.

⁷⁵ *Id.* P 69.

⁷⁶ TANC Rehearing Request at 2-4, 66-67 (citing Complaint Order, 148 FERC ¶ 61,150 at P 69).

and erroneously ruled on the contractual aspects of the case without addressing the impacts, including the financial impacts presented.

2. Commission Determination

61. As discussed in the Complaint Order and above, TANC has not met its burden of establishing that PG&E has breached the Operation Agreement. This being so, we need not turn to the issue of financial consequences. Accordingly, we will deny rehearing on this issue.

H. Breakdown of Negotiations

1. Argument

62. TANC further argues that the Commission erred in finding that “negotiations apparently stalled because the Owners were unable to agree on the proper interpretation of the Duties Proviso,” so settlement of this matter failed.⁷⁷

2. Commission Determination

63. Regardless of which factors were at play during the negotiations, the Commission’s ultimate determination would have remained unchanged. We deny rehearing on this basis.

I. Subsequent Answers

1. Argument

64. TANC and Western argue that the Commission abused its discretion in rejecting their answers to answers in the complaint proceeding.⁷⁸ They assert that their later-filed answers responded to assertions raised for the first time in this proceeding, which they were not capable of fully predicting. They contend that the Commission’s decision was an unwarranted departure from established Commission practice of accepting answers

⁷⁷ TANC Rehearing Request at 2-4, 67-69 (citing Complaint Order, 148 FERC ¶ 61,150 at P 70).

⁷⁸ *Id.* at 2-5, 69-74; Western Rehearing Request at 3-8 (citing Complaint Order, 148 FERC ¶ 61,150 at P 33 (accepting PG&E’s initial answer but not later-filed answers and replies)).

when they provide information that assists with the understanding or disposition of issues or that permits issues to be narrowed or clarified.⁷⁹

2. Commission Determination

65. We deny rehearing on this issue. As an initial matter, the Commission's Rules of Practice and Procedure prohibit answers to answers.⁸⁰ Although the Commission has sometimes allowed additional answers on case-by-case basis, the Commission has substantial discretion to manage its proceedings.⁸¹ In this proceeding, the Commission's primary focus centered on making a determination regarding the correct meaning of the Duties Proviso based on our assessment of the plain language of the contract and on the overall structure of the Comprehensive Agreement. This being the case, the Commission properly exercised its discretion in finding that there was sufficient record evidence to render a decision on the issue presented.

J. TANC's Requested Relief

1. Argument

66. TANC asserts that it has shown that there will be significant consequences, as a result of the alleged errors in the Complaint Order and the Commission's failure to grant the requested relief. Thus, TANC requests that the Commission grant rehearing and the relief TANC requested in the Complaint.

⁷⁹ See e.g., TANC Rehearing Request at 72 (citing *Southwest Power Pool, Inc.*, 148 FERC ¶ 61,145, at P 6 (2014); *PacifiCorp v. Western Elect. Coordinating Council*, 142 FERC ¶ 61,172 (2013); *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,126, at P 20 (2010); *Duke Energy Shared Services, Inc.*, 121 FERC ¶ 61,144, at P 12 (2007)).

⁸⁰ 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.

⁸¹ See *Mobil Oil Exploration & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230-31 (1991) ("An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures and priorities....an agency need not solve every problem before it in the same proceeding. This applies even where the initial solution to one problem has adverse consequences for another area that the agency was addressing." (internal citations omitted)); *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003) (administrative agencies enjoy broad discretion to manage their own dockets).

2. Commission Determination

67. Because we continue to find that TANC's complaint is without merit, we need not address its requested relief. Accordingly, we deny rehearing on this issue.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.