

152 FERC ¶ 61,016  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Modesto Irrigation District and  
Turlock Irrigation District

v.

Docket No. EL15-55-000

Pacific Gas and Electric  
Company

ORDER DENYING COMPLAINT

(Issued July 2, 2015)

1. On March 18, 2015, the Modesto Irrigation District (Modesto) and the Turlock Irrigation District (Turlock) (collectively Districts), filed a complaint (Complaint) against Pacific Gas and Electric Company (PG&E) pursuant to sections 202, 206, 306 and 309 of the Federal Power Act (FPA),<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure.<sup>2</sup>

2. The Complaint alleges that PG&E breached certain Interconnection Agreements between PG&E and the Districts due to PG&E's failure to: (1) notify the Districts of the termination of PG&E's Comprehensive Agreement with the California Department of Water Resources (DWR) resulting in the termination of DWR's participation in a remedial action scheme, and the consequent impact on the California-Oregon Transmission Project; (2) study the potential Adverse Impacts<sup>3</sup> resulting from that loss; and (3) assure the Districts that PG&E would either mitigate any Adverse Impacts

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<sup>1</sup> 16 U.S.C. §§ 824a, 824e, 825e and 825h (2012).

<sup>2</sup> 18 C.F.R. § 385.206 (2014).

<sup>3</sup> As will be discussed *infra*, "Adverse Impacts" is a term defined in the Interconnection Agreements.

identified by the study or compensate the Districts for the economic harm stemming from these Adverse Impacts.

3. The Districts assert that, as their claims involve contract disputes regarding the Interconnection Agreements, filed rates that are subject to Commission jurisdiction, the Commission may invoke its discretion to exercise primary jurisdiction over this matter.<sup>4</sup> The Districts request that the Commission summarily resolve the Complaint in their favor based on the pleadings and supporting exhibits, or in the alternative, direct a trial-type hearing to address the issues of fact that cannot be resolved based on the record. As discussed below, we deny the Complaint.

## **I. Background**

### **A. Description of the Parties**

4. Modesto is a California irrigation district, which undertakes both electric and water operations. Modesto owns and operates its own transmission facilities, which are interconnected with PG&E at Westley, and therefore, interconnected with the California Independent System Operator Corporation (CAISO)-Controlled Grid. Modesto is a member of the Transmission Agency of Northern California (TANC)<sup>5</sup> and has a percentage share (320 MW north-to-south) of TANC's entitlement to capacity on the California-Oregon Transmission Project. Modesto directly interconnects with the California-Oregon Transmission Project at Tracy. Modesto uses its California-Oregon Transmission Project entitlement to transmit energy generated from renewable resources located in the Pacific Northwest. Modesto is located in the western sub-balancing authority area of the Balancing Authority of Northern California (BANC), which is adjacent to the Turlock and CAISO balancing authority areas.

5. Turlock is a California irrigation district that supplies electric power and energy to the residents and businesses within its service area. Among the resources that Turlock uses to meet its electric load is the jointly-owned Tuolumne Wind Project located in Washington State. Turlock purchases all of the capacity and energy from the Tuolumne

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<sup>4</sup> Complaint at 6-8 (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)).

<sup>5</sup> TANC is a joint powers agency existing under the laws of California and is a "municipality" as defined in the FPA. 16 U.S.C. § 796(7) (2012). Among TANC's purposes is the provision of electric transmission facilities and services for the use of its members.

Wind Project. Turlock is also a member of TANC and has a percentage share of TANC's entitlement to capacity on the California-Oregon Transmission Project, which it uses for delivery of resources located in the Pacific Northwest, including the Tuolumne Wind Project. Turlock operates its own balancing authority area, which is interconnected to CAISO and BANC.

6. PG&E, a vertically-integrated public utility operating in central and northern California, is subject to the jurisdiction of the Commission pursuant to FPA section 201(e),<sup>6</sup> and is counterparty to the Interconnection Agreements with the Districts.<sup>7</sup>

### **B. Relevant Facilities**

7. The California-Oregon Intertie is the northern part of a three-line system, which is comprised of the two Pacific AC Intertie lines and the California-Oregon Transmission Project. The two-line Pacific AC Intertie runs between Malin substation (in southern Oregon) to Tesla Substation (in central California), and is predominantly owned by PG&E, with the northernmost portions owned by Western Area Power Authority and PacifiCorp. The California-Oregon Transmission Project is a 340-mile, 500 kV alternating current transmission line that runs from Captain Jack substation (in southern Oregon) to Tracy Substation (in central California). TANC owns an 87 percent interest in, and is the project manager of, the California-Oregon Transmission Project. The California-Oregon Intertie is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central California.

8. Turlock and Modesto jointly own several transmission facilities, including the Westley-Tracy Transmission Project, a 27-mile, double-circuit, 230 kV transmission line, which interconnects their systems with Western transmission facilities at its Tracy Station. Turlock and Modesto also jointly own the Westley Substation, and the Westley-Parker, Westley-Walnut and Parker-Walnut 230 kV lines, which allow power received at the Westley Substation interconnection to serve Turlock and Modesto loads.

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<sup>6</sup> 16 U.S.C. § 824(e) (2012).

<sup>7</sup> As will be discussed, PG&E was also counterparty to the Comprehensive Agreement with DWR. In 1998, as part of California's electric industry restructuring, PG&E transferred operational control of its transmission system to CAISO, which operates and controls these facilities under the CAISO's Open Access Transmission Tariff. CAISO establishes and implements procedures for the scheduling of power within PG&E's balancing authority area.

9. The Interconnection Agreements establish Westley Junction as the point of interconnection between the Districts and PG&E, where PG&E's Tesla-Westley 230 kV transmission line interconnects with the 230 kV conductors jointly owned by Turlock and Modesto, and where PG&E's Los Banos-Westley 230 kV transmission line interconnects with the 230 kV conductors jointly owned by Turlock and Modesto. The Tesla, Los Banos, and Tracy substations are major 500/230 kV substations with extensive network connections with the rest of the Western Electricity Coordinating Council interconnection.

**C. Relevant Provisions of the Interconnection Agreements**

10. The Districts and PG&E renegotiated the relevant Interconnection Agreements during 2008-2009, replacing prior versions that had been in place for decades.<sup>8</sup> The Interconnection Agreements govern the interconnection of PG&E's electric transmission system with the systems of Turlock and Modesto, respectively, and provide the terms under which the independent interconnected electric utility systems coordinate the operation of their respective systems.<sup>9</sup>

11. Section 9.11 of each Interconnection Agreement addresses Avoidance of Adverse Impacts and provides specific requirements and procedures by which each party should avoid adversely impacting the other party's electric system.<sup>10</sup> Specifically, section 9.11.1(a) of the Interconnection Agreements sets forth notice requirements:

[I]f a Primary Party<sup>[11]</sup> intends to make a Modification, New Facility Addition, or Long-Term Change to Operations on its

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<sup>8</sup> The current Turlock Interconnection Agreement became effective in January 2009, and the current Modesto Interconnection Agreement became effective three months later, in April 2009. Both Interconnection Agreements have a remaining term of about a decade.

<sup>9</sup> The Turlock and Modesto Interconnection Agreements are designated as Service Agreement No. 99 and 110, respectively, under PG&E's Transmission Owner Tariff, Volume No. 5, and are attached to the complaint as Complaint Ex. COM-3 and Complaint Ex. COM-4, respectively.

<sup>10</sup> Complaint Ex. COM-3, section 9.11; COM-4, section 9.11.

<sup>11</sup> A "Primary Party is "[a] Party that proposes to make or makes a Modification, New Facility Addition, or Long-Term Change to Operations on its own System." Complaint Ex. COM-3, section 4.30; COM-4, section 4.28.

System that may reasonably result in an Adverse Impact to the System of the Coordinating Party,<sup>[12]</sup> before making any irrevocable commitment to proceed and before any Long-Term Change to Operations occurs, the Primary Party shall provide written notice to the Coordinating Party . . . .<sup>[13]</sup>

12. Section 9.11.1(b) of the Interconnection Agreements provides Coordinating Parties the right to demand a study in certain circumstances where the Coordinating Party failed to provide the above-mentioned notice:

To the extent that a Coordinating Party has a reasonable belief that the primary Party failed to provide reasonable or timely notice as required in section 9.11.1(a), above, and proceeded with construction of a Modification, New Facility Addition or Long-Term Change to Operations on its System that may result or may have resulted in an Adverse Impact on the system of the Coordinating Party, the Coordinating Party may demand that study be undertaken to determine whether the actions(s) taken by the Primary party will result or have resulted in an Adverse Impact on the system of the Coordinating Party....<sup>[14]</sup>

13. Section 9.11.2 of the Interconnection Agreements provides for a joint study process:

If requested by either Party, the Parties shall conduct joint studies of any proposed Modification, New Facility Addition, or Long-Term Change to Operations of its System that may reasonably be expected to result in an Adverse Impact....<sup>[15]</sup>

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<sup>12</sup> A “Coordinating Party” is [a] Party whose System is or may be subject to an Adverse Impact as a result of a Modification, New Facility Addition, or Long-Term Change to Operations on the System of the Primary Party.” Complaint Ex. COM-3, section 4.11; COM-4, section 4.11.

<sup>13</sup> Complaint Ex. COM-3, section 9.11.1(a); Ex. COM-4, section 9.11.1.a.

<sup>14</sup> Complaint Ex. COM-3, section 9.11.1(b); Ex. COM-4, section 9.11.1.b.

<sup>15</sup> Complaint Ex. COM-3, section 9.11.2; Ex. COM-4, section 9.11.2.

In addition, section 9.11.2 provides guidance on how to perform these studies to determine whether there may be an Adverse Impact. This guidance includes preparing a base case for system impact studies that reflect then-current system conditions.<sup>16</sup> Then, the study would determine whether there is an Adverse Impact in accordance with Good Utility Practice, “such as by simulating the behavior of the Coordinating Party’s System under normal and contingency conditions and [sic] with and without the proposed Modification, New Facility Addition, or Long-Term Change to Operations.”<sup>17</sup>

14. Assuming an Adverse Impact has been identified through the study process, section 9.11.3 imposes the obligation to avoid, fully mitigate, or compensate for that Adverse Impact.<sup>18</sup>

15. Before invoking any provision under section 9.11.1(a), 9.11.1(b), 9.11.2, or 9.11.3, one Party must make (or plan to make) a “Modification, New Facility Addition, or Long-Term Change to Operations of its System.” A Modification is defined as:

[t]he removal of, or physical change to, any element of either Party’s then currently existing System, including any Primary Party or Third-Party generating facility, power control device, or electric transmission facility.<sup>[19]</sup>

A Long-Term Change to Operations is defined as:

[an] action intentionally taken, or an event permitted, by a Party that materially alters, on a long-term basis, the configuration or other operational characteristics of its System. . . . The following are examples of actions and events that qualify as a Long-Term Change to Operations when taken or occurring on a long-term basis, though this list is not exhaustive:

(a) disarming or materially modifying a Remedial Action Scheme;

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<sup>16</sup> Complaint Ex. COM-3, section 9.11.2 ¶ 2; Ex. COM-4, section 9.11.2 ¶ 2.

<sup>17</sup> Complaint Ex. COM-3, section 9.11.2 ¶ 3; Ex. COM-4, section 9.11.2 ¶ 3.

<sup>18</sup> Complaint Ex. COM-3, section 9.11.3; Ex. COM-4, section 9.11.3.

<sup>19</sup> Complaint Ex. COM-3, section 4.26; Ex. COM-3, section 4.24.

(f) changing any operating practice or procedure that might result in new or revised operating nomogram.

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(i) action or events similar in nature and/or effect to the foregoing.<sup>[20]</sup>

16. Moreover, in order for a party to invoke the provisions of section 9.11.1(a), 9.11.1(b), 9.11.2, or 9.11.3, the Modification or Long-Term Change to Operations must have an “Adverse Effect” on the “Coordinating Party’s System.” An Adverse Impact is defined as:

An effect on a Coordinating Party’s System resulting from a Modification, New Facility Addition, or Long-Term Change to Operations to the Primary Party’s System that (1) materially degrades reliability of the Coordinating Party’s System or (2) materially reduces the ability of the Coordinating Party’s System to physically transfer power into, out of, or within said System as compared to the transmission system and generation facilities that are agreed by the Parties to be in service before implementation of the proposed Modification, New Facility Addition, or Long-Term Change to Operations....<sup>[21]</sup>

17. Finally, a System is defined as:

All properties and other assets, now or hereafter existing, which are leased to, licensed to, owned (or jointly-owned) by, or controlled (or jointly-controlled) by a Party....<sup>[22]</sup>

#### **D. Expiration of the Comprehensive Agreement**

18. Relevant here, under a previous Comprehensive Agreement, PG&E provided interconnection of all DWR plants and facilities in PG&E’s service territory and firm transmission service to DWR since 1983. Under that agreement, DWR’s generation plants and water pumping loads were subject to certain remedial action scheme

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<sup>20</sup> Complaint Ex. COM-3, at section 4.24; Ex. COM-4, section 4.23.

<sup>21</sup> Complaint Ex. COM-3, section 4.2; Ex. COM-4, section 4.2.

<sup>22</sup> Complaint Ex. COM-3, section 4.33; Ex. COM-4, section 4.32.

curtailment arrangements, which allowed PG&E to automatically interrupt the operation of various DWR pumping loads and generation facilities during certain system contingencies. DWR's participation in the remedial action scheme supported the daily operating limits of north to south imports through the California-Oregon Intertie, the primary interconnection between Northern California and Oregon. The Comprehensive Agreement expired by its own terms on December 31, 2014.<sup>23</sup>

19. Concern over the loss of DWR participation in the remedial action scheme upon the expiration of the Comprehensive Agreement was the focus of a separate complaint brought by TANC against PG&E, in which TANC alleged an anticipatory breach of PG&E's obligations under the 2012 Owners Coordinated Operation Agreement (Operation Agreement) between the owners of the California-Oregon Intertie.<sup>24</sup> The Commission denied TANC's complaint, finding that the Operation Agreement does not require PG&E to replace the remedial action scheme upon cancellation or termination of the Comprehensive Agreement and does not require PG&E alone to replace any remedial action scheme provided thereunder, including substituting some other means of achieving the same objective as the remedial action scheme.<sup>25</sup>

## II. The Districts' Complaint

20. The Districts assert that PG&E's refusal to study and mitigate the alleged Adverse Impacts resulting from PG&E's termination of its Comprehensive Agreement with DWR, which in turn resulted in termination of DWR's participation in the PG&E remedial action scheme, constitutes a breach by PG&E of various provisions of its respective Interconnection Agreements with the Districts. The Districts state that the lack of DWR's participation in the PG&E remedial action scheme will cause reductions in transmission capability over the California-Oregon Transmission Project, and will materially reduce the Districts' ability to transfer power into, out of, and within their respective systems and may have significant adverse impacts on the Districts' reliability.

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<sup>23</sup> On December 29, 2014, the Commission accepted PG&E's October 29, 2014 notice of termination of the Comprehensive Agreement (as well as several replacement agreements). *Pac. Gas and Elec. Co.*, 149 FERC ¶ 61,276 (2014), *order on reh'g*, 151 FERC ¶ 61,252 (2015).

<sup>24</sup> *See Transmission Agency of Northern California v. Pacific Gas and Electric Company*, 148 FERC ¶ 61,150 (2014) (TANC Complaint Order), *order on reh'g*, 150 FERC ¶ 61,133 (2015), *petition for review pending*, *Transmission Agency of Northern California, et al. v. FERC*, D.C. Cir. No. 15-1057.

<sup>25</sup> *See* TANC Complaint Order, 148 FERC ¶ 61,150 at P 62.

The Districts contend that, as a result of PG&E's failure to replace the benefits of DWR's participation in the remedial action scheme, PG&E has breached three provisions of its Interconnection Agreements with the Districts, as described below.<sup>26</sup>

**A. The Alleged Contract Violations**

21. First, the Districts assert that, pursuant to section 9.11.1(a) of the Interconnection Agreements, PG&E breached its obligation to notify the Districts of PG&E's intention to make a Modification, New Facility Addition, or Long-Term Change to Operations on its system that may reasonably result in an Adverse Impact to the Systems of the Districts.<sup>27</sup> The Districts assert that PG&E is required to provide written notification to the Districts of its intent to make such changes before making a commitment to proceed and before any action is taken. The Districts state that any such notice is required to include: (1) a description of the New Facility Addition, Modification or Long-Term Change to Operations; (2) the expected schedule for installation or implementation and description of any studies performed to assess the possible Adverse Impact on the Districts' Systems and the nature of the Adverse Impact; and (3) a statement as to whether PG&E requests joint studies in accordance with the joint study process in the Interconnection Agreements. The Districts state that PG&E never provided the requisite notification.<sup>28</sup>

22. The Districts contend that PG&E's removal of the DWR portion of PG&E's remedial action scheme (which the Districts allege constitutes a physical change to an element of PG&E's then existing System) comprises a Modification, as defined in sections 4.26 and 4.24 of Turlock's and Modesto's Interconnection Agreements.<sup>29</sup>

23. The Districts assert that the definition of Long-Term Change to Operations referenced in the Interconnection Agreements also includes modifications to PG&E's remedial action scheme. They further argue that the changes to the remedial action scheme will result in a new or revised operating nomogram as stated in subsection (f) of the Long-Term Change to Operations definition. Thus, the Districts contend that

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<sup>26</sup> Complaint at 2-4.

<sup>27</sup> *Id.* at 15, 34-39.

<sup>28</sup> *Id.* at 38-39.

<sup>29</sup> *Id.* at 15-16.

termination of DWR participation in PG&E's remedial action scheme constitutes both a Long-term Change to Operations and a Modification.<sup>30</sup>

24. The Districts contend that the aforementioned definitions of a Modification, Long-Term Change to Operations, Adverse Impacts, and System, when read together with section 9.11.1(a) of the Interconnection Agreements, demonstrate that PG&E was obligated to notify the Districts of its intent to modify PG&E's remedial action scheme and satisfy the associated obligations set forth in their Interconnection Agreements.<sup>31</sup>

25. Second, the Districts assert that, pursuant to section 9.11.1(a) of the Interconnection Agreements, PG&E is obligated to conduct a study to determine if the termination of DWR's participation in the remedial action scheme will cause an adverse impact on the Districts' respective Systems. However, should PG&E decide not to conduct any studies, the Districts argue that under section 9.11.1(b) of the Interconnection Agreements, the Districts, as the Coordinating Party, have the right to demand that PG&E conduct a study if they have a reasonable belief that PG&E's actions may result in an Adverse Impact on the their respective Systems. Additionally, the Districts assert that their respective Interconnection Agreements also provide either party with the right to request a joint study.<sup>32</sup>

26. The Districts explain that they made various attempts to obtain information from PG&E pertaining to the termination of DWR's participation in the remedial action scheme including requesting any studies that PG&E conducted to determine the impact of the termination on the Districts' respective Systems. The Districts state that they subsequently "invoked their rights under the Interconnection Agreements and demanded that PG&E initiate an Interconnection Agreement study to determine if its modifications to the remedial action scheme would cause Adverse Impacts on the Districts' Systems."<sup>33</sup>

27. The Districts indicate that the demand for a study led to a series of discussions and exchanges to develop a study work plan. However, the Districts state that PG&E objected to the Districts' request to study the potential Adverse Impacts on the Districts' Systems resulting from reductions in Available System Transfer Capability (ASTC) and Available Scheduling Capability (ASC) over the California-Oregon Transmission Project

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<sup>30</sup> *Id.* at 15-17.

<sup>31</sup> *Id.* at 18.

<sup>32</sup> *Id.* at 20-22, 36-37, 39-43.

<sup>33</sup> *Id.* at 24.

upon termination of DWR's participation in PG&E's remedial action scheme. Instead, according to the Districts, PG&E indicated that a study was being contemplated by TANC, PG&E and other parties to the Operation Agreement concerning the impacts of changes to PG&E's remedial action scheme on the California-Oregon Transmission Project (Operations Agreement Study). The Districts contend that there was an agreement, based on those discussions, that upon completion of the Operations Agreement Study, portions of the Operations Agreement Study data and information would be incorporated in another study under the Interconnection Agreements, which would address Adverse Impacts on the Districts' Systems and address any mitigation measures if necessary. The Districts indicate that PG&E disagrees that any understanding had been reached on the issue of a specific study addressing Adverse Impacts on the Districts' Systems.<sup>34</sup>

28. The Districts assert that it is PG&E's contention that the reduction in California-Oregon Transmission Project ASTC and ASC is not significant enough to warrant initiating, participating in, or paying for a study. However, the Districts assert that the Interconnection Agreements do not provide PG&E discretion to refuse to conduct a study demanded by either of the Districts.<sup>35</sup> The Districts therefore assert that PG&E has breached its obligation under the Interconnection Agreements to conduct a study after the Districts invoked their rights to demand such study.

29. The Districts further contend that PG&E also breached its obligation under sections 9.11.2 of the Interconnection Agreements by refusing to participate in a joint study, as requested by the Districts, using the same reasoning advanced for not conducting a separate study by PG&E.<sup>36</sup>

30. Third, the Districts state that, under sections 9.11.3 of the Interconnection Agreements, if the studies determine that PG&E's modification of its remedial action scheme cause Adverse Impacts, PG&E is obligated to mitigate the Adverse Impacts or compensate the Districts before the modifications occur.<sup>37</sup> The Districts assert that PG&E has stated that it is not required to mitigate Adverse Impacts resulting from its

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<sup>34</sup> *Id.* at 26-28.

<sup>35</sup> *Id.* at 41.

<sup>36</sup> *Id.* at 42-43.

<sup>37</sup> *Id.* at 22, 43-45.

remedial action scheme modifications.<sup>38</sup> The Districts also assert that PG&E has refused to study potential impacts identified by the Districts and therefore contends that PG&E has anticipatorily breached the Districts' Interconnection Agreements.<sup>39</sup>

**B. Alleged Harm**

31. The Districts contend that PG&E's modifications to the remedial action scheme will cause Adverse Impacts on the Districts' Systems, resulting in millions of dollars in economic damages and reductions in the reliability of their respective Systems. As an example, the Districts assert that PG&E's modifications expose them to reliability and economic risks stemming from the potential inability to move power into and out of their Systems from the Pacific Northwest. As a result, the Districts claim that they could suffer significant economic damage having to replace power purchases from the Pacific Northwest with purchases in the market.<sup>40</sup> The Districts also assert that PG&E acknowledges that its remedial action scheme modifications will reduce ASTC and ASC over the California-Oregon Transmission Project. Although PG&E contends that the impacts of the reduction in ASTC and ASC would not be significant, the Districts assert that they have a right to know exactly what those impacts will be.<sup>41</sup>

32. The Districts explain that Turlock, as a Balancing Authority Area, relies on a portion of the ASTC and ASC over the California-Oregon Transmission Project to meet its NERC reliability obligations. In addition, Turlock imports capacity from entities in the Northwest Power Pool in the event of disturbances, emergencies, or outages on its System. The Districts claim that a material reduction in Turlock's share of the ASTC and

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<sup>38</sup> *Id.* at 44 (citing Ex. No. COM-12, PG&E December 19, 2014 Letter, at 1 ("As PG&E has explained, the termination of [DWR's participation in remedial action scheme is not a Modification, New Facility Addition, or Long-Term Change to Operations that may reasonably be expected to result in an Adverse Impact to [Modesto]'s or [Turlock]'s systems that PG&E must study or mitigate under the [Interconnection Agreements].").

<sup>39</sup> The Districts state that the Interconnection Agreements are to be interpreted, governed by and construed under California Law. *Id.* at 24 (citing Ex. No. COM-3, Turlock Interconnection Agreement, section 22; Ex. No. COM-4, Modesto Interconnection Agreement, section 22).

<sup>40</sup> *Id.* at 36-37, 48-49.

<sup>41</sup> *Id.* at 49-50.

ASC could prevent Turlock from meeting its reserve obligations and thereby jeopardize its reliability and potential reliability in the region.<sup>42</sup>

### **C. Requested Relief**

33. The Districts request that the Commission: (1) find that PG&E has unlawfully breached and anticipatorily breached the Interconnection Agreements; (2) direct PG&E to provide the Districts with the information required under the notice provisions of the Interconnection Agreements; (3) direct PG&E to conduct studies on the potential Adverse Impacts to the Districts due to PG&E's remedial action scheme modification; and (4) declare that PG&E is obligated to mitigate or compensate the Districts under the Interconnection Agreements for any Adverse Impacts identified in the studies due to PG&E's remedial action scheme modifications. In the alternative, the Districts request that the Commission establish a trial-type hearing.<sup>43</sup>

### **III. Notice of Filing and Responsive Pleadings**

34. Notice of the Districts' Complaint was published in the *Federal Register*, 80 Fed. Reg. 16,671 (2015), with interventions and protests due on or before April 7, 2015.<sup>44</sup> Timely motions to intervene were filed by the City of Santa Clara, California; DWR; Powerex Corp.; the Sacramento Municipal Utility District; and Western. Timely motions to intervene and comments in support of the Complaint were filed by the City of Redding, California and the M-S-R Power Agency (Redding/M-S-R); BANC and TANC. PG&E filed a timely answer to the Complaint. On May 6, 2015, the Districts filed a motion for leave to answer and answer to PG&E's answer.

### **IV. Discussion**

#### **A. Procedural Matters**

35. 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.

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<sup>42</sup> *Id.* at 50-54.

<sup>43</sup> *Id.* at 4-5, 70.

<sup>44</sup> The Commission granted a motion filed by PG&E to extend the time to answer the Complaint until April 21, 2015. *See* Notice of Extension of Time, Docket No. EL15-55-000 (April 7, 2015).

36. 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 Districts' answer to PG&E's answer and will, therefore, reject it.

**B. Parties' Comments**

**1. PG&E's Answer**

37. PG&E states that under the Interconnection Agreements, it is only obligated to provide notice to Modesto and Turlock, respectively, if it makes or intends to make a Modification, New Facility Addition, or Long-Term Change to Operations that may reasonably result in an Adverse Impact to their respective Systems. PG&E contends that the termination of DWR's participation in the remedial action scheme satisfies none of these elements. PG&E asserts, therefore, that it has no obligation under the Interconnection Agreements to notify the Districts of the loss of DWR participation in the remedial action scheme, to study any impacts, or to mitigate or compensate for those impacts.<sup>45</sup>

38. PG&E asserts that the definition of Modification in the Interconnection Agreements is restricted in scope to physical changes, and does not include procedures such as the remedial action scheme at issue.<sup>46</sup> PG&E notes that the only physical facilities that will be affected by the discontinuation of DWR's participation in the remedial action scheme are those in DWR's electric system, not in PG&E's system. PG&E states that the Commission has already found that the loss of DWR's participation in the remedial action scheme was not a physical change to PG&E's system.<sup>47</sup>

39. PG&E also contends that DWR's ceasing its participation in the remedial action scheme was a third-party action out of PG&E's control, and thus does not qualify as a Long-Term Change to Operations that must be studied under section 9.11 of the Interconnection Agreements. PG&E explains that the Comprehensive Agreement was an existing transmission contract that was appropriately allowed by Commission policy to expire by its own terms on December 31, 2014, and that the decision to terminate the

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<sup>45</sup> PG&E Answer at 2-6, 29-32.

<sup>46</sup> *Id.* at 32-33.

<sup>47</sup> *Id.* at 33 (citing TANC Complaint Order, 148 FERC ¶ 61,150 at P 67 ("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")).

remedial action scheme under that agreement was ultimately DWR's decision, not PG&E's.<sup>48</sup> PG&E asserts that the definition of Long-Term Change to Operations in the Interconnection Agreements explicitly excludes "actions taken by a Third Party, including [CAISO], that are beyond the control of the Parties."<sup>49</sup>

40. PG&E further argues that the loss of DWR's participation in the remedial action scheme and the potential for curtailments on the California-Oregon Transmission Project will not have an Adverse Impact on the Turlock or Modesto Systems.<sup>50</sup> First, PG&E contends, the California-Oregon Transmission Project is not owned, leased to, licensed or controlled by Turlock or Modesto, and is thus not a part of the Districts' Systems as defined in the Interconnection Agreements.<sup>51</sup> PG&E states that the Districts' Systems include the Westley Substation and the 230 kV transmission lines between the Westley and Tracy Substation and their service territories, but not any part of the California-Oregon Transmission Project.

41. PG&E also contends that the loss of DWR's participation in the remedial action scheme will not affect the ability of either Turlock or Modesto to physically transfer power into, out of, or within their respective Systems.<sup>52</sup> PG&E asserts that there are many other transmission lines that interconnect to Turlock's and Modesto's Systems at the Tracy and Westley Substations, and that a reduction in transfer capability on the California-Oregon Transmission Project will not limit the ability of power to flow from those other transmission lines to their Systems.<sup>53</sup>

42. In response to the argument that curtailments on the California-Oregon Transmission Project will degrade the reliability of Turlock's System by limiting Turlock's ability to transfer power from the Pacific Northwest to satisfy operating reserves, PG&E counters that Adverse Impacts under the Interconnection Agreements do not include effects on the Districts' contractual arrangements for power.<sup>54</sup> PG&E

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<sup>48</sup> *Id.* at 34-35.

<sup>49</sup> *Id.* at 35 (citing Ex. COM-33, section 4.24; Ex. COM-4, section 4.24).

<sup>50</sup> *Id.* at 36-43.

<sup>51</sup> *Id.* at 37-38.

<sup>52</sup> *Id.* at 39-40.

<sup>53</sup> *Id.* at 40-41.

<sup>54</sup> *Id.* at 41.

explains that it has interconnection agreements with many other entities, with and without interest in the California-Oregon Transmission Project. PG&E contends that good utility practice does not require PG&E to assess the impact of curtailments of the California-Oregon Transmission Project on those entities' power purchase agreements, and that any other outcome would make every transmission owner or operator the insurer of every interconnected entity's power purchase agreements.<sup>55</sup> PG&E argues that, as these potential indirect effects on the Districts' contractual arrangements for power are not included under the definition of Adverse Impact, PG&E is not obligated to study or mitigate such impacts under the Interconnection Agreements.<sup>56</sup>

43. PG&E further contends that the Districts have not suffered damages due to the loss of DWR participation in the remedial action scheme because the Interconnection Agreements do not protect against indirect, consequential damages from any curtailment of the California-Oregon Intertie that may affect the Districts' ability to transfer power over the California-Oregon Transmission Project to their Systems.<sup>57</sup>

44. PG&E also states that due to continued upgrades to its System, the impact of any curtailments on the California-Oregon Transmission Project resulting from loss of DWR participation in the remedial action scheme has declined, and that studies show that there will be minimal curtailments, and even then, only when there are simultaneously high flows on California-Oregon Intertie and high Northern California hydroelectric generation.<sup>58</sup>

45. PG&E argues that even if it had performed studies regarding the loss of DWR participation in the remedial action scheme, the studies would not have shown that the alleged impacts to the Districts' abilities to import power over the California-Oregon Transmission Project were Adverse Impacts. PG&E states that system impact studies assess whether a change has an impact on the reliability of an interconnected entity by examining the operation of the system with and without the change; however, this examination does not include the indirect consequences of contractual arrangements over facilities not within the System.<sup>59</sup> PG&E argues that potential consequences to Turlock

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<sup>55</sup> *Id.* at 43.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 44.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 45.

and Modesto from curtailments on the California-Oregon Transmission Project, resulting from the loss of DWR participation in the remedial action scheme, should be viewed no differently from any other event that could cause curtailment of the transmission line. PG&E points out that whenever the transmission service over the line is curtailed, Turlock is not able to rely on its full capacity to transfer operating reserves, and that it was Turlock's decision to rely upon the Pacific Northwest for operating reserves that created this risk.<sup>60</sup>

46. Finally, PG&E states that it is the Operation Agreement, not these Interconnection Agreements, under which impacts to the California-Oregon Transmission Project should be assessed. PG&E emphasizes that the Commission has previously rejected TANC's claims finding that PG&E is not solely responsible to mitigate for the expected loss of DWR's participation in the remedial action scheme.<sup>61</sup> PG&E states that the parties to the Operation Agreement, who have a stake in the California-Oregon Transmission Project, are cooperating to study impacts and potential mitigation measures. However, PG&E contends that since the California-Oregon Transmission Project is not a part of either Turlock's or Modesto's Systems, curtailment of that line is not covered by the Interconnection Agreements.<sup>62</sup>

## 2. Intervenor Comments

47. Redding/M-S-R, BANC and TANC filed comments in support of the Complaint, requesting that the Commission grant the relief requested by the Districts. TANC and Redding/M-S-R note that in a letter dated December 19, 2014 from PG&E to the Districts, PG&E states that "[a]s [California-Oregon Transmission Project Participants, [Modesto] and [Turlock] receive the benefits and are subject to the obligations and restrictions of the [Operation Agreement]."<sup>63</sup> TANC and Redding/M-S-R contend that by making this statement, PG&E makes at least two erroneous assertions: (1) that Turlock and Modesto are California-Oregon Transmission Project participants and (2) that a contract between TANC and PG&E forecloses TANC Members from enforcing their own separate contracts with PG&E. TANC and Redding/M-S-R contend that TANC, as a legally separate and distinct entity from its Members, entered into, and is

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<sup>60</sup> *Id.* at 45-46.

<sup>61</sup> *Id.* at 46-47 (citing TANC Complaint Order, 148 FERC ¶ 61,150 at PP 60-62).

<sup>62</sup> *Id.* at 47.

<sup>63</sup> TANC Comments at 2; Redding/M-S-R Comments at 5 (citing Complaint Ex. COM-12).

bound by, the Operation Agreement and that the contract does not bind TANC Members, who are not parties to that contract; therefore, they contend that the Commission's ruling in the TANC Complaint Order does not excuse PG&E from its responsibilities under the Interconnection Agreements with the Districts.<sup>64</sup>

48. BANC contends that contracts such as the Interconnection Agreements form the backbone of long-standing operational arrangements and responsibilities of interconnected parties and that those obligations are not obviated by the superimposition of new market structures or other operational rules, unless the terms of the contracts have been modified by Commission action.<sup>65</sup> BANC notes that the Interconnection Agreements have not been so modified. BANC states that PG&E and others should be willing to study in a collaborative and coordinated way the effects of major operational or system changes, to identify adverse impacts that affect the economic and reliable operation of the interconnected grid.

### **C. Commission Determination**

49. The Complaint contends that PG&E breached its duties under the Interconnection Agreements to notify, study or mitigate for Adverse Impacts to the Districts' Systems due to the loss of DWR participation in the remedial action scheme and the effects that loss would have on the California-Oregon Transmission Project. For the reasons outlined below, we deny the Complaint.

50. As we read the relevant provisions of the Interconnection Agreements together, in order to find that PG&E breached the Interconnection Agreements, the loss of DWR participation in the remedial action scheme must have either been a Modification or Long-Term Change to Operations of PG&E's System that had an Adverse Impact on Turlock's and/or Modesto's Systems as these terms are defined in the Interconnection Agreement.

51. As outlined above, an Adverse Impact (section 4.2 of the Interconnection Agreements) includes defined actions that:

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<sup>64</sup> TANC Comments at 2-4; Redding/M-S-R comments at 5-6. While we agree that the Operation Agreement does not bind individual TANC members who are not parties to that contract, we nevertheless are compelled to deny the Complaint for the reasons herein discussed.

<sup>65</sup> BANC Comments at 3.

(1) materially degrades reliability of the Coordinating Party's System or (2) materially reduces the ability of the Coordinating Party's System to physically transfer power into, out of, or within said System as compared to the transmission system and generation facilities that are agreed by the Parties to be in service before implementation of the proposed Modification, New Facility Addition, or Long-Term Change to Operations.

52. In this case, the "Coordinating Party's System" refers to the Districts' System(s) and not to the California-Oregon Transmission Project. As set forth *supra*, to be considered as a part of its "System," a party must lease, license, own (or jointly own), or control (or jointly control) the relevant facilities.<sup>66</sup> However, while the Complaint focuses on the allegation that the loss of DWR's participation in the PG&E remedial action scheme will cause reductions in transfer capability over the California-Oregon Transmission Project,<sup>67</sup> the Districts offer scant information regarding effects on the Districts' Systems themselves.

53. We find it dispositive that the Districts do not own or control any portion of the California-Oregon Transmission Project, and thus the California-Oregon Transmission Project cannot be considered part of the Districts' Systems, as defined in the Interconnection Agreements. TANC is the predominant owner of the California-Oregon Transmission Project, and while the Districts may have contractual rights, as members of TANC, to use a portion of TANC's transfer capability on the California-Oregon Transmission Project, they do not lease, license, own or control any portion of the California-Oregon Transmission Project.<sup>68</sup>

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<sup>66</sup> Complaint Ex. COM-3, section 4.33; Ex. COM-4, section 4.32.

<sup>67</sup> *See, e.g.*, Complaint at 2 ("PG&E's RAS [remedial action scheme] modifications will cause reductions in transmission capacity [*sic*] over the California-Oregon Transmission Project[]"), 27-28, 31, 46-54.

<sup>68</sup> *See id.* at 2, 9-12, 55 ("The Districts are also not [California-Oregon Transmission Project] Participants."). *See also id.* at 58 ("[T]he Districts are not TANC and are neither parties to the [Operations Agreement] nor third-party beneficiaries thereunder...."); *accord* TANC Comments at 2-4; Redding/M-S-R comments at 5-6; PG&E Answer at 9-12. We note here that any reduction in TANC's share of transfer capability on the California-Oregon Transmission Project, in turn, would be reallocated to its members (such as Turlock and Modesto). The Districts nevertheless would have

(continued...)

54. We therefore cannot find that PG&E has breached its obligations under section 9.11 of the Interconnection Agreements regarding impacts to the Districts' Systems, because irrespective of any effects that the loss of DWR's participation in the remedial action scheme may have on the California-Oregon Transmission Project, the California-Oregon Transmission Project is not part of the Districts' Systems. The Districts' rights to use a portion of capacity on the California-Oregon Transmission Project do not make the California-Oregon Transmission Project a part of their "Systems."

55. Moreover, although the Districts allege that the loss of DWR's participation in the remedial action scheme will have a reliability impact on the Turlock and/or Modesto Systems and materially reduce the ability of Turlock or Modesto to physically transfer power into, out of, or within their respective Systems, the record reflects no supporting evidence regarding the likely impact on their Systems.

56. As explained above, prior to the expiration of the Comprehensive Agreement, DWR allowed PG&E to automatically interrupt the operation of various DWR pumping loads and generating facilities under certain conditions. Since the expiration of the Comprehensive Agreement, PG&E has reprogrammed the remedial action scheme to respond to the same contingencies and achieve mitigation without DWR's participation. We find no evidence demonstrating that the loss of the DWR participation or this reprogramming has or will reduce reliability of the Districts' respective Systems.

57. Moreover, prior to the spring 2014 discussions with the Districts, PG&E had determined that there was no reasonable likelihood of Adverse Impacts to the Districts' Systems due to the termination of DWR's participation in the remedial action scheme.<sup>69</sup> Based on the design of the remedial action scheme, the expiration of DWR's participation would not impact the Tesla-Los Banos and Tracy-Los Banos Double Line or the Tesla-Tracy and Tracy-Los Banos Double Line (the Districts' interconnection points) as the DWR pumps were not interrupted for these double line outages as a part of the remedial action scheme.<sup>70</sup>

58. In addition, according to CAISO Transmission Planning Process studies, while there could be minimal impacts to the transmission system south of Turlock's and

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the same percentage entitlement of TANC's transfer capability (approximately 30 percent) with or without the DWR participation in the remedial action scheme.

<sup>69</sup> See Ex. PGE-2 at P 9.

<sup>70</sup> See Complaint Ex. COM-10 and COM-16.

Modesto's Systems, CAISO would manage the grid through congestion management without impacting the District's Systems.<sup>71</sup> As a result, PG&E concluded that the loss of DWR participation in the remedial action scheme was not likely to impact the Districts' Systems or reduce their ability to physically transfer power into, out of, or within those Systems.<sup>72</sup>

59. We find it significant that PG&E communicated these conclusions to the Districts.<sup>73</sup> The record demonstrates that Turlock and Modesto then conceded that a study of potential impacts (other than from the curtailment of the California-Oregon Transmission Project) on the service territories and jointly-owned facilities of Turlock and Modesto was not necessary.<sup>74</sup> We will not direct PG&E to undertake what the Districts conceded is an unnecessary study.

60. The issue of whether the loss of DWR participation in the remedial action scheme may cause a reduction in transfer capability on the California-Oregon Transmission Project itself has already been considered and decided in the TANC Complaint Order.<sup>75</sup> We will not revisit this issue in this proceeding.

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<sup>71</sup> See Ex. PGE-2 at P 9.

<sup>72</sup> *Id.*

<sup>73</sup> See Ex. PGE-1 at PP 33-37; Complaint Ex. Nos. COM-6 through COM-13, COM-16, COM-17.

<sup>74</sup> See Ex. PGE-1 at PP 33-37; Complaint Ex. Nos. COM-6 through COM-13, COM-16, COM-17; Complaint Ex. No. COM-1 at P 51 (“the Districts concluded that it would be unnecessary to study whether PG&E’s [remedial action scheme][ ] modification caused overloads on the Los Banos – Westley 230 kV Line due to the Tesla – Los Banos and Tracy - Los Banos Double Line or the Tesla – Tracy and Tracy – Los Banos Double Line outages.”).

<sup>75</sup> See TANC Complaint Order, 148 FERC ¶ 61,150 at P 69.

The Commission orders:

The Districts' Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.