

144 FERC ¶ 61,107  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Pacific Gas and Electric Company

Docket No. ER92-595-005

ORDER GRANTING REHEARING, IN PART,  
AND DENYING REHEARING, IN PART

(Issued August 6, 2013)

1. On August 20, 2012, the Transmission Agency of Northern California (TANC), City of Redding, California, City of Santa Clara, California, Modesto Irrigation District, and Turlock Irrigation District (collectively, Petitioners) filed a request for rehearing of a letter order issued in this proceeding on July 20, 2012 (July 20 Letter Order)<sup>1</sup> by the Director, Division of Electric Power Regulation – West (Director), pursuant to delegated authority, 18 C.F.R. § 385.713 (2012). In the July 20 Letter Order, the Director accepted a filing submitted by Pacific Gas and Electric Company (PG&E) as being in satisfactory compliance with Opinion No. 389-A.<sup>2</sup> In this order, we grant rehearing, in part, and deny rehearing, in part.

**I. Background**

2. The California-Oregon Transmission Project (COTP) is a 500 kV transmission line built in 1993 that runs from the California-Oregon border to central California, where it interconnects with PG&E's system. TANC constructed the COTP for itself and others and owns an approximately 87 percent entitlement share in the COTP.

3. On June 1, 1992, PG&E submitted a rate schedule to establish the rates, terms, and conditions for the interconnection of the COTP with PG&E's electric system (COTP

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<sup>1</sup> *Pacific Gas and Elec. Co.*, Docket No. ER92-595-003 (July 20, 2012) (unpublished delegated letter order) (July 20 Letter Order).

<sup>2</sup> *Pacific Gas and Elec. Co.*, Opinion No. 389-A, 85 FERC ¶ 61,230 (1998).

Interconnection Rate Schedule, or CIRS). By an order issued on September 30, 1992, the Commission accepted the CIRS, consolidated the proceeding with two related filings,<sup>3</sup> and established hearing procedures to determine the justness and reasonableness of the three rate schedules.<sup>4</sup>

4. The CIRS contains three provisions that are relevant to the instant proceeding. First, section 4.29 provides the definition of “Prudent Utility Practice” to include “those standards, practices, and methods that are currently and commonly used by electric utilities to plan, engineer, select, operate, schedule and maintain electric power facilities and equipment reliably, safely and efficiently.” Second, section 4.35 provides the definition of “Unacceptable Operating Condition” to be “a condition of significant magnitude on an Electric System which is inconsistent with Prudent Utility Practice.” Third, section 7.2 describes the “Response to Unacceptable Operating Conditions,” providing that “if an Unacceptable Operating Condition occurs on the COTP or the PG&E Electric System as a result of an event on the other Electric System...then the affected Party(ies) shall have the right to take such corrective actions as it determines are necessary and in accordance with Prudent Utility Practice to promptly eliminate or mitigate such Unacceptable Operating Condition.”

5. Following the hearing regarding the rate schedules, the Presiding Administrative Law Judge (Judge) issued an initial decision finding that certain terms of the CIRS were unjust and unreasonable and would need to be revised.<sup>5</sup> In relevant part, the Initial Decision noted that there was “a lingering dispute as to whether hydro spill or PG&E’s incurring take-or-pay charges are ‘unacceptable operating conditions’ to be avoided” in CIRS sections 4.35 and 7.2.<sup>6</sup> The Judge noted that PG&E had agreed that these conditions were not unacceptable operating conditions. Accordingly, the Judge determined that these conditions would specifically be excluded in the definition of Unacceptable Operating Conditions in section 4.35. The Judge also found that the

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<sup>3</sup> The two related filings involved the following proposed rate schedules: (1) the Coordinated Operations Agreement, which provides for the coordinated operation of the combined systems; and (2) the agreement that provides for transmission service by PG&E to TANC.

<sup>4</sup> *Pacific Gas & Elec. Co.*, 60 FERC ¶ 61,321 (1992).

<sup>5</sup> *Pacific Gas & Elec. Co.*, 63 FERC ¶ 63,018 (1993) (Initial Decision).

<sup>6</sup> *Id.* at 65,096. The Initial Decision refers to section 4.37, which was later renumbered to section 4.35.

definition of Prudent Utility Practice in section 4.29 “shall not be construed to include either of these conditions.”<sup>7</sup>

6. On May 26, 1994, the Commission issued Opinion No. 389, affirming, for the most part, the Initial Decision with respect to the terms and conditions of the CIRS and directing PG&E to submit a revised CIRS.<sup>8</sup> In relevant part, Opinion No. 389 affirmed the Initial Decision with respect to the definitions in CIRS sections 4.29 and 4.35 without discussion, but it also addressed section 7.2. The Commission explained that PG&E had proposed to modify this section, pursuant to a stipulation between the parties, to establish the procedures for mitigating unacceptable operating conditions caused by minimum load conditions.<sup>9</sup> The proposed modification, pursuant to the stipulation, stated that:

In response to an Unacceptable Operating Condition...a Party may request a COTP Participant or a COTP user to curtail its Northwest schedules when such a curtailment is required solely for operational reasons. The COTP Participant or COTP user shall reasonably respond to such requests....<sup>10</sup>

7. The Commission noted requests for clarification and modification by Turlock Irrigation District (Turlock) in its brief on exceptions to the Initial Decision. Turlock had requested clarification that a voluntary response to a request for curtailment by PG&E, rather than a mandatory response, was appropriate. To that effect, Turlock requested a modification to PG&E’s proposed language to state that “[t]he COTP Participant or

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<sup>7</sup> *Id.* The Initial Decision refers to section 4.31, which was later renumbered to section 4.29.

<sup>8</sup> *Pacific Gas and Elec. Co.*, Opinion No. 389, 67 FERC ¶ 61,239 (1994).

<sup>9</sup> *See id.* at 61,785-86. Minimum load conditions “occur as a result of large daily load swings. In response to a dramatic reduction in load, a utility reduces generation output as far as it can without actually shutting down intermediate and baseload plants needed to meet load the next day. If this condition, in fact, causes such units to shut down, they could not be restarted in time to meet the anticipated load the next day.” *Id.* at 61,785, n.151.

<sup>10</sup> *Id.* at 61,785; *see also* PG&E, Proposed Stipulations to CTS and the CIRS, Ex. P-95, Docket No. ER92-595-000, *et al.*, at 3 (March 3, 1993) (PG&E Stipulation).

COTP user *may* reasonably respond to such requests.”<sup>11</sup> The Commission noted that, in response, PG&E argued that Turlock’s proposed modification rendered the provision meaningless because it allowed a party to choose to ignore PG&E’s request for curtailment for any reason. PG&E also stated that under the “reasonably respond” language, responding parties would not have had to comply with the request if they had a sound technical reason. The Commission agreed that Turlock’s proposed modification, which would allow a discretionary response to a request for assistance at a time of serious operational conditions, was unreasonable.<sup>12</sup>

8. Additionally, the Commission noted Turlock’s request that, regardless of whether its modification was adopted, the Commission clarify that, before any party could request others to curtail imports, the requesting party must have first curtailed its own purchases.<sup>13</sup> The Commission noted that, in response, PG&E clarified that PG&E must first curtail imports and other purchases and must reduce generation to the greatest extent possible before PG&E could request curtailments by the COTP Participants and that it was only after these measures were taken that a utility is faced with a minimum load condition.<sup>14</sup> The Commission stated that section 7.2, as modified by the PG&E Stipulation, would be adopted.<sup>15</sup>

## **II. PG&E’s Compliance Filing and Responsive Pleadings**

9. On June 27, 1994, in Docket No. ER92-595-003, PG&E submitted its compliance filing in response to the Initial Decision and Opinion No. 389. In relevant part,<sup>16</sup> PG&E proposed to revise the definition of Prudent Utility Practice in section 4.29 by adding the following sentence:

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<sup>11</sup> As opposed to the language proposed by PG&E that “[t]he COTP Participant or COTP user *shall* reasonably respond to such requests.” Opinion No. 389, 67 FERC at 61,786 (emphasis in original).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (citing Turlock Brief on Exceptions at 12-17).

<sup>14</sup> *Id.* (citing PG&E Brief Opposing Exceptions at 29-33).

<sup>15</sup> *Id.*

<sup>16</sup> PG&E made a number of other revisions that are not at issue in this request for rehearing.

Prudent Utility Practice shall not be construed to include either the spill of water past hydroelectric generating facilities or PG&E incurring a take-or-pay purchase obligation under a contract with a qualifying cogenerator or qualifying small power producer....

PG&E also proposed to revise the definition of Unacceptable Operating Condition in section 4.35 by adding the following sentence:

Neither the spill of water past hydroelectric generating facilities nor PG&E incurring a take-or-pay purchase obligation under a contract with a qualifying cogenerator or qualifying small power producer...shall be considered an Unacceptable Operating Condition.

Finally, PG&E proposed to modify section 7.2 consistent with the PG&E Stipulation. Specifically, PG&E proposed to add a new section 7.2.2 – Minimum Load Conditions – stating that:

In response to an Unacceptable Operating Condition...and consistent with Prudent Utility Practice, a Party may request a COTP Participant or a COTP user to curtail its Northwest schedules when such a curtailment is required solely for operational reasons. The COTP Participant or COTP user shall reasonably respond to such requests....

10. Protests were filed by, among others, TANC and certain of its members (TANC),<sup>17</sup> the Northern California Power Agency (NCPA), and the City of Vernon, California (Vernon). These parties argued that certain revisions in PG&E's compliance filing did not comply with the Initial Decision and Opinion No. 389. In relevant part,<sup>18</sup> TANC stated that PG&E's revision to the definition of Unacceptable Operating Condition in section 4.35 complied with the directives but that the similar change to the definition of Prudent Utility Practice in section 4.29 was nonsensical in that it is the

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<sup>17</sup> The TANC members that joined the filing included: the Cities of Santa Clara and Redding, California, the Modesto and Turlock Irrigation Districts, and the Sacramento Municipal Utility District. With the exception of the Sacramento Municipal Utility District, Petitioners are the same parties as those that joined the TANC protest.

<sup>18</sup> TANC offered several other arguments in its protest that are not at issue in this request for rehearing.

avoidance of hydro spill and the avoidance of PG&E's incurring a take-or-pay obligation to a Qualifying Facility that were to be excluded from the definition.<sup>19</sup>

11. Similarly, NCPA expressed concern that PG&E could use section 4.29 to curtail transactions when PG&E was suffering from conditions that were merely uneconomic, such as incurring take-or-pay charges from Qualifying Facilities or spilling water from PG&E hydro projects, rather than for genuine operating limitations on the PG&E system. NCPA stated that, under PG&E's proposed revision, an Unacceptable Operating Condition is defined as a situation inconsistent with Prudent Utility Practice and also specifically excludes the hydro spill or take-or-pay conditions, which are otherwise defined as inconsistent with Prudent Utility Practice. NCPA stated that, by applying the Judge's instructions too literally, PG&E rendered the definition of Unacceptable Operating Condition confusing and contradictory and provided an opportunity for PG&E to argue that hydro spill or incurrance of Qualifying Facility take-or-pay charges were inconsistent with Prudent Utility Practice and hence constituted Unacceptable Operating Conditions (thus resulting in potential curtailment).<sup>20</sup> Accordingly, TANC and NCPA requested that PG&E be directed to revise the definition of Prudent Utility Practice in section 4.29 to state "Prudent Utility Practice shall not be construed to require the avoidance of the spill of water past hydroelectric generating facilities or to require the avoidance of PG&E incurring a take-or-pay purchase obligation under a contract with a qualifying cogenerator or qualifying small power producer...." (emphasis added).<sup>21</sup>

12. With respect to PG&E's proposed new section 7.2.2, TANC argued that this section did not accommodate the clarification made by PG&E that it must first curtail imports and other purchases and must reduce generation to the greatest extent possible before it can request curtailments by the COTP Participants and that it is only after these measures are taken that a utility is faced with a minimum load condition. TANC and Vernon requested that the Commission direct PG&E to add this clarification to section 7.2.2. TANC suggested the following language: "In response to an Unacceptable Operating Condition...and consistent with Prudent Utility Practice, and after having undertaken all actions practicable to avoid minimum load conditions, a Party may request

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<sup>19</sup> TANC July 29, 1994 Protest at 9.

<sup>20</sup> NCPA argued that the intent behind the Judge's statement was to *prevent* this result. NCPA July 29, 1994 Protest at 2-3.

<sup>21</sup> TANC July 29, 1994 Protest at 9-10; NCPA July 29, 1994 Protest at 3.

a COTP Participant or a COTP user to curtail its Northwest schedules when such a curtailment is required solely for operational reasons....” (emphasis added).<sup>22</sup>

13. PG&E filed an answer to the protests. PG&E contended that its change to section 4.29 literally and precisely implemented what the Commission prescribed, and that if TANC and NCPA thought that the Initial Decision needed clarification, they should have raised the issue on exceptions.<sup>23</sup> PG&E also explained that its proposed section 7.2.2 included a mechanism for parties to request that other parties curtail transactions on the COTP during minimum load conditions and for the requesting party to compensate the responding party for any costs, which was agreed to by TANC and PG&E in the hearings, included in the PG&E Stipulation, and adopted by the Commission in Opinion No. 389 without modification. PG&E argued that its compliance filing included the language verbatim and that there is no basis for TANC to renege on its stipulation by requesting its proposed clarification.<sup>24</sup>

### **III. Commission Action**

14. On November 16, 1998, the Commission issued Opinion No. 389-A denying requests for rehearing but clarifying certain issues. Opinion No. 389-A denied rehearing on several CIRS issues requested by TANC and stated that the Commission will not require any revisions to the CIRS.<sup>25</sup> These rehearing issues were not related to the issues raised by protestors in the compliance proceeding.

15. On February 8, 2005, the Assistant General Counsel, Markets, Tariffs and Rates, issued a letter to PG&E in related dockets, but not the docket assigned to PG&E’s June 27, 1994 compliance filing, stating that “it now appears that this proceeding has been overtaken by events and has become moot,” and that the dockets would be closed.

16. On July 20, 2012, the Director, Division of Electric Power Regulation – West, issued the July 20 Letter Order accepting PG&E’s 1994 compliance filing as being in satisfactory compliance with Opinion No. 389-A, effective as requested.

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<sup>22</sup> TANC July 29, 1994 Protest at 12-13; *see also* Vernon July 20, 1994 Protest at 1-2.

<sup>23</sup> PG&E August 15, 1994 Answer at 6-7.

<sup>24</sup> *Id.* at 8.

<sup>25</sup> Opinion No. 389-A, 85 FERC at 61,964.

#### **IV. Request for Rehearing**

17. On August 20, 2012, Petitioners filed a request for rehearing of the July 20 Letter Order. Petitioners argue that the Commission acted arbitrarily and capriciously by accepting PG&E's revised CIRS without responding meaningfully to TANC's objections in its protest. Petitioners state that Commission staff exceeded its delegated authority by issuing a letter order accepting a compliance filing in a contested proceeding. Finally, Petitioners argue that the Commission erred in accepting PG&E's compliance filing because it does not comply with the directives of Opinion No. 389. Petitioners state that TANC and other parties raised five instances in which PG&E's compliance filing failed to comply and that three of these issues have since been addressed or are rendered moot by the passing of time, but that two remaining issues concerning sections 4.29 and 7.2.2 of the CIRS continue to adversely affect the Petitioners.<sup>26</sup> Petitioners request that the Commission grant their request for rehearing and find that PG&E's compliance filing failed to comply with the Commission's directives on these sections.

#### **V. Discussion**

##### **A. Acceptance of PG&E's Revised CIRS Without Addressing Relevant Protests**

18. Petitioners argue that the Commission's failure to meaningfully address or even acknowledge the concerns in TANC's protest in the July 20 Letter Order does not amount to reasoned decision-making, and, therefore, the July 20 Letter Order is arbitrary and capricious. Petitioners also claim that the Commission cannot accept PG&E's revised CIRS as being in satisfactory compliance with Opinion No. 389-A when the Commission has never accepted that filing as being in satisfactory compliance with Opinion No. 389 (i.e., the operative order in which the Commission directed PG&E to revise the CIRS). Petitioners state that, by accepting the revised CIRS as being in satisfactory compliance with Opinion No. 389-A, the Commission is effectively finding it in compliance with Opinion No. 389, which it cannot do without first considering the substantive arguments made in TANC's protest. Finally, Petitioners argue that only uncontested proceedings may be accepted pursuant to authority delegated under 18 C.F.R. § 375.307 (2012). Because the revised CIRS was a contested proceeding, Petitioners state that Commission staff exceeded its delegated authority by accepting PG&E's revised CIRS. Accordingly, Petitioners assert that the Commission should grant rehearing and give due regard to TANC's arguments and concerns.

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<sup>26</sup> Petitioners August 20, 2012 Request for Rehearing at 6.

19. PG&E submitted its compliance filing in 1994, and the Commission did not address the revised CIRS until the July 20 Letter Order. Due to the age of the record, the language set forth in the Commission's Opinion No. 389-A,<sup>27</sup> and coupled with an administrative oversight, staff accepted the revised CIRS without noting and addressing the protests. Because the matter is a contested proceeding, acceptance pursuant to delegated authority, 18 C.F.R. § 385.713 (2012) was in error. Accordingly, in this order, we address the arguments raised in TANC's protest that are still relevant, as described by Petitioners. We have also examined the other protests received in the proceeding in order to address any other relevant arguments; both NCPA and Vernon raised arguments similar to TANC's. Thus, we will address these protestors' relevant arguments below.

**B. Section 4.29 – Prudent Utility Practice**

20. Petitioners, in their request for rehearing,<sup>28</sup> and NCPA, in its earlier protest, argue that PG&E failed to comply with the Commission's direction to revise the definition of Prudent Utility Practice in section 4.29 of the CIRS to exclude the avoidance of hydro spill and the avoidance of PG&E's incurring a take-or-pay obligation to a qualifying facility. They argue that PG&E's omission of the qualifying phrase "to be avoided" is inconsistent with the Commission's affirmation of the Initial Decision and creates ambiguity that exposes TANC and other COTP Participants to potential costs the Commission agreed should not be imposed.<sup>29</sup>

21. In the Initial Decision, the Judge stated that

[t]here is a lingering dispute as to whether hydro spill and take-or-pay charges PG&E incurs to Qualifying Facilities are 'unacceptable operating conditions' to be avoided on sections 4.3[5] and 7.2. PG&E has agreed they are not. These conditions will specifically be excluded in section [4.35], defining unacceptable operating conditions. Prudent Utility Practice (section [4.29]) shall not be construed to include either of these conditions.<sup>30</sup>

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<sup>27</sup> Opinion No. 389-A, 85 FERC at 61,964 ("We will not require any revisions to the CIRS.").

<sup>28</sup> TANC also raised this argument in its earlier protest.

<sup>29</sup> Petitioners August 20, 2012 Request for Rehearing at 7.

<sup>30</sup> Initial Decision, 63 FERC at 65,096 (emphasis added).

22. This finding was affirmed by the Commission in Opinion No. 389 without discussion. While PG&E literally incorporated the Judge's holding into the definition of Prudent Utility Practice in section 4.29, we agree with Petitioners and NCPA that the added language creates a confusing and contradictory result that is also contrary to the Judge's, and our, intent. Specifically, under section 4.35, an Unacceptable Operating Condition: (1) is a condition inconsistent with Prudent Utility Practice; and (2) does not include either hydro spill or take-or-pay charges incurred by PG&E. Thus, if Prudent Utility Practice is defined in section 4.29 as not including either hydro spill or PG&E's take-or-pay charges, an inconsistency between sections 4.29 and 4.35 results; i.e., these conditions would be unacceptable pursuant to section 4.29, and acceptable, under section 4.35.

23. Section 4.29, when read in conjunction with section 4.35, is most reasonably construed to reflect Petitioners' understanding. In other words, when reading these sections together, the most reasonable interpretation is that neither hydro-spill nor incurrence of take-or-pay charges should be considered inconsistent with Prudent Utility Practice, nor should they be Unacceptable Operating Conditions. It then follows that avoiding hydro-spill or take-or-pay charges should not be considered consistent with Prudent Utility Practice. While section 4.29 arguably could be construed to already reflect this thought, it is not clear on its face.

24. Further, we agree with NCPA's concerns that PG&E's proposed definition of Prudent Utility Practice provides an opportunity for PG&E to contend that hydro spill or incurrence of take-or-pay charges are inconsistent with Prudent Utility Practice and hence constitute Unacceptable Operating Conditions, thus presenting an opportunity for a curtailment under section 7.2.2. This result is contrary to the Judge's, and our, intent.<sup>31</sup>

25. Given the inconsistency between sections 4.29 and 4.35, we find that PG&E's existing definition of Prudent Utility Practice in section 4.29 is unjust and unreasonable. We further find that Petitioners' and NCPA's proposed definition would produce a just and reasonable result by providing needed clarity, resolving the inconsistency between the definitions, and preventing the opportunity for PG&E to argue that hydro spill or incurrence of take-or-pay charges are inconsistent with Prudent Utility Practice and instead constitute Unacceptable Operating Conditions.<sup>32</sup> Thus, we grant rehearing on this

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<sup>31</sup> *Id.* (stating that hydro spill and PG&E's take-or-pay charges "will specifically be excluded in section [4.35], defining unacceptable operating conditions.").

<sup>32</sup> In other words, if PG&E were to experience hydro spill or to incur take-or-pay charges, PG&E's actions would not be inconsistent with Prudent Utility Practice, thus precluding any argument that either condition should be considered an Unacceptable Operating Condition.

issue. We direct PG&E to revise the CIRS consistent with this discussion in a compliance filing to be effective upon the issuance date of this order.

**C. Section 7.2.2 – Minimum Load Conditions**

26. Petitioners, in their request for rehearing,<sup>33</sup> and Vernon, in its earlier protest, argue that PG&E failed to include in its new section 7.2.2 a condition that expressly requires PG&E to take measures to avoid minimum load conditions, despite PG&E's commitment made on the record and recognized in Opinion No. 389. Petitioners state that, as argued by TANC in its protest, PG&E's proposed language does not comport with the Commission's observations regarding minimum load. They request that the clarification be added to section 7.2.2 so that it states that, "[i]n response to an Unacceptable Operating Condition...and consistent with Prudent Utility Practice, and after having undertaken all actions practicable to avoid minimum load conditions, a Party may request a COTP Participant or a COTP user to curtail its Northwest schedules when such a curtailment is required solely for operational reasons..."<sup>34</sup> Petitioners argue that PG&E's failure to properly include this further, explicit condition precedent to invoking a minimum load condition exposes TANC and the COTP Participants to the risk of additional costs, contrary to the Commission's findings in Opinion No. 389.

27. In Opinion No. 389, the Commission noted that PG&E provided a clarification in its Brief Opposing Exceptions: "PG&E also clarified that it must first curtail imports and other purchases and must reduce generation to the greatest extent possible before it can request curtailments by the COTP Participants. PG&E notes that it is only after these measures are taken that a utility is faced with a minimum load condition."<sup>35</sup>

28. While the Commission acknowledged PG&E's clarification, the Commission was not persuaded to require PG&E to expressly incorporate the clarification into the language of section 7.2.2. Instead, the Commission explained that section 7.2 should be adopted, as modified by the PG&E Stipulation as described by PG&E, without the necessity of providing an express reference to PG&E's stated clarification.<sup>36</sup> Additionally, we note that Petitioners' requested modification to section 7.2.2 is different

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<sup>33</sup> TANC also raised this argument in its earlier protest.

<sup>34</sup> Petitioners August 20, 2012 Request for Rehearing at 9-10 (emphasis added).

<sup>35</sup> Opinion No. 389, 67 FERC at 61,786 (citing PG&E Brief Opposing Exceptions at 29-33).

<sup>36</sup> *Id.* at 61,786.

and potentially broader than PG&E's clarification. Accordingly, we deny rehearing on this issue.

The Commission orders:

(A) Petitioners' request for rehearing is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) PG&E is hereby required to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.