UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Sierra Pacific Power Company Docket Nos. ER99-28-005
EL99-38-004
ER99-945-004

OPINION NO. 465-A

OPINION AND ORDER

(Issued February 17, 2004)

I. Introduction

1. This Opinion and Order denies a request for rehearing filed in this proceeding of Commission Opinion No. 465, issued on August 25, 2003,[1] jointly by Transmission Agency of Northern California and Sacramento Municipal Utility District (TANC and SMUD). This Opinion and Order benefits all participants in the Pacific Northwest-California-Nevada power-trading region by promoting the efficient use of the Pacific Northwest AC Intertie (Northwest Intertie), i.e., by providing all customers that wish to access available power in the Pacific Northwest the opportunity to make use of the Northwest Intertie, a limited transmission resource.

II. Background

2. Power deliveries from the Pacific Northwest to California and Nevada involve two steps. First, power is delivered over the Northwest Intertie to the California-Oregon Border (COB). Power to California is then transmitted over the California-Oregon Intertie (COI), while power to Nevada is transmitted over the Alturas Intertie. The

[1] Sierra Pacific Power Company, Opinion No. 465, 104 FERC ¶ 61,223 (2003) (Opinion No. 465).

Alturas Intertie, which began operation on December 21, 1998, allows Sierra Pacific Power Company (Sierra Pacific) to transmit power from Malin, Oregon across the northeast corner of California and into Nevada. The Northwest Intertie has a maximum capacity of 4800 MW, as does the COI, while the Alturas Intertie has a maximum capacity of 300 MW. Thus, the Northwest Intertie has insufficient capacity to support simultaneous deliveries to both the COI and the Alturas Intertie at their respective fully-rated capacities.

3. On October 2, 1998, in Docket No. ER99-28-000, Sierra Pacific filed the Alturas Intertie Project Interconnection and Operation and Maintenance Agreement (Interconnection Agreement) between Sierra Pacific, Bonneville Power Administration (Bonneville), and PacifiCorp. Sierra Pacific explained that the Interconnection Agreement provides for the delineation of ownership of the new facilities constructed as part of the Alturas Intertie, the assignment of responsibility for operation and maintenance of the facilities, and the interconnected operation of the Alturas Intertie.

4. On November 30, 1998, the Commission accepted the Interconnection Agreement for filing, effective December 1, 1998, as requested.[2] The Commission acknowledged that intervenors had raised "important" issues, decided that "the ongoing discussions between the parties under the [Western Systems Coordinating Council (WSCC)] procedures are the proper forum for resolving them," and directed "the jurisdictional parties to negotiate the appropriate operational procedures."[3]

5. On January 6, 1999, in Docket No. ER99-945-000, Sierra Pacific filed an Operating and Scheduling Agreement (Scheduling Agreement) between Sierra Pacific, Bonneville, and PacifiCorp. Sierra Pacific explained that the Scheduling Agreement provides for the operation and maintenance of the Alturas Intertie, and also provides for scheduling of transmission service on the Alturas Intertie and for curtailments to mitigate operation outside of reliability limits.

6. On February 26, 1999, the Commission accepted, suspended, and set for hearing[4] the Scheduling Agreement. The Commission also, on its own motion, set the

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[2]Sierra Pacific Power Company, 85 FERC & 61,314 (1998) (November 30 Order).

[3]Id. at 62,235-36.

[4]The Commission held the hearing in abeyance, pending settlement negotiations. However, settlement negotiations, which took place from March 1999 until August 1999, were unsuccessful.

Interconnection Agreement for investigation under Section 206 of the Federal Power Act (FPA)[5] (in Docket No. EL99-38-000). All three dockets were consolidated.[6]

7. On March 22, 2001, in an Initial Decision, the Presiding Judge determined that the Scheduling Agreement and Interconnection Agreement (collectively Agreements) should be approved.[7]

8. On August 25, 2003, in Opinion No. 465, the Commission affirmed in part and vacated in part the Initial Decision. The Commission found that the Presiding Judge had correctly determined that the Agreements are just and reasonable, and that Sierra Pacific is entitled to use of the full 300 MW of the Alturas Intertie.[8] The Commission found, however, that the Presiding Judge had exceeded the scope of the directions in the Hearing Order in determining to limit the Alturas Intertie to 300 MW unless and until an upgrade is approved as part of a regional generation/transmission program, and therefore vacated that portion of the Initial Decision.[9]

9. On September 24, 2003, TANC and SMUD filed for rehearing, maintaining that both rulings were in error. They first argue that the Commission erred in failing to reopen the record because the Initial Decision was based, "in material part, on representations made by Bonneville, which were withdrawn by Bonneville after the [I]nitial [D]ecision was issued."[10] They also argue that the Commission decision is contrary to certain factual determinations in the Initial Decision. Finally, they maintain that, in vacating a portion of the Initial Decision, the Commission ignored its own policy regarding the broad scope of hearings on the justness or reasonableness of contracts, as well as the express language of the Agreements.

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[5] 16 U.S.C. ' 824e (2000).

[6] Sierra Pacific Power Company, 86 FERC & 61,198 (1999) (Hearing Order). The Commission also denied in part and granted in part requests for rehearing and clarification of the November 30 Order.

[7] Sierra Pacific Power Company, 94 FERC ¶ 63,019, errata issued, 94 FERC ¶ 63,021 (2001) (Initial Decision).

[8] Opinion No. 465 at P 27-32.

[9] Id. at P 36.

[10] Request for Rehearing at 2 (emphasis in original).

III. Discussion

A. Reopening Record

10. On rehearing, TANC and SMUD reiterate their previous argument[11] that, because Bonneville, in its Brief on Exceptions, "recanted" its statement that it intended to seek an uprating of the Northwest Intertie from 4800 MW to 5100 MW, and the Presiding Judge relied on those prior representations, the Commission should have reopened the record.[12] They also argue that the Commission erred in its "terse – and unfounded" conclusion that the Presiding Judge's self-styled "more complicated answer" did not rely on this uprating.[13]

11. We disagree. As we discussed in Opinion No. 465, the Presiding Judge expressly acknowledged the possibility that the uprating would not occur and nonetheless concluded that the Agreements are just and reasonable – and we agreed that, even if the Northwest Intertie is not uprated from 4800 MW to 5100 MW, the Agreements are just and reasonable.[14] Moreover, TANC and SMUD are merely arguing that the fact that Bonneville no longer intended to seek an uprating of the Northwest Intertie amounts to a change in core circumstances. In fact, there was never any guarantee that, even if Bonneville had sought or does seek such uprating, it would actually occur.

B. Factual Findings

12. TANC and SMUD maintain that the Commission ignored evidence that the Agreements impair reliability, that operation of the Alturas Intertie adversely affects use and operation of the COI, that WSCC standards and good utility practice were ignored, that Sierra Pacific had made misrepresentions to regulators, and that the Agreements impede the ability of the California Utilities[15] to make the most economical use of their

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[11] See the California Utilities' May 15, 2001 motion to reopen the record.

[12] Id. at 12.

[13] Id. at 14.

[14] Opinion No. 465 at P 31 & n.43, 32; cf. id. at P 20-21.

[15] As we explained in Opinion No. 465, the California Utilities are the users of the COI who intervened in this proceeding. They consist of: TANC and its members (including the Cities of Santa Clara and Redding, California, Modesto Irrigation District, and SMUD), M-S-R Public Power Agency, Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company. Id. at P 8 & n.9. As

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transmission system. They also argue that the Commission erred in concluding that the California Utilities are merely seeking to avoid the expense of reserving firm capacity on the Northwest Intertie, as the record shows that almost all the firm capacity in the Pacific Northwest is already booked.

13. We disagree. As a preliminary matter, we note that the Presiding Judge made 474 findings of fact and in Opinion No. 465 we did not discuss each and every one of those factual findings.[16] That does not mean, however, that we ignored relevant evidence, and we will address the specifics of TANC's and SMUD's arguments below.

1. Most Economical Use

14. TANC and SMUD disagree with the Commission's position that the California Utilities have had the opportunity, but have chosen not, to compete with Sierra Pacific for firm capacity on the Northwest Intertie. They assert that the Commission, by forcing customers in California (or Nevada) to purchase transmission capacity upstream of the hub (i.e., the COB), is creating artificial barriers to the efficient development of market centers.[17] They conclude that it "is wholly unreasonable to require the California Utilities to reserve transmission capacity on another utility's system in order to maintain the amount of transfer capability they have available to post on their own systems."[18] Rather, they maintain, they are simply seeking to preserve existing scheduling rights on the COI, and prevent loop flow-type problems.

15. We again find TANC's and SMUD's position unpersuasive as it amounts to essentially "imputing a perpetual right to continue their previous usage of the Northwest Intertie."[19] The California Utilities' system and the COB hub do not exist in a vacuum; it

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noted above, only TANC and SMUD sought rehearing.

[16]We point out that, as we noted in Opinion No. 465, various parties stated that they disputed many findings of fact but, as we did not rely on these findings in our conclusions, we did not discuss them. Id. at P 2 & n.31.

[17]Request for Rehearing at 19.

[18]Id. at 21.

[19]Opinion No. 465 at P 29. This is particularly inappropriate because, as we pointed out in Opinion No. 465, the California Utilities, in their September 22, 2000 Reply Brief, stated that they "have never suggested that they have a right to priority use of the [Northwest Intertie] based on prior use." Id. (citation omitted).

is reasonable in these circumstances to expect a utility to reserve transmission capacity on upstream facilities in order to be able to make use of transmission capacity on downstream facilities.[20] That is, it is reasonable to find that, if the California Utilities want to be able to fully use the 4800 MW COI, they need to ensure that they have the right to use the full 4800 MW of the Northwest Intertie, and that, if they fail to secure the latter, they will be unable to fully use the former.[21] We also consider TANC's and SMUD's loop flow analogy flawed. This case is not about the uncontrolled flow of electrons over a neighboring transmission system. It is about rights to use a limited resource. Nor does our decision create artificial barriers to development of market centers. To the contrary, our ruling in any other way (i.e., by imputing to the California Utilities a perpetual right to continue to use the Northwest Intertie) would slow the development of market centers.

2. Mitigation

16. TANC and SMUD continue to assert that Sierra Pacific's operation of the Alturas Intertie fails to mitigate the alleged inability of the California Utilities to make the most economical use of their system, which TANC and SMUD argue, is the policy laid out by

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[20] We also reject TANC and SMUD's argument that the Agreements are inconsistent with Bonneville's agreements with the California Utilities (Interim Interconnection Agreement), and are therefore void as against public policy. As they acknowledge, Request for Rehearing at 72-78, Bonneville disputes their interpretation of the Interim Interconnection Agreement and, as they also acknowledge, Request for Rehearing at 79, "the terms of the Interim Interconnection Agreement are not subject to the Commission's jurisdiction." Accordingly, given TANC's and SMUD's acknowledgement that the Interim Interconnection Agreement is "not subject to the Commission's jurisdiction," it is not for us in this proceeding to determine the meaning of the Interim Interconnection Agreement.

[21] See supra P 2.

the Commission in the November 30 Order and the Hearing Order.[22] In particular, they dispute Sierra Pacific's position that, because there has been no change in the rated transfer capability of the COI (i.e., the COI facilities are still physically capable of carrying the same amount of power), there has been no adverse impact; the amount of power that can actually be used is reduced. Because of the additional costs of obtaining power for California from alternative sources, TANC and SMUD argue, there has clearly been adverse economic impact. Moreover, they maintain, this policy will deter investment in transmission facilities, as "no utility would put at risk hundreds of millions of dollars to build transmission facilities which might ultimately be used by other parties who have made absolutely no investment in such facilities."[23]

17. We reject this argument as well. There could, of course, be an obligation to mitigate if use of the Alturas Intertie impacts the physical carrying capability of the COI. A competitor, however, does not have the same obligation when it comes to the economic impact from the competition; that one competitor (Sierra Pacific) now has access to a portion of the Northwest Intertie and thus there may be less transmission capacity available to other competitors (the California Utilities) does not warrant mitigation because use of the Alturas Intertie does not impact the physical carrying capability of the COI. We also disagree with TANC and SMUD about possible deterrence of investment. While we have no desire to deter investment in transmission facilities, our action simply refuses to grant the California Utilities "a perpetual right to continue their previous usage of the Northwest Intertie," merely because they built the downstream transmission facilities first.[24] Such action should not deter investment. Indeed, to the contrary, it

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[22]TANC and SMUD also argue that the Commission ignored its own admonition in the Hearing Order, that "utilities that choose to interconnect bear the responsibility to exercise all appropriate measures to resolve operational problems on a mutually acceptable basis," and the fact that the presiding judge expressly found that "the parties never carried out the Commission's admonition." Request for Rehearing at 31, citing Hearing Order, 86 FERC at 61,698; Initial Decision, 94 FERC at 65,099, Finding No. 383. What they neglect to discuss, however, is the specific finding by the presiding judge that the California Utilities refused to discuss operating procedures for the Alturas Intertie without also discussing mitigation. While of course it would have been preferable for the parties to agree on operating procedures, as the presiding judge found, it was both parties, i.e., the California Utilities as well, and not just Sierra Pacific, who were responsible for "a failure to communicate." Initial Decision, 94 FERC at 65,147-48 n.346, citing Finding No. 279.

[23]Request for Rehearing at 30.

[24]Opinion No. 465 at P 29.

could motivate the California Utilities to pursue investments in additional transmission facilities to access additional sources of power.

3. Reliability

18. TANC and SMUD also assert that the Commission miscast and, as a result, failed to consider the California Utilities' argument that the Agreements would have an adverse effect on reliability in California, specifically by: (1) reducing the California Utilities' ability to rely on their existing transmission paths to access adequate supply; and (2) undermining new transmission investment.[25] In support, they state that "the California Utilities' inability to schedule deliveries on the COI up to its Operational Transfer Capability due to the energization of the Alturas Intertie creates a reliability problem by rendering 300 fewer megawatts available to the California Utilities to supply the electrical demand and energy requirements of their customers."[26] They also point to Finding of Fact No. 425 to attempt to show that operation of the Alturas Intertie has already adversely affected SMUD, and required it to curtail service to firm customers.[27] In addition, they assert that there could be adverse consequences for long-term supply adequacy because investment of existing transmission owners is placed at risk, discouraging future investment. They also allege that the Commission's conclusion that the California Utilities provided "no record evidence" showing impairment of reliability[28] improperly shifted the burden of proof to the California Utilities, whereas the burden is on Sierra Pacific to show that the Agreements are just and reasonable.

19. Again, TANC and SMUD miss the point. Although use of the Alturas Intertie does mean fewer megawatts are available to the California Utilities over the COI because power coming over the Northwest Intertie that then goes over the Alturas Intertie to Sierra Pacific is not available instead to go over the COI to the California Utilities, the Agreements (and usage of the Alturas Intertie pursuant to the Agreements) do not impair the reliability of the California Utilities' transmission systems. TANC's and SMUD's allegation that transmission alternatives would "substantially increase the cost of

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[25] To a substantial degree, these arguments mirror TANC's and SMUD's arguments above, and are addressed in our answers above.

[26] Request for Rehearing at 81.

[27] Initial Decision, 94 FERC at 65,105.

[28] Opinion No. 465 at P 28.

power,"[29] does not involve reliability concerns. As we stated in Opinion No. 465 (quoting the Public Utilities Commission of Nevada), "'this Commission has never held that the fact that a utility may be forced to obtain supplies from sources other than its 'first choice' amounts to a reliability concern.'"[30]

20. We also reject the claim that the Commission improperly shifted the burden of proof regarding impairment of reliability. We agree that Sierra Pacific had the burden to show that the Agreements are just and reasonable, and we find that it met that burden. In reviewing the Agreements, we determined that they do not raise reliability concerns. To successfully challenge that finding, a party must present more than the unsupported allegations presented here. Requiring a party to provide some evidence in support of a bare allegation does not amount to a shift in the burden of proof. [31]

4. Good Utility Practice

21. On rehearing, TANC and SMUD argue that the Commission failed to adequately consider their argument that the Agreements are inconsistent with good utility practice. In support, they argue that the Commission ignored the fact that the Hearing Order "expressly notes that Section 5(a) of the Scheduling Agreement subjects parties to that agreement to 'the operating procedures and reliability standards that apply in the areas in which those parties operate,'"[32] and that, in concluding that the California Utilities' "challenge to the procedure used to obtain the WSCC rating, as noted by the Presiding Judge, is not appropriately raised in this forum,"[33] the Commission ignored its duty to address all relevant considerations. In particular, they point to Finding No. 446, where the Presiding Judge found:

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[29] Request for Rehearing at 86.

[30] Opinion No. 465 at P 28 (citing Nevada Commission Brief Opposing Exceptions at 40).

[31] Cf., e.g., Woolen Mills Association v. FERC, 917 F.2d 589, 592 (D.C. Cir. 1990) ("mere allegations of disputed fact are insufficient to mandate a hearing; a petitioner must make an adequate proffer of evidence to support them").

[32] Request for Rehearing at 39, 47 (citing 86 FERC at 61,689 in both discussions).

[33] Request for Rehearing at 44 (citing Opinion No. 465 at P 30, citing Initial Decision, 94 FERC at 65,144 n.331). We note that TANC and SMUD, in quoting from Opinion No. 465, inserted ellipses for the phrase "as noted by the presiding judge."

> Agreement to allocation and curtailment procedures that preserve the scheduling rights of existing transmission facility owners where there is a nomogram relationship is part of good utility practice. Utilities have routinely reached such allocation agreements within the WSCC. There are numerous examples of such arrangements both within the WSCC and in other regions of the country. [34]

22. They also argue that good utility practice requires the protection of simultaneous scheduling rights of existing transmission owners and users and the presiding judge found "that good utility practice in analogous circumstances required much more."[35] In support, they allege that the Commission ignored findings of fact that the instant case is "virtually indistinguishable" from the circumstances surrounding the construction of the California Oregon Transmission Project (COTP) -- where a presiding judge (in a portion of an initial decision which later became moot) found that users of the pre-existing Pacific AC Intertie "should not be penalized by the operation of the COTP."[36] They also allege that two transmission facilities involving Idaho, Brownlee East and West Borah, were treated differently, and in keeping with good utility practice.

23. We disagree. As a preliminary matter, we disagree with the Presiding Judge that agreement is a necessary component of good utility practice;[37] while it is certainly preferable for utilities to reach agreement, the absence of agreement by itself does not constitute a violation of good utility practice. Moreover, as we explained in Opinion No. 465 and above, as relevant here, what is before us in this case is whether only the California Utilities or both the California Utilities and Sierra Pacific should be allowed to use certain transmission facilities. Good utility practice simply does not dictate any particular answer for or against one or the other of the two competing users.

24. We also reject TANC's and SMUD's claim that, because other facilities are treated differently, current operation procedures for the Alturas Intertie violate good utility practice. The factual circumstances of those other facilities are very different. The

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[34] Initial Decision, 94 FERC at 65,109 (citations omitted).

[35] Request for Rehearing at 46, 48-60.

[36] Id. at 49-50 (citing Pacific Gas and Electric Co., 63 FERC ¶ 63,018 at 65,088 (1993)).

[37] See supra n.16.

Alturas Intertie is, as noted above, sequential to the Northwest Intertie, and it is not a parallel path to either the Northwest Intertie or to the COI. The factual circumstances of those other facilities involve parallel paths; the COTP is one of three parallel paths that make up the COI,[38] and Brownlee East[39] and West Borah[40] also involve parallel paths. We also note that, notwithstanding the California Utilities' allegation that the WSCC process was corrupted,[41] the threat of litigation does not taint the WSCC process.[42]

C. Future Expansion

25. TANC and SMUD argue that the Presiding Judge's determination that future expansion of the Alturas Intertie should require approval as part of a regional generation/transmission program,[43] was not beyond the scope of the Hearing Order.

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[38] See Sierra Pacific Brief Opposing Exceptions at 18-19; compare Initial Decision, 94 FERC at 65,053 with Pacific Gas & Electric Company, Opinion No. 389, 67 FERC ¶ 61,239 at 61,752, 61,753-54, 61,767 (1994), order on reh'g, Opinion No. 389-A, 85 FERC ¶ 61,230 (1998). Moreover, TANC's and SMUD's reliance on an initial decision that in relevant part was not affirmed by the Commission is simply misplaced. See Southern Company Services, Inc., 61 FERC ¶ 61,339 at 62,334 n.56, 62,335 n.59 (1992), reh'g denied, 63 FERC ¶ 61,217 (1993); Illinois Power Company, 62 FERC ¶ 61,147 at 62,062 n.17 (1993).

[39] Initial Decision, 94 FERC at 65,110; see also Sierra Pacific Brief Opposing Exceptions at 21-22.

[40] Initial Decision, 94 FERC at 65,109-10, n.258; see also Sierra Pacific Brief Opposing Exceptions at 20-21.

[41] Request for Rehearing at 10; California Utilities' Brief on Exceptions at 38-41.

[42] We also reject TANC's and SMUD's argument that the "Commission erred by failing to address the record evidence" that Sierra Pacific "consistently and purposefully misled neighboring utilities, the WSCC, and both the Nevada and California Commission [sic] as to the purpose and proposed operation of the Alturas Intertie during the development, permitting and regulatory approval process" and "the Commission's silence is arbitrary and capricious." Request for Rehearing at 64-65. We did address the California Utilities' allegation that Sierra Pacific had misled regulators, and rejected that contention. See Opinion No. 465 at P 26 n.35.

[43] Initial Decision, 94 FERC at 65,147-48.

They maintain that it is settled Commission policy that, when the justness and reasonableness of a contract is set for hearing, all relevant issues are set for hearing unless the hearing order expressly limits their consideration.

26. We disagree. As we said in Opinion No. 465, "we fully agree with the presiding judge's encouragement of regional coordination and negotiated solutions to regional problems."[44] However, the essential question here is whether potential, future upgrades to the Alturas Intertie are relevant to a determination of the current justness and reasonableness of the Agreements. Questions about any future expansion should be addressed if and when such upgrades are actually planned and/or built, and TANC and SMUD have not alleged that any such plans and/or construction are currently underway.

The Commission orders:

TANC and SMUD's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

[44] Opinion No. 465 at P 36.