

154 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Modesto Irrigation District and
Turlock Irrigation District

Docket No. EL15-55-001

v.

Pacific Gas and Electric Company

ORDER DENYING REHEARING

(Issued March 17, 2016)

1. On August 3, 2015, the Modesto Irrigation District (Modesto) and Turlock Irrigation District (Turlock) (collectively, the Districts), the Transmission Agency of Northern California, the City of Redding, California, and M-S-R Public Power Agency filed requests for rehearing of the Commission's July 2, 2015 Order denying the Districts' complaint alleging that Pacific Gas and Electric Company (PG&E) breached certain Interconnection Agreements between the Districts and PG&E.¹ In this order, we deny the requests for rehearing of the Complaint Order, as discussed below.

I. Background

2. Under a previous Comprehensive Agreement with the California Department of Water Resources (DWR), PG&E provided interconnection service for 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

¹ *Modesto Irrigation Dist. and Turlock Irrigation Dist. v. Pacific Gas and Elec. Co.*, 152 FERC ¶ 61,016 (2015) (Complaint Order).

were subject to certain remedial action scheme 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, 2014.²

3. 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 submitted by the Transmission Agency of Northern California (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.³ The Commission denied TANC's complaint, finding that the clear and unambiguous language in the Operation Agreement did not require PG&E to replace the remedial action scheme upon cancellation or termination of the Comprehensive Agreement and did 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.⁴

4. On March 18, 2015, the Districts filed a complaint (Complaint) against PG&E pursuant to sections 202, 206, 306, and 309 of the Federal Power Act (FPA),⁵ and Rule 206 of the Commission's Rules of Practice and Procedure.⁶ The Complaint alleged that PG&E breached section 9.11 of the Interconnection Agreements between PG&E and

² 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).

³ See *Transmission Agency of Northern California v. Pacific Gas and Electric Co.*, 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, v. FERC*, D.C. Cir. No. 15-1057 (D.C. Cir. filed 3/17/2015).

⁴ See TANC Complaint Order, 148 FERC ¶ 61,150 at P 62.

⁵ 16 U.S.C. §§ 824a, 824e, 825e, and 825h (2012).

⁶ 18 C.F.R. § 385.206 (2015).

the Districts.⁷ 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 transmission systems. Turlock and Modesto jointly own, among other facilities, 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. 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.

5. Specifically, the Complaint asserted that PG&E breached the Interconnection Agreements due to its failure to: (1) notify the Districts of the termination of PG&E's Comprehensive Agreement with DWR, resulting in the termination of DWR's participation in a remedial action scheme, and of the consequent impact on the

California-Oregon Transmission Project;⁸ (2) study the potential Adverse Impacts⁹ on the Districts' Systems resulting from the loss of DWR's participation; and (3) assure the

⁷ Section 9.11.1(a) of the Interconnection Agreements requires that:

[I]f a Primary Party intends 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 System of the Coordinating Party, 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...

Section 9.11.1(b) of the Interconnection Agreements requires that:

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 action(s) taken by the Primary party will result or have resulted in an Adverse Impact on the system of the Coordinating Party...

⁸ The California-Oregon Transmission Project is a 340-mile, 500 kV alternating

(continued...)

Districts that PG&E would either mitigate any Adverse Impacts identified by the study or compensate the Districts for the economic harm stemming from these Adverse Impacts.

6. In the Complaint Order, the Commission denied the Complaint, finding that Adverse Impact under section 4.2 of the Interconnection Agreements specifies defined actions to a Coordinating Party's System. In order 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, and because "the Districts do not own or control any portion of the California-Oregon Transmission Project ...the California-Oregon Transmission Project cannot be considered part of the Districts' Systems as defined in the Interconnection

Agreements."¹⁰ The Commission further noted that the record reflected no supporting evidence regarding the likely impacts of the effect of the termination of DWR's

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 Transmission Project and the two-line Pacific AC Intertie that runs between Malin substation (in southern Oregon) to Tesla Substation (in central California), comprise the California-Oregon Intertie, which is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central California.

⁹ An "Adverse Impact" is defined in section 4.2 the Interconnection Agreements 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...

¹⁰ Complaint Order, 152 FERC ¶ 61,016 at PP 52-53. Section 4.33 of the Interconnection Agreements defines System as:

All properties and other assets, now and hereafter existing, which are leased to,

(continued...)

participation in the remedial action scheme on the Districts' Systems, and that both California Independent System Operator Corporation's (CAISO's) and PG&E's technical analyses in fact concluded that the change would not likely impact the Districts' Systems.¹¹ The Commission explained that it therefore could not find that PG&E breached its obligations under section 9.11 (Avoidance of Adverse Impacts) of the Interconnection Agreements to, among other things, notify the Districts of potential Adverse Impacts.¹²

II. Requests for Rehearing

7. On August 3, 2015, the Districts, TANC, and the City of Redding, California and M-S-R Public Power Agency (M-S-R/Redding) filed separate requests for rehearing of the Complaint Order. As a general matter, TANC and M-S-R/Redding have adopted the specifications of error and arguments that Modesto set forth in its request for rehearing. For expedience, we will attribute the arguments adopted by these aligned parties to the Districts. Where parties have raised unique issues, we will address those issues separately.

A. Commission's Interpretation of Interconnection Agreements

8. The Districts argue that the Commission erred in interpreting the meaning of certain sections of the Interconnection Agreements, and therefore erred in denying their Complaint. Specifically, the Districts assert that the Commission erred by finding that the California-Oregon Transmission Project must be part of the Districts' Systems to conclude that PG&E breached section 9.11 of the Interconnection Agreements as a result of its remedial action scheme reprogramming. The Districts state that the Complaint Order erroneously interprets the Interconnection Agreements to require a Party to study and mitigate Adverse Impacts on other Parties' Systems only if there are not also impacts on facilities outside of the latter Parties' Systems as a result of the former Party's action.¹³ The Districts state that the Commission's interpretation of the Interconnection

licensed to, owned (or jointly-owned) by or controlled (or jointly-controlled) by a Party, and used for or directly associated with the generation, transmission, transformation, distribution, purchase or sale of electric power, including all additions, extensions, expansions, and improvements thereto.

¹¹ *Id.* PP 55, 58.

¹² *Id.* P 54.

¹³ Rehearing Request at 16. Citations refer to the Districts' request for rehearing, unless otherwise noted.

Agreements contravenes the plain meaning of sections 4.2 (Adverse Impact), 9.3 (Operational Limitations), and Appendix B of the Interconnection Agreement.¹⁴ The Districts also argue that the Commission misinterpreted section 9.11 (Avoidance of Adverse Impacts) and applied a different burden of proof than required to establish a breach of the agreements.

1. Section 4.2 (Adverse Impact)

9. The Districts argue that the Commission did not analyze any of the first criterion of the definition of Adverse Impacts (e.g., materially degrades reliability)¹⁵ or all of the elements of the second criterion (e.g., materially reduces the ability to physically transfer power into or out of the System) in considering their Complaint.¹⁶ The Districts state that, instead, the Commission focused only on an action that materially reduces the ability of a party to physically transfer power within the System, applying its finding that the California-Oregon Transmission Project cannot be considered part of the Districts' Systems.

10. The Districts also argue that the Commission dismissed the reliability impacts criterion and effectively read the qualification that a Modification, New Facility Addition, or Long-Term Change to Operations may materially degrade the Districts' reliability out of the Interconnection Agreements.¹⁷ The Districts assert that it is undisputed that reductions of transfer capability on the California-Oregon Transmission Project will materially reduce Turlock's access to reserves in the Pacific Northwest which will materially reduce Turlock's reliability, and that the Commission erred by interpreting the Interconnection Agreements in a manner which ignored all of the possible effects that qualify as Adverse Impacts.¹⁸

2. Section 9.3 (Operational Limitations) and Appendix B

¹⁴ *Id.* at 17.

¹⁵ *See supra* n.9.

¹⁶ Rehearing Request at 41-42.

¹⁷ *Id.* at 43.

¹⁸ *Id.* at 43-44.

11. The Districts also contend that the Commission's finding is inconsistent with Section 9.3 and Appendix B¹⁹ of the Interconnection Agreements. The Districts state that if only impacts on the Parties' Systems qualify as Adverse Impacts, there would be no need for the mitigation measures detailed in section 9.3, which were designed to prevent a potential Adverse Impact as a result of an overload on the north-of-Los Banos cut-plane.²⁰ The Districts assert that because the Panoche Energy Center²¹ is listed in Appendix B of the Interconnection Agreements, that demonstrates the Parties intended for Adverse Impacts, as defined in section 4.2 of the Interconnection Agreements, to include transmission constraints on facilities outside of the Districts' Systems that could materially reduce the Districts' ability to import and export power and/or would materially reduce the Districts' reliability.²² The Districts assert that, taken together, these provisions demonstrate that the definition of Adverse Impact includes impacts even if they also affect non-System facilities like the California-Oregon Transmission Project or the north-of-Los Banos cut-plane.²³

3. **Section 9.11 (Avoidance of Adverse Impacts)**

12. The Districts contend that the Commission interpreted the Interconnection Agreements to require a Party to demonstrate a "reasonable likelihood of Adverse Impacts" before it could demand or request a study from the other Party, a showing not required by the text of the agreements.²⁴ The Districts contend that this interpretation

¹⁹ Appendix B is a list of facilities, in service or under construction outside of the Districts' Systems, that the Parties agreed might have a significant impact on the other Party's System.

²⁰ Rehearing Request at 23.

²¹ The Districts describe the Panoche Energy Center as a generator that was to be interconnected around the time that the Interconnection Agreements were being negotiated, and state that it was included in Appendix B due to the Districts' concern that its interconnection could trigger overloading on facilities within CAISO north of the Los Banos cut-plane facilities which are not part of the Districts' Systems.

²² Rehearing Request at 20-21.

²³ *Id.* at 24.

²⁴ *Id.* at 36.

changes the Parties' intent under the Interconnection Agreements by requiring PG&E to give notice under these sections only if, in PG&E's view, it is more likely than not that an Adverse Impact will result from its actions. The Districts state that section 9.11 requires no more than a reasonable belief of the possibility of an Adverse Impact and gives the Districts, not PG&E, the discretion to prompt a study.²⁵ The Districts argue that the Commission's interpretation of the "may reasonably" standard in section 9.11 of the Interconnection Agreements is an abuse of discretion because the Commission failed to give meaningful consideration to, and respond to, the evidence and arguments raised by the Districts in the case and failed to articulate a reasoned basis for its decision.²⁶

13. The Districts further assert that the Commission's interpretation of the Interconnection Agreements is not supported by substantial evidence because correspondence between the Parties highlights the following disputed issues: (1) the magnitude of the impacts on the Districts' Systems; (2) whether the Interconnection Agreements or the Operation Agreement governed these impacts; (3) whether PG&E could rely on the Operation Agreement parties' study as a proxy for PG&E's Interconnection Agreement study obligation; and (4) whether the impacts on the Districts' Systems would be mitigated by actions of CAISO.²⁷

B. Commission's Findings on Potential Impacts Due to Remedial Action Scheme Reprogramming

14. The Districts assert that the Commission made several errors in its findings on the potential impacts of the remedial action scheme reprogramming on the Districts' Systems, and therefore incorrectly denied their Complaint. Specifically, the Districts contend that the Commission erred in: (1) concluding the reprogrammed remedial action scheme would have no potential impact on the Districts' system reliability; (2) relying on CAISO transmission planning studies in verifying potential impacts; and (3) finding that the issue of transfer reductions on the California-Oregon Transmission Project had been considered and decided by the Commission.

1. Reprogrammed Remedial Action Scheme

15. The Districts state that the Commission's finding that PG&E reprogrammed the remedial action scheme to respond to the same contingencies reflected in the

²⁵ *Id.* at 37-38.

²⁶ *Id.* at 40-41.

²⁷ *Id.* at 25-26.

Comprehensive Agreement and achieve mitigation without DWR's participation in the remedial action scheme was arbitrary, capricious and an abuse of discretion.²⁸ The Districts assert that the Commission's decision cites to no evidence in the record suggesting that PG&E's reprogramming of the remedial action scheme responded to and mitigated impacts caused by DWR not participating in the remedial action scheme.²⁹ Thus, the Districts assert that the Commission's finding on this point is also arbitrary and capricious because it relied upon improper factors and failed to articulate a reasoned basis for its decision.³⁰

16. The Districts argue that the Commission erred in finding that there was no evidence demonstrating that the loss of DWR's participation in or PG&E's reprogramming of the remedial action scheme has or will reduce the Districts' reliability. The Districts contend that they cannot confirm the magnitude of reliability impacts until a study is conducted to make that determination.³¹ The Districts also contend that the Commission violated the Due Process Clause of the U.S. Constitution by adopting PG&E's assertion that there was no reasonable likelihood of adverse impacts to the Districts' Systems due to termination of DWR's participation in the remedial action scheme.³²

2. CAISO Transmission Planning Studies

17. The Districts also contend that the Commission erred in relying on CAISO transmission planning studies in determining the potential impact of the remedial action scheme reprogramming.³³ The Districts argue that PG&E has conceded that the impacts caused by its remedial action scheme reprogramming are significant enough to warrant PG&E's developing and executing projects to reduce these impacts, and that the impacts

²⁸ *Id.* at 32.

²⁹ *Id.*

³⁰ *Id.* at 32-33.

³¹ *Id.* at 33-34.

³² *Id.* at 34-36.

³³ *Id.* at 45-46.

would trigger curtailments on the California-Oregon Transmission Project.³⁴ The Districts assert that the Commission therefore erred, acted arbitrarily and capriciously, and abused its discretion by relying on the mistaken conclusion that CAISO Transmission Planning studies proved that there would be minimal impacts on the Districts' Systems due to the loss of DWR's participation in the remedial action scheme.³⁵

18. The Districts also contend that the CAISO studies are irrelevant because they were neither requested by the Districts under the Interconnection Agreements nor focused on the impacts to the Districts, but instead were part of an ongoing CAISO process unrelated to the issues in this proceeding.³⁶ Finally, the Districts argue that the Commission's reliance on the CAISO studies, which the Districts did not take part in, were not able to do discovery on, or cross-examine witnesses about, violates the Due Process Clause of the U.S. Constitution, which forbids the Commission from relying on evidence in a way that forecloses the Districts of the opportunity to offer a contrary presentation.³⁷

3. Transfer Capacity Reductions on the California-Oregon Transmission Project

19. The Districts contend that whether the cessation of DWR's participation in the remedial action scheme would cause a reduction in transfer capability on the California-Oregon Transmission Project was neither considered nor decided upon in the TANC Complaint Order.³⁸ The Districts assert that the Commission specifically left the issue open for the parties to the Operation Agreement to address. The Districts further argue that, in accordance with California law, collateral estoppel would only preclude litigation if the issues in the TANC Complaint proceeding and the instant proceeding were identical. The Districts assert that the TANC Complaint proceeding involved different contracts, different parties, different rights, and different remedies. Therefore, the

³⁴ *Id.* at 46-47.

³⁵ *Id.* at 47.

³⁶ *Id.* at 48.

³⁷ *Id.* at 49 and n.118 (citing *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 63 (D.C. Cir. 1999)).

³⁸ *Id.* at 53.

Districts argue that any reliance on the findings from the TANC Complaint order is misplaced.³⁹

20. TANC argues that the Commission also erred in stating that the issue of whether the cessation of DWR's participation in the PG&E remedial action scheme would cause a reduction in transfer capability on the California-Oregon Transmission Project was considered in the TANC Complaint Order. TANC argues that the Commission provided no support for its assertion and left the issue open for the owners of the California-Oregon Transmission Project to address.⁴⁰

C. Commission's Findings on Communication Between Parties

21. The Districts assert that the Commission erred in stating that the Districts conceded that a study of potential impacts was unnecessary. The Districts state that they conceded nothing with respect to the need to study impacts on their Systems due to DWR ending its participation in the remedial action scheme.⁴¹ The Districts argue that the referenced study was to address whether the loss of DWR's participation in the remedial action scheme would cause overloads on the Los Banos – Westley 230 kV Line due to outages on the lines running between Tesla, Los Banos, and Tracy, and was not intended to address all of the potential Adverse Impacts on the Districts.⁴²

22. The Districts also contend that the fact that PG&E and the parties to the Operation Agreement are conducting a study that the Commission considers to have some overlap with the study requested by the Districts does not mean that the study of the impacts on the Districts should not go forward.⁴³ The Districts argue that the Commission erred and acted arbitrarily and capriciously in construing the record to demonstrate that the Districts conceded that a study on potential Adverse Impacts is unnecessary, because the facts in the record directly contradict the Commission's conclusion.⁴⁴

D. Need for Hearing

³⁹ *Id.* at 55-56.

⁴⁰ TANC Rehearing Request at 7-9.

⁴¹ Rehearing Request at 49-50.

⁴² *Id.* at 50.

⁴³ *Id.* at 51-52.

⁴⁴ *Id.* at 52.

23. The Districts argue that the Commission cannot resolve the issues based on the written record alone and incorrectly required the Districts meet an evidentiary standard before being granted a study under the Interconnection Agreements.⁴⁵ The Districts contend that the Commission's ruling essentially blocks the Districts from obtaining needed data in order to verify that reliability impacts do not exist. Without such data, the Districts contend that the Commission is not only accepting evidence based on data that is not part of the record, but it is also asking the Districts to blindly take the word of third parties that there will not be Adverse Impacts.⁴⁶ The Districts argue that a hearing would have provided the Districts an opportunity to conduct discovery, and to challenge the credibility of PG&E's witnesses through cross examination.

III. Discussion

24. We deny the requests for rehearing, as discussed below. Section 206 of the FPA requires that a complainant carry the burden of establishing that the existing rate or practice is unjust and unreasonable, unduly discriminatory, or preferential.⁴⁷ Furthermore, the Commission has long recognized that before ordering a trial-type hearing to determine whether the challenged practice is unjust and unreasonable, the complainant must first do more than make unsubstantiated allegations.⁴⁸ Rather, the complainant must present an adequate proffer of evidence that such a hearing is warranted.⁴⁹

25. The Districts misinterpret the Commission's finding regarding their lack of ownership or control of the California-Oregon Transmission Project as it relates to the Districts carrying their burden of establishing that PG&E breached section 9.11 of the Interconnection Agreements. Furthermore, we disagree that the Commission erred in its findings regarding the record evidence of potential impacts resulting from the remedial action scheme reprogramming, communication between the parties, and the need for hearing procedures. Rather, the Commission correctly found that the Districts presented

⁴⁵ *Id.* at 56-57.

⁴⁶ *Id.* at 57.

⁴⁷ *E.g., Buckeye Power, Inc. v. American Transmission Systems Inc.*, 148 FERC ¶ 61,174, at P 12 (2014).

⁴⁸ *See, e.g., Interstate Power and Light Co. v. ITC Midwest, LLC* 127 FERC ¶ 61,043, at PP 44-45, n.49 (2009).

⁴⁹ *Id.* n.49.

nothing more than unsubstantiated allegations regarding potential impacts to their Systems in their complaint.

A. Commission's Interpretation of the Interconnection Agreements

26. We deny rehearing of the issues regarding the Commission's interpretation of the relevant sections of the Interconnection Agreements. Contrary to the Districts' assertions, the Commission did not find that the Interconnection Agreements require a Party to perform a study of potential Adverse Impacts caused by its Modification or Long-Term Change to Operations *only* if that modification does not also impact unaffiliated facilities. The plain language of sections 4.2, 9.11.1(a), and 9.11.1(b) requires that there be a reasonable possibility that a Modification or Long-Term Change to Operations results in an Adverse Impact on or within a Party's System before a study and mitigation occur.⁵⁰ The Districts allege that the changes to the remedial action scheme might result in an Adverse Impact to the California-Oregon Transmission Project; they identify no other facility which might be adversely impacted by these changes.⁵¹ Thus, when deciding the merits of their complaint, the Commission found it dispositive that the California-Oregon Transmission Project was not part of the Districts' Systems.⁵²

27. As stated in the Complaint Order, while the Districts' Complaint focuses heavily on potential impacts on the California-Oregon Transmission Project as a result of the remedial action scheme reprogramming, "the Districts offer scant information regarding effects on the Districts' Systems themselves."⁵³ Moreover, while there may be capacity reductions on the California-Oregon Transmission Project, the Districts' allocation of transmission capacity on that facility is governed by the Districts' membership in TANC and TANC's rights and obligations under the Operation Agreement. Those rights are not

⁵⁰ See *supra* notes 7 & 9.

⁵¹ Complaint at 49-50. Record evidence suggests that the Districts' discussions with PG&E identified potential overloads on the Los Banos-Westley Line as the only potential impact to a facility in their Systems from the remedial action scheme reprogramming that may amount to an Adverse Impact on their Systems under the Interconnection Agreements. Later, the Districts conceded that the reprogramming would not impact the Los Banos –Westley Line. See Complaint at 25-28, 30.

⁵² See Complaint Order, 152 FERC ¶ 61,016 at PP 51-53.

⁵³ *Id.* P 52.

considered part of the Districts' Systems as defined in the Interconnection Agreements.⁵⁴ Therefore, the Commission correctly found that the Districts had not met their burden of establishing that PG&E breached the Interconnection Agreements by failing to notify the Districts and perform a study of potential impacts due to remedial action scheme modifications, because the Districts failed to establish that an Adverse Impact to their Systems might result in the first instance.

28. Furthermore, although the Districts cite Appendix B as evidence that impacts outside of their Systems are covered under the Interconnection Agreements, the impact of termination of DWR's participation in PG&E's remedial action scheme was not included in Appendix B, even though the Districts were well aware of the impending expiration of the Comprehensive Agreement. And while it is possible that transmission constraints on facilities outside of the Districts' Systems could present reliability concerns and require mitigation measures such as those provided in section 9.3, as explained above, the record does not demonstrate that changes to the remedial action scheme discussed herein will have such a result.

29. In addition, the record here does not support the Districts' argument that a Modification or Long-Term Change to Operations might impact non-System facilities in addition to causing an Adverse Impact on a Party's System. PG&E presented evidence that the reprogramming of the remedial action scheme to remove DWR participation would not materially degrade the Districts' reliability or their ability to physically transfer power into or out of their respective Systems.⁵⁵ Both PG&E and CAISO performed technical analyses concluding that the reliability of the Districts' Systems would not be reduced because of the reprogramming.⁵⁶ In summary, "the record reflects no supporting

⁵⁴ *Id.* PP 53-54.

⁵⁵ *Id.* P 44. PG&E submitted sworn affidavits summarizing its analysis on the effects of the DWR remedial action scheme no longer being in-service. *See* PG&E April 21, 2015 Answer Ex. No. PGE-2, at pp. 5-6. Commission regulation and precedent permit the submittal of sworn affidavits as record evidence to be considered by the Commission. *See* 18 C.F.R. § 385.213(c)(4) (2015); *see also* *Edgington Oil Co. Inc.*, 20 FERC ¶ 61,262, at 61,497 (1982) (finding that affidavit presented sufficient evidence to warrant a finding in favor of moving party)).

⁵⁶ Complaint Order, 152 FERC ¶ 61,016 at P 44.

evidence regarding the likely impact on [the Districts'] Systems" due to the remedial action scheme reprogramming.⁵⁷

B. Commission's Findings on Potential Impacts of Remedial Action Scheme Reprogramming

30. We deny rehearing on this issue. The remedial action scheme under the Comprehensive Agreement with DWR allowed PG&E to drop load or generation upon detecting system overloads. Specifically, PG&E would interrupt DWR generation and/or load during unplanned simultaneous or near simultaneous outages of the two Diablo Canyon Nuclear Generation Plant units, or the unplanned simultaneous or near simultaneous outages of the Pacific AC Intertie lines.⁵⁸ In the Complaint Order, the Commission concluded that the record reflected no supporting evidence for the alleged impacts on the Districts' Systems resulting from the remedial action scheme reprogramming.⁵⁹

31. PG&E reprogrammed the remedial action scheme to remove DWR participation in accordance with the expiration of the Comprehensive Agreement. However, as stated in the Complaint Order, 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 outages on these double lines as part of the remedial action scheme.⁶⁰ Furthermore, PG&E and CAISO analyses concluded that reprogramming the remedial action scheme would not materially degrade the reliability of the Districts' Systems or reduce their ability to transfer power.⁶¹

⁵⁷ *Id.* P 55.

⁵⁸ *See* TANC Complaint Order, 148 FERC ¶ 61,150 at n.9 (citing TANC, Complaint, Docket No. EL14-44-000, Ex. No. TNC-2 at P 10 (filed April 30, 2014)).

⁵⁹ Complaint Order, 152 FERC ¶ 61,016 at P 55.

⁶⁰ *Id.* P 57.

⁶¹ CAISO's 2014-2015 Transmission Plan, approved by the CAISO Board, assumed that the DWR remedial action scheme was not in service. The plan reflected PG&E's Bulk Transmission System Assessment which identified a section of the Westley-Los Banos 230kV line as overloaded or potentially overloaded under certain contingencies during summer off-peak conditions. CAISO determined that raising the short-term emergency rating, re-dispatching generation, and congestion management could mitigate these overloads. *See* PG&E April 21, 2015 Answer Ex. No. PGE-2,

(continued...)

Therefore, the Commission's finding that PG&E reprogrammed the remedial action scheme to respond to the same contingencies and achieve mitigation without DWR's participation, with respect to the Districts' Systems, was supported by the record evidence. The Districts now attempt to explain their failure to make a sufficient showing of the possibility of an Adverse Impact on their Systems before they can demand a study by asserting that a study of the potential impacts must first be performed. This logic is circular; such unsubstantiated allegations do not meet the burden of proof required to prevail in a complaint proceeding.

32. We disagree with the Districts that the CAISO transmission planning studies are irrelevant in determining whether PG&E breached section 9.11.1(a) or section 9.11.1(b) of the Interconnection Agreements. Those studies are designed to, among other things, identify potential transmission system limitations as well as examine the CAISO-controlled grid and reliability requirements, and identify mitigation solutions.⁶² The CAISO planning studies, together with PG&E's own technical analysis and the affidavits submitted by the Districts, amount to persuasive record evidence which the Districts failed to sufficiently rebut and therefore could not make the requisite showing of a reasonable belief of potential Adverse Impacts due to remedial action scheme reprogramming.

33. As explained above, the issue of whether reprogramming to the remedial action scheme causes *pro rata* reductions in transmission capacity and scheduling ability among the owners of the California-Oregon Transmission Project is a matter properly governed by the Operation Agreement.⁶³ In the Complaint Order, the Commission noted that this issue was addressed in a related proceeding concerning the Operation Agreement, where, as we clarify here, the Commission chose to allow the parties to the Operation Agreement to reach mutually agreeable solutions regarding reductions on the Project.⁶⁴

34. We recognize the significance of import capability over these facilities and the associated benefits of accessing economic capacity and energy and coordinating actions; however, these operational aspects are separate from reliability impacts. As stated

Attachment 6.

⁶² CAISO, *2014-2015 Transmission Planning Process*, <http://www.aiso.com/planning/Pages/TransmissionPlanning/2014-2015TransmissionPlanningProcess.aspx>.

⁶³ *See supra* P 27.

⁶⁴ Complaint Order, 152 FERC ¶ 61,016 at P 60.

previously, CAISO, the path operator for the California-Oregon Intertie, concluded that the termination of the DWR remedial action schemes would not adversely affect reliability of the CAISO controlled grid. No party disputes this conclusion. While it is reasonable to expect that transfers into and/or out of the Districts' Systems could be affected by overloading of the Westley-Los Banos 230kV line absent mitigation, as we have previously noted, CAISO indicates that potential overloads on this facility under certain contingencies and without DWR remedial action scheme participation could be mitigated through congestion management procedures, resulting in no adverse impact on the CAISO controlled grid.⁶⁵ Therefore, it is also reasonable to conclude that with no significant reduction in transfer capability over the Westley-Los Banos 230kV line, the Districts' ability to transfer power into and/or out of their respective Systems would not be adversely affected.

35. For purposes of establishing whether PG&E breached section 9.11.1(a) or section 9.11.1(b) of the Interconnection Agreements, reductions in the Districts' scheduling rights remains a non-dispositive issue because they relate to contractual rights along the California-Oregon Transmission Project, which is not part of the Districts' Systems.⁶⁶ Therefore, we need not address the issue further here.

C. Commission's Findings on Communication Between Parties

36. We deny rehearing. Our discussion of the Districts' concessions in the Complaint Order was in reference to their express acknowledgment that a study of the Los Banos-Wesley Line was unnecessary.⁶⁷ The Commission found this concession significant because this line was, other than the California-Oregon Transmission Project, the apparent sole facility potentially impacted by the remedial action scheme reprogramming. Accordingly, the Commission was correct in concluding that a study was unnecessary because the Districts failed to present evidence sufficient to establish that an Adverse Impact may reasonably result from the remedial action scheme reprogramming.

D. Request for Evidentiary Hearing

⁶⁵ CAISO, *Board Approved 2014-2015 Transmission Plan*, at 51, <http://www.caiso.com/Documents/Board-Approved2014-2015TransmissionPlan.pdf>.

⁶⁶ *See supra* P 27.

⁶⁷ Complaint Order, 152 FERC ¶ 61,016 at P 59.

37. We deny rehearing on this issue. As stated above, a review of relevant provisions of the Interconnection Agreements and the evidence in the record revealed no issue of material fact.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.