

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PacifiCorp	Docket Nos. ER07-882-000 ER07-973-000
Pacific Gas and Electric Company	ER07-967-000 ER07-968-000 ER07-969-000 ER07-994-000
Southern California Edison Company	ER07-978-000 EL07-84-000

ORDER ON AGREEMENTS GOVERNING
THE PACIFIC INTERTIE

(Issued July 30, 2007)

1. This order addresses proposed changes to several agreements that govern the Pacific Intertie. As discussed more fully herein, the proposed changes raise disputes concerning use, rates for transmission service, and operational responsibility issues. We are accepting and suspending certain of these agreements, initiating a paper hearing, and initiating and holding in abeyance an investigation of rates under section 206 of the Federal Power Act (FPA) in Docket No. EL07-84-000.¹ As a separate matter, we are rejecting a proposed firm transmission agreement between the City of Vernon, California (Vernon) and Pacific Gas and Electric Company (PG&E). Additionally, we are accepting proposed extensions of two interconnection agreements, as well as an interim agreement that supersedes a terminating intertie agreement. Termination of that intertie agreement is also accepted herein, as it is no longer necessary.

¹ 16 U.S.C. § 824e (2000).

I. Overview

A. Background

2. The agreements and terminations that are discussed in this order affect the service over the Pacific Intertie, which, as referred to herein, consists of the California-Oregon Intertie (COI) and a 500-kV direct current line (DC Line), discussed below. The COI extends from near the California-Oregon border to central California. The COI is formed by three 500-kV alternating current (AC) transmission lines. Two were built in 1967 and are referred to as the Pacific AC Intertie. The third was built in 1993 and is referred to as the California-Oregon Transmission Project (COTP). The COI is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central California.²

3. The three 500-kV AC lines on the COI are interconnected with one another and are operated in parallel, on a coordinated basis, as a single path. As a result, the three lines together achieve a single, rated transfer capability. Inter-area transfer limits of the COI are 4,800 MW north to south and 3,675 MW south to north. The three 500-kV AC lines on the COI are also interconnected with lower voltage facilities throughout the region. Due to the large transfers over the COI and its interconnection to other transmission facilities, operating conditions of the COI have a major impact on the regional transmission grid.³ The COI also operates in parallel with the DC Line that extends from northern Oregon to southern California. Transfer limits of the DC Line are 3,100 MW in both directions.

² See *Cal. Energy Comm'n v. Bonneville Power Admin.*, 902 F.2d 1298, 1302 (9th Cir. 1990); *Pacific Gas and Elec. Co. v. FERC*, 746 F.2d 1383, 1384 n.1 (9th Cir. 1984).

³ The Western Electricity Coordinating Council (WECC) found that the COI has a major impact on the WECC bulk power system. In its 1996 Disturbance Report, issued following the August 10, 1996 blackout, WECC concluded that: “[a] wide variety of conditions and contingencies must be looked at to ensure that the system is planned and operated within the [WECC] Reliability Criteria. Nevertheless, it is recognized that improbable conditions can develop that will lead to system separation across major transfer paths, such as the COI and other paths.” The same report referred to the July 2, 1996 blackout when “[t]he loss of the COI resulted in approximately 28,000 MW of underfrequency load shedding and approximately 20,000 MW of undesired generation loss in the northern California and southern islands in this disturbance.” See, Western Systems Coordinating Council Disturbance Report, For the Power System Outage that Occurred on the Western Interconnection *August 10, 1996* at pages 11 and 19. ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/AUG10FIN.pdf.

4. A 47-mile segment of the easternmost of the Pacific AC Intertie lines is owned by PacifiCorp (PacifiCorp Segment). The PacifiCorp Segment is located at the northern end of that Pacific AC Intertie line, between the Malin substation in southern Oregon and a point in northern California known as Indian Spring.⁴ The PacifiCorp Segment, like other portions of the Pacific AC Intertie, was constructed in conjunction with a federal program to develop intertie facilities that would deliver electricity between the Pacific Northwest and the Pacific Southwest.⁵ Since the PacifiCorp Segment was built in 1967, PacifiCorp has leased the full capacity of the PacifiCorp Segment to PG&E, Southern California Edison Company (SoCal Edison) and San Diego Gas & Electric Company (SDG&E) (together, the California Companies) for a fixed annual payment of \$475,000. The relevant agreement – the Use of Transmission Capacity Agreement (Capacity Agreement) – provides for a term of 40 years. The term of the Capacity Agreement expires on July 31, 2007.

5. Several other agreements that affect the COI provide for their expiration in the same time frame or upon termination of other intertie agreements without successor agreements. Those agreements include an agreement that allocates the capacity of the COI facilities among owners, an agreement that provides for the coordinated operation of the COI facilities, and several interconnection agreements. To date, the parties have not developed mutually agreeable successor agreements.

B. Filings

6. PacifiCorp and the California Companies have submitted a series of proposed changes to existing COI agreements, which are explained individually in more detail below. First, PacifiCorp proposes to terminate the Capacity Agreement on July 31, 2007. PacifiCorp plans, upon termination, to provide service over the PacifiCorp Segment under PacifiCorp's open access transmission tariff (OATT).

7. Second, PG&E proposes to amend the Owners Coordinated Operation Agreement (Coordinated Operation Agreement), which provides for coordinated operation of the COI. The Coordinated Operation Agreement provides for its termination upon termination of the Capacity Agreement, assuming that no successor to the latter agreement is reached. Under the proposed amendment: (1) the Coordinated Operation Agreement would stay in effect notwithstanding termination of the Capacity Agreement; (2) SoCal Edison and SDG&E (who do not own COI facilities) would be removed as

⁴ PG&E owns the southern 47 miles of the line extending from Indian Spring to Round Mountain.

⁵ See Agreement for Use of Transmission Capacity among Pacific Power & Light Company (now PacifiCorp), PG&E and SoCal Edison, dated August 1, 1967 (Pacific Power & Light Company Rate Schedule FPC No. 86), clauses 1-6.

parties; and (3) curtailments on the COI would apply first to the portion of the Pacific AC Intertie that includes the PacifiCorp Segment. PacifiCorp is not included as a party to PG&E's proposed amendment to the Coordinated Operation Agreement.

8. Third, the California Companies propose to terminate a 1966 agreement that allocates intertie capacity and associated costs among the California Companies (Pacific Intertie Agreement). The California Companies assert that the Pacific Intertie Agreement is no longer necessary because allocation of the relevant capacity and costs is now governed by an OATT. The California Companies propose an interim agreement that would allocate, among the California Companies, any continuing costs under the Capacity Agreement.

9. Fourth, three of the owners of intertie facilities propose to extend agreements that govern the physical interconnection of their facilities. The relevant agreements are between PacifiCorp and PG&E and between PG&E and SoCal Edison and provide for expiration by their own terms on July 31, 2007. The parties assert that temporary extensions would give the parties time to negotiate successor agreements.

10. Fifth, PG&E proposes to terminate a 1992 agreement that grants Vernon firm transmission rights on the DC Line in exchange for a portion of Vernon's capacity on the COI (Exchange Agreement).⁶ According to PG&E, termination of the Pacific Intertie Agreement will make PG&E unable to meet its obligations under the Exchange Agreement. PG&E has filed a unilateral proposal to provide subsequent transmission service to Vernon.

II. Discussion

A. Capacity Agreement – Docket No. ER07-882-000

i. Proposal and Comments

11. The Capacity Agreement allocates the capacity of the PacifiCorp Segment to the California Companies for an annual fee of \$475,000. The agreement provides for its expiration after 40 years from commencement of service as defined in the agreement. The term of the Capacity Agreement expires on July 31, 2007.⁷

12. On May 10, 2007, in Docket No. ER07-882-000, PacifiCorp proposed to terminate the Capacity Agreement effective July 31, 2007. PacifiCorp plans to provide transmission service over the PacifiCorp Segment under its OATT, with delivery at

⁶ PG&E Rate Schedule FERC No. 148.

⁷ Capacity Agreement § 9. *See also* PacifiCorp's May 10, 2007 Notice of Termination in Docket No. ER07-882-000 (PacifiCorp Notice of Termination) at 3.

Indian Spring. PacifiCorp states that service could be combined with other service on PacifiCorp's system.⁸ According to PacifiCorp, there will be no changes to essential aspects of service over the Pacific AC Intertie.⁹

13. Notice of PacifiCorp's proposal was published in the Federal Register on May 21, 2007.¹⁰ Interventions, comments and protests were due on or before May 31, 2007. Bonneville Power Administration (Bonneville), the Washington Utilities and Transportation Commission and the Utah Division of Public Utilities filed timely notices of intervention or timely motions to intervene. Arizona Public Service Company (APS) and Calpine Corporation (Calpine) filed untimely motions to intervene. Timely motions to intervene and comments were filed by Western Area Power Administration (Western), Turlock Irrigation District (Turlock), Northern California Power Agency (NCPA), Wyoming Office of Consumer Advocate, the Idaho Public Utilities Commission and the Public Utility Commission of Oregon, and the Wyoming Public Service Commission. Timely motions to intervene and protests were filed by the California Public Utilities Commission (California Commission), PG&E, SoCal Edison, SDG&E, the Transmission Agency of Northern California (TANC), Sacramento Municipal Utility District (SMUD), the California Independent System Operator Corporation (CAISO), the Cities of Santa Clara and Redding, California and the M-S-R Public Power Agency (Cities/M-S-R), and Modesto Irrigation District (Modesto).

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-882-000.¹¹ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant APS's and Calpine's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.¹²

15. The following intervenors support PacifiCorp's proposal: Wyoming Office of Consumer Advocate, Wyoming Public Service Commission, Idaho Public Utilities

⁸ *Id.* at 6, n.7 and 8.

⁹ *Id.* at 3-5. For example, PacifiCorp states there will be no changes to the physical characteristics of the PacifiCorp Segment, the reliability of the Pacific AC Intertie, the responsibility for and manner of operating the Pacific AC Intertie, or the manner in which the physical path rating for the Pacific AC Intertie is determined.

¹⁰ 72 Fed. Reg. 28,484 (May 21, 2007).

¹¹ 18 C.F.R. § 385.214 (2007).

¹² 18 C.F.R. § 385.214(d) (2007).

Commission and Public Utility Commission of Oregon. The Wyoming Office of Consumer Advocate states that any extension of the Capacity Agreement would allow California parties to use PacifiCorp's transmission system on a preferential basis, *i.e.*, on terms that are not available to PacifiCorp's other transmission service customers. Other intervenors argue that the Capacity Agreement termination should be rejected, or suspended for five months and set for technical conference, hearing, and settlement judge procedures, for reasons discussed below.

16. TANC, the California Commission, PG&E, and the CAISO assert that the proposed termination would threaten reliability because the parties have not reached agreements to preserve coordinated operation of the COI. Coordinated operation includes coordinating the maintenance, replacement and operation of facilities; sharing in overload mitigation measures; coordinating use, maintenance and replacement of Remedial Action Schemes; coordinating planning; and other coordinated activities. Intervenors contend that, if the COI is not operated on a coordinated basis, actions on one portion of the intertie could cause outages on other portions of the intertie, to the detriment of reliability. They request that any acceptance of the proposed termination be conditioned on the execution of successor agreements that would ensure coordinated and reliable operation. The CAISO proposes two options: (1) establishing a Transmission Ownership Right for PacifiCorp on the PacifiCorp Segment; or (2) establishing a new CAISO scheduling point at Indian Spring or Round Mountain.¹³ The California Commission, PG&E, TANC, CAISO, and SDG&E assert that the proposed termination, if accepted, should be suspended so that the parties could reach appropriate operating agreements and so that no change to current operations would be made during the peak summer season.

17. Apart from reliability and operating issues, protesters assert that the proposed termination would significantly and unreasonably increase both the rates that users of the COI pay and, as a result, PacifiCorp's transmission service revenues. SoCal Edison, SDG&E, the California Commission, and PG&E assert that revenues/costs would increase from \$475,000 per year under the Capacity Agreement to approximately \$39 million to \$69 million per year under PacifiCorp's OATT. They assert that the proposed termination should be rejected because PacifiCorp failed to provide associated cost support for the rate increase. They also assert that PacifiCorp's proposal would introduce a new, pancaked transmission service charge for transfers over the COI.

18. On June 18, 2007, PacifiCorp moved for leave to answer and answered the protests. Our rules prohibit answers to protests unless otherwise ordered by the

¹³ The CAISO states that it proposes these options to ensure that termination of the Capacity Agreement will not result in operational concerns or financial harm to customers.

decisional authority.¹⁴ We accept PacifiCorp's answer because it provides information that has assisted us in our decision. In its answer, PacifiCorp asserts that minimal changes to the Coordinated Operation Agreement and related agreements are needed to ensure reliable operation. PacifiCorp submitted, as part of its answer, a mark-up of the Coordinated Operation Agreement that would add PacifiCorp as a party and that would provide for the same curtailments over the PacifiCorp Segment as over other portions of the COI. With respect to rates, PacifiCorp asserts that the opponents have overestimated the increase in PacifiCorp's revenues because the opponents have failed to account for the fact that use of the PacifiCorp Segment could be combined with other service over PacifiCorp's system, for a single transmission charge, and that opponents have exaggerated the usage of capacity on the PacifiCorp Segment.

19. On June 26, several parties filed answers to PacifiCorp's answer. Our rules prohibit answers to answers unless otherwise ordered by the decisional authority.¹⁵ We reject the answers here because we are establishing proceedings in which the parties will have an opportunity to air their concerns.

ii. Determination

20. Termination of service under the Capacity Agreement results in a change in rates, terms, and conditions of service for transmission in interstate commerce that may be unjust and unreasonable, and therefore requires our approval under section 205 of the FPA. Termination requires our approval notwithstanding that the Capacity Agreement provides for its expiration.¹⁶

21. To obtain our approval under section 205, a utility that proposes to terminate service must demonstrate that the termination is just and reasonable and not unduly discriminatory or preferential.¹⁷ PacifiCorp suggests that, to meet this burden, a utility need only demonstrate that circumstances after termination would be just and reasonable.¹⁸ PacifiCorp asserts that circumstances after its proposed termination would be just and reasonable because customers could take service over the PacifiCorp Segment under PacifiCorp's OATT, at rates that have been determined to be just and reasonable.

¹⁴ 18 C.F.R. § 385.213(a)(2) (2007).

¹⁵ *Id.*

¹⁶ *Sacramento Municipal Utility District v. FERC*, 474 F.3d 797, 800 (D.C. Cir. 2007). *See also* 16 U.S.C. § 824d(d); 18 C.F.R. § 35.15(a) (2007).

¹⁷ *See* 16 U.S.C. § 824d; *Public Serv. Comm'n v. FERC*, 866 F.2d 487 (D.C. Cir. 1989).

¹⁸ *See* PacifiCorp's June 18, 2007 Answer at 8.

PacifiCorp also suggests that the proposed termination is just and reasonable, because it would implement the intention of the parties to the Capacity Agreement, who had agreed to a fixed expiration date.¹⁹

22. We find that PacifiCorp interprets section 205 too narrowly. Section 205 requires us to examine potentially harmful effects of a proposed termination of service.²⁰ PacifiCorp has not demonstrated that appropriate coordination and operating arrangements are in place and therefore, that coordinated and reliable operation and planning of the COI would be preserved. As discussed below, the parties have relied on the Coordinated Operation Agreement to ensure that the COI is operated, maintained, and developed in a coordinated manner. The COI is infrastructure that is critical to ensuring that electricity can be transferred between the Pacific Northwest and the Pacific Southwest. We are concerned that changes to one element of the COI could have significant, adverse effects on other elements unless they are closely coordinated and operational responsibility is established. Failure to have appropriate procedures in place to ensure the coordinated operation of the COI could have a significant impact on the reliable operation, import/export capability, and coordinated planning of the COI.²¹

23. In all, PacifiCorp's proposal to terminate the Capacity Agreement has not been shown to be just and reasonable and might be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. We will therefore accept and suspend for the full five-month statutory period until December 31, 2007, the termination, and make it subject to further order and the outcome of the paper hearing as discussed below.

24. Moreover, several protesters have raised rate-pancaking as a concern. Our initial analysis is that the payment being made under the Capacity Agreement is currently directly billed by PacifiCorp and included as part of the CAISO's transmission charges. Thus, it is not clear to us that termination of the Capacity Agreement will introduce any new pancaked rate. It appears that the issue is really about the magnitude of the rate rather than how the charge is levied.

25. Under PacifiCorp's proposed termination of the Capacity Agreement, PacifiCorp's existing transmission service rates may no longer be just and reasonable because the significant increase in OATT service may result in significantly increased revenues to PacifiCorp. Because PacifiCorp has not proposed a rate change to reflect the new

¹⁹ *Id.*

²⁰ *Pacific Power & Light Co.*, 23 FERC ¶ 61,402 at 61,890 (1983).

²¹ The Commission encourages WECC to review the coordinated operations agreements set for paper hearing and comment as appropriate whether they satisfy and are consistent with the mandatory and enforceable reliability standards.

services proposed to be rendered under its OATT, we will initiate an investigation in Docket No. EL07-79-000, into all changes to PacifiCorp's system-wide transmission service rates under section 206 of the FPA raised by the parties to the proceeding. Such hearing will be held in abeyance pending the outcome of the Commission's order on the Coordinated Operation Agreement, which will be issued following the paper hearing on the operation, maintenance, and planning issues and prior to the end of the five-month suspension.

26. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,²² requires the Commission to establish a refund effective date that is no earlier than publication of notice of its initiation of the investigation, but no later than five months after that date. We will establish the refund effective date to be January 1, 2008, to coincide with the end of the five-month suspension period.

27. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision.

B. Coordinated Operation Agreement – Docket No. ER07-967-000

i. Proposal and Comments

28. The Coordinated Operation Agreement took effect in 1993, when the COTP was added to the Pacific AC Intertie to form the COI.²³ The current parties are PG&E, SoCal Edison, SDG&E, Western and the COTP Participants.²⁴ The Coordinated Operation Agreement provides for coordinated planning and operation of the COI facilities, including coordinated efforts to maintain and enhance transfer capability. The Coordinated Operation Agreement also allocates the transfer capability of the COI among the parties and determines each party's share of curtailments. The Coordinated Operation

²² Energy Policy Act of 2005, Pub.L. No. 109-58, § 1285, 119 Stat 594, 580-81.

²³ The Coordinated Operation Agreement was revised effective January 1, 2005 pursuant to a Commission-approved settlement agreement. *See Pacific Gas and Electric Co.*, 109 FERC ¶ 61,255 (2004).

²⁴ The COTP Participants are: Western, TANC, the California Department of Water Resources, the City of Shasta Lake, Carmichael Water District, the City of Vernon, California, PG&E, San Juan Suburban Water District, and their successors and assigns.

Agreement requires operation of the COI by a single operator, currently the CAISO under the California-Oregon Intertie Path Operating Agreement (Path Operating Agreement).²⁵

29. On May 31, 2007, in Docket No. ER07-967-000, PG&E proposed to amend the Coordinated Operation Agreement to allow it to stay in effect after termination of the Capacity Agreement,²⁶ to remove SoCal Edison and SDG&E as parties as provided for in it,²⁷ and to add a new curtailment rule. Under the proposed curtailment rule, any curtailment of the COI capacity would be applied first to the Pacific AC Intertie line that includes the PacifiCorp Segment. The amended Coordinated Operation Agreement that was submitted by PG&E was not executed by the parties.

30. In support of the proposed extension of the Coordinated Operation Agreement, PG&E states that termination without a successor agreement could impair or preclude the coordinated operation of the COI and jeopardize the reliability of California's transmission system. In support of the proposed curtailment rule, PG&E states that PacifiCorp's proposal would increase costs for certain schedules over the COI. PG&E asserts that curtailment of higher-cost schedules would mitigate those increased costs and therefore would promote economically efficient inter-regional transfers.²⁸

31. Notice of PG&E's filing was published in the *Federal Register* on June 18, 2007.²⁹ Interventions, comments and protests were due on or before June 21, 2007. Timely motions to intervene were filed by the California Electricity Oversight Board (CEOB) and NCPA. Timely motions to intervene and protests were filed by PacifiCorp and Powerex Corp. (Powerex). Timely motions to intervene and comments were filed by TANC, Western, the CAISO, Bonneville, SMUD, Modesto and Cities/M-S-R. On

²⁵ The Path Operating Agreement, on file as CAISO Rate Schedule FERC No. 50, provides terms under which the CAISO operates the COI. The Path Operating Agreement incorporates terms from the Coordinated Operation Agreement. The parties to the Path Operating Agreement are the parties to the Coordinated Operation Agreement plus the CAISO.

²⁶ Section 6.2(c) of the Coordinated Operation Agreement provides that the agreement will terminate upon termination of the Capacity Agreement without a successor agreement.

²⁷ Section 6.3 of the Coordinated Operation Agreement provides that SoCal Edison and SDG&E will no longer be parties to the agreement upon termination of the Pacific Intertie Agreement, discussed below.

²⁸ PG&E's May 31, 2007 Filing at 5-7.

²⁹ 72 Fed. Reg. 33,480 (June 18, 2007).

June 25, 2007, the California Commission filed a motion to intervene out of time. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-967-000.³⁰ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant the California Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.³¹

32. PacifiCorp asserts that PG&E failed to negotiate amendments to the Coordinated Operation Agreement in good faith and that only minimum changes are needed to reflect termination of the Capacity Agreement.³² PacifiCorp argues that PG&E's proposed curtailment rule would unreasonably impose curtailments for the entire COI on PacifiCorp's transmission service customers. Instead, PacifiCorp proposes a curtailment rule under which the PacifiCorp Segment would be assigned the same curtailments on a pro-rated basis as the rest of the COI. Powerex agrees that PG&E's proposed rule is unreasonable, asserting that rule would violate Order No. 888, which provided for *pro rata* curtailment of firm transmission service without regard to price.

33. Western, the CAISO, Bonneville, TANC, SMUD, Modesto and Cities-M-S-R support extension of the Coordinated Operation Agreement but assert that PacifiCorp must be added as a party to ensure reliable operation of the COI. These parties also assert that, to protect reliability, PacifiCorp must be added as a party to the Path Operating Agreement and certain other operating agreements.³³ These parties request suspension of PG&E's proposal, consolidation with proceedings on termination of the PacifiCorp Capacity Agreement, and initiation of a technical conference or settlement procedures. PacifiCorp opposes consolidation on the grounds that other parties are unreasonably attempting to delay expiration of the Capacity Agreement.

³⁰ 18 C.F.R. § 385.214 (2007).

³¹ 18 C.F.R § 385.214(d) (2007).

³² PacifiCorp's protest at Appendix 2 attaches its proposed version of an amended Coordinated Operation Agreement that includes PacifiCorp as a party. PacifiCorp also includes this same Coordinated Operation Agreement as well as a suggested Path Operating Agreement in its answer in Docket No. ER07-882-000, dated June 18, 2007.

³³ PG&E does not appear to be opposed to PacifiCorp becoming a party to the Coordinated Operation Agreement, but the two parties have yet to agree on successor terms.

ii. Determination

34. Coordinated operation, maintenance, and planning of the facilities on the COI enables the COI's transfer capability to be achieved and maximized in a coordinated and reliable manner. To ensure coordinated operation, maintenance, and planning, appropriate procedures must be used by all entities that own and control COI facilities. All such entities should share in overload mitigation measures and be responsible for implementation, maintenance, and replacement of remedial action schemes, coordinated planning, and other coordinated activities. Without such coordinated operation, maintenance, and planning, parties might take inconsistent or inadequate actions that could impair reliable operation of the regional grid.

35. Our preliminary analysis of PG&E's proposed amendments to the Coordinated Operation Agreement indicates that the amendments have not been shown to be just and reasonable and might be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. In particular, PG&E and PacifiCorp disagree on the appropriate practice for allocating curtailments to be included in the Coordinated Operation Agreement. In addition, it is not clear whether all appropriate parties have been included as parties to the Coordinated Operation Agreement. We will therefore accept PG&E's amended Coordinated Operation Agreement, suspend it for five months until December 31, 2007, subject to further order, and initiate paper hearing procedures on both it and the Coordinated Operation Agreement that has been proposed by PacifiCorp in its answer.³⁴ The differences between these proposed Coordinated Operation Agreements do not appear to be numerous or extensive and focus, in particular, on the allocation of curtailments. However, all of the disputed issues on coordinated operation, maintenance, and planning related to a Coordinated Operation Agreement are to be briefed with evidence in the paper hearing. Parties that wish to file briefs and/or evidence

³⁴ The Commission may use a paper hearing when written submissions provide an adequate basis for resolving a dispute of material fact. *See Central Maine Power Co. v. FERC*, 252 F.3d 34, 46-47 (1st Cir. 2001); *Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193, 1199 (D.C. Cir. 2000) (*citing Conoco Inc. v. FERC*, 90 F.3d 536, 543 n.15 (D.C. Cir. 1996) (*quoting Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993))). *See also Public Service Co. of Indiana*, 49 FERC ¶ 61,346 (1989), *order on reh'g*, 50 FERC ¶ 61,186, *opinion issued*, Opinion No. 349, 51 FERC ¶ 61,367, *order on reh'g*, Opinion No. 349-A, 52 FERC ¶ 61,260, *clarified*, 53 FERC ¶ 61,131 (1990), *appeal dismissed*, *Northern Indiana Public Service Co. v. FERC*, 954 F.2d 736 (D.C. Cir. 1992). *See also, Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294, at P 79 (July 31, 2006).

on the issues must do so within 45 days of the date of this order. Parties that wish to file reply briefs must do so within 15 days of date of filing of initial briefs and evidence.³⁵

C. Pacific Intertie Agreement and Interim Capacity and Cost Sharing Agreement – Docket No. ER07-969-000

36. The Pacific Intertie Agreement, which was executed in 1966, allocates capacity and costs on the Pacific Intertie among the California Companies.³⁶ The Pacific Intertie Agreement expires by its own terms on July 31, 2007.

37. On May 31, 2007, in Docket No. ER07-969-000, the California Companies submitted a notice of cancellation of the Pacific Intertie Agreement, with no successor agreement.³⁷ The California Companies assert that termination will not affect transmission service or rates because the allocation of capacity and costs on the Pacific Intertie is now and will continue to be governed by the CAISO tariff.

38. In the same docket, the California Companies submitted an Interim Capacity and Cost Sharing Agreement (Interim Agreement) to be used in the event that termination of the Capacity Agreement is suspended for any period. The Interim Agreement provides for the continued sharing among the California Companies of the capacity and costs of the PacifiCorp Segment, and would terminate upon termination of the Capacity Agreement.

39. Notice of the California Companies' proposal was published in the *Federal Register* on June 18, 2007.³⁸ Interventions, comments and protests were due on or before June 21, 2007. Timely motions to intervene were filed by CEOB, Cities/M-S-R, Modesto, NCPA, SDG&E, SoCal Edison, TANC and SMUD. Pursuant to Rule 214 of

³⁵ While the Commission will hold this paper hearing, we nevertheless encourage the various parties to avail themselves of the Commission's alternative dispute resolution services, such as settlement judges or the Dispute Resolution Service, for any issues in dispute related to any agreements discussed in this order. Furthermore, we note that even if any such settlement discussions are unsuccessful, we are committed to resolving the operational, maintenance, and planning issues raised by these proceedings prior to December 31, 2007.

³⁶ PG&E Rate Schedule FERC No. 38, SoCal Edison Rate Schedule FERC No. 40, and SDG&E Rate Schedule FERC No. 20.

³⁷ PG&E included certificates of concurrence signed by SoCal Edison and SDG&E.

³⁸ 72 Fed. Reg. 33,480 (June 18, 2007).

the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-969-000.³⁹ No party has objected to the proposed termination of the Pacific Intertie Agreement or to the proposed Interim Agreement.

40. We accept the proposed termination of the Pacific Intertie Agreement effective July 31, 2007. We also accept the proposed Interim Agreement effective July 31, 2007.

D. PacifiCorp-PG&E Interconnection Agreement – Docket Nos. ER07-973-000 and ER07-968-000

41. Interconnection of the transmission systems of PacifiCorp and PG&E on the COI is governed by a 1995 Interconnection Agreement between PacifiCorp and PG&E (PacifiCorp-PG&E Interconnection Agreement).⁴⁰ The PacifiCorp-PG&E Interconnection Agreement expires by its own terms on July 31, 2007.

42. On May 31, 2007, in Docket No. ER07-973-000, PacifiCorp proposed to extend the term of the PacifiCorp-PG&E Interconnection Agreement until September 30, 2007. PacifiCorp asserts that the extended term would give the parties time to negotiate a successor agreement. PG&E concurs with PacifiCorp's proposal and filed the same proposal in Docket No. ER07-968-000.

43. Notice of the PacifiCorp's filing was published in the *Federal Register*, 72 Fed. Reg. 33,480 (June 18, 2007).⁴¹ Interventions, comments and protests were due on or before June 21, 2007. Timely motions to intervene were filed by SoCal Edison, SDG&E, SMUD, CEOB, and NCPA.⁴² Timely motions to intervene and comments were filed by TANC, Modesto and Cities/M-S-R. PG&E filed a motion to intervene in Docket No. ER07-973-000 one day out of time. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴³ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-973-000.

³⁹ 18 C.F.R. § 385.214 (2007).

⁴⁰ PacifiCorp Rate Schedule FERC No. 426 and PG&E Rate Schedule FERC No. 195.

⁴¹ *See also* 72 Fed. Reg. 33,480 (June 18, 2007) (notice of PG&E's parallel proposal in Docket No. ER07-968-000).

⁴² CEOB and NCPA moved to intervene in both Docket Nos. ER07-973-000 and Docket No. ER07-968-000. The others moved to intervene only in Docket No. ER07-973-000. We will consolidate these two dockets.

⁴³ 18 C.F.R. § 385.214 (2007).

Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, the Commission will grant PG&E's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.⁴⁴

44. The commenters do not object to the proposed extension of the PacifiCorp-PG&E Interconnection Agreement. However, the commenters state that a two-month extension is insufficient to allow the parties to address all matters that flow from termination of the Capacity Agreement. The commenters request consolidation with proceedings on termination of the Capacity Agreement.

45. We accept the proposed extension of the PacifiCorp-PG&E Interconnection Agreement until September 30, 2007. The extension will give the parties time to negotiate a successor agreement. In response to commenters' concern that two months will not be sufficient to address the effects of any termination of the Capacity Agreement, we note that the PacifiCorp-PG&E Interconnection Agreement may not be terminated without our approval and that the parties may request additional extensions in the future, if necessary. We deny the motion to consolidate these proceedings with proceedings on termination of the Capacity Agreement, as no issue remains concerning the proposed extension of the PacifiCorp-PG&E Interconnection Agreement. However, we will consolidate Docket Nos. ER07-973-000 and ER07-968-000, because these are parallel proceedings.

E. SoCal Edison-PG&E Interconnection Agreement – Docket No. ER07-978-000

46. Interconnection of PG&E's facilities on the Pacific Intertie and SoCal Edison's facilities is governed by the Midway Interconnection Agreement, which took effect in 1970.⁴⁵ The agreement provides for its termination upon termination of the Pacific Intertie Agreement.

47. On May 31, 2007, in Docket No. ER07-978-000, SoCal Edison proposed to extend the term of the Midway Interconnection Agreement to October 31, 2007 to allow SoCal Edison and PG&E to negotiate a successor agreement. PG&E concurs.

48. Notice of SoCal Edison's filing was published in the Federal Register on June 18, 2007.⁴⁶ Interventions, comments and protests were due on or before June 21, 2007.

⁴⁴ 18 C.F.R. § 385.214(d) (2007).

⁴⁵ SoCal Edison Rate Schedule FERC No. 309.

⁴⁶ 72 Fed. Reg. 33,481 (June 18, 2007).

Timely motions to intervene were filed by TANC, Modesto, Cities/M-S-R and CEOB. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-978-000.⁴⁷

49. We accept the proposed extension until October 31, 2007, to allow the parties time to negotiate a successor agreement.

F. Exchange Agreement and Firm Transmission Agreement – Docket No. ER07-994-000

i. Proposal and comments

50. Under the Exchange Agreement, which was executed in 1992, Vernon receives 93 MW of PG&E's firm rights on the DC Line in exchange for 121 MW of Vernon's firm rights on the COTP. PG&E's rights on the DC Line derive from the Pacific Intertie Agreement.

51. On May 31, 2007, in Docket No. ER07-994-000, PG&E proposed to terminate the Exchange Agreement, effective July 31, 2007. PG&E states that, upon the California Companies' proposed termination of the Pacific Intertie Agreement, PG&E will no longer have capacity rights on the DC Line and therefore will be unable to perform under the Exchange Agreement.⁴⁸ The Exchange Agreement authorizes PG&E to terminate it if PG&E loses its rights on the DC Line.⁴⁹ PG&E proposes termination on July 31, 2007 to coincide with termination of the Pacific Intertie Agreement.

52. PG&E also unilaterally submitted an unexecuted agreement for firm service to Vernon between the COTP and SoCal Edison's transmission system. PG&E proposes an effective date of August 1, 2007 to coincide with termination of the Exchange Agreement, so that service to Vernon would not be interrupted. Service under the proposed agreement would enable Vernon to move electricity in and out of southern California in conjunction with Vernon's rights on the COTP.

53. PG&E asserts that the proposed agreement is valid under the CAISO's OATT. The tariff requires a transmission service customer to take service under the tariff unless the customer holds rights under an existing contract or a contract that was entered into

⁴⁷ 18 C.F.R. § 385.214 (2007).

⁴⁸ PG&E's May 31, 2007 Filing, Docket No. ER07-994-000 (PG&E-Vernon Filing) at 2.

⁴⁹ Exchange Agreement § 5.2.2.

pursuant to an existing contract.⁵⁰ PG&E asserts that the proposed agreement is pursuant to the Exchange Agreement because the Exchange Agreement requires the parties to negotiate a successor agreement and requires PG&E, if negotiations fail, to file unilaterally a proposed rate schedule.⁵¹ PG&E states that PG&E and Vernon have not yet reached a successor agreement but likely could with the assistance of a settlement judge. PG&E states that Vernon could arrange service under the CAISO's tariff but, in that case, would face congestion charges.⁵²

54. Notice of PG&E's filing was published in the Federal Register on June 18, 2007.⁵³ Interventions, comments and protests were due on or before June 21, 2007. Timely motions to intervene and comments were filed by TANC, Cities/M-S-R, SMUD, and Turlock. Pursuant to Rule 214 of the Commissions Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER07-994-000.⁵⁴

55. The commenters express concern about the effect of the proposed agreement on their rights under a separate rate schedule, the South of Tesla Principles.⁵⁵ Under the South of Tesla Principles, PG&E built upgrades between the COTP and SoCal Edison's transmission system in exchange for contributions by PG&E's customers. The commenters assert that, if Vernon takes service under the proposed agreement for longer than ten years, Vernon would rely on the upgrades and should pay a share of the associated costs. The commenters seek refunds and interest from the time that the upgrades were built in 1993.

56. On July 3, 2007, PG&E filed an answer to the comments of TANC, SMUD and Turlock. Our rules prohibit answers to protests unless otherwise ordered by the decisional authority.⁵⁶ We reject PG&E's answer.

⁵⁰ CAISO FERC Electric Tariff, Third Replacement Volume No. II, Original Sheet No. 282-284, § 16.

⁵¹ Exchange Agreement §§ 5.2.2 and 6.2.

⁵² PG&E-Vernon Filing at 2.

⁵³ 72 Fed. Reg. 33,482 (June 18, 2007).

⁵⁴ 18 C.F.R. § 385.214 (2007).

⁵⁵ PG&E Rate Schedule FERC No. 143.

⁵⁶ 18 C.F.R. § 385.213(a)(2) (2007).

ii. Determination

57. We will accept PG&E's unopposed proposal to terminate the Exchange Agreement, effective July 31, 2007. The Exchange Agreement permits termination upon termination of the Pacific Intertie Agreement, which is being terminated as discussed above.⁵⁷

58. We reject PG&E's proposed rate schedule for firm service to Vernon between the COTP and SoCal Edison's transmission system. As noted by PG&E in its filing, similar service is available under the CAISO OATT.⁵⁸ Accordingly, we do not see any particular reason to create a new encumbrance on the CAISO system for service outside of the CAISO OATT. Under the CAISO's OATT, a transmission service customer must take service at the rates, terms and conditions of service set forth in the tariff unless the customer holds an Existing Contract.⁵⁹ An Existing Contract is a transmission service contract that existed when the CAISO began operation in 1998 or that was entered into pursuant to such a contract.⁶⁰ The tariff's recognition of rights under Existing Contracts was intended only as a transitional matter in moving to competitive electricity markets.⁶¹ When the Commission accepted open access transmission tariffs in Order No. 888, the Commission found that the transition did not necessitate the generic abrogation of existing contracts because those contracts would expire by their own terms.⁶² However,

⁵⁷ Exchange Agreement §5.2.2.

⁵⁸ Commission policy allows for service agreements under a tariff to be negotiated and filed up to 30 days after service commences. *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

⁵⁹ CAISO FERC Electric Tariff, Third Replacement Volume No. II, Original Sheet No. 282-284 § 16.

⁶⁰ CAISO FERC Electric Tariff, Third Replacement Volume No. II, Substitute Second Revised Sheet No. 494, Appendix A (Master Definitions Supplement), definition of Existing Contract ("Existing Contract" means "the contracts which grant transmission service rights in existence on the ISO Operations Date (including any contracts entered into pursuant to such contracts) as may be amended in accordance with their terms or by agreement between the parties thereto from time to time").

⁶¹ *See Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122, at 61,470-72 (1997). *See also Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, FERC Stats. & Regs. ¶ 31,036 (1996), *aff'd New York v. FERC*, 122 S. Ct. 1012 (2002) (Order No. 888).

⁶² *See* Order No. 888 at 31,663.

we will strictly construe the definition of Existing Contract in determining whether a proposal qualifies thereunder.

59. PG&E's proposed rate schedule does not qualify as an Existing Contract. As a unilateral proposal by PG&E, the rate schedule is not a "contract" and was not "entered into" by the parties as required under the definition of Existing Contract. Moreover, the Exchange Agreement does not require a successor agreement.⁶³ In these circumstances, to allow Vernon to take service under the proposed rate schedule outside of the CAISO tariff has not been justified.

60. This conclusion is consistent with our treatment of other expiring contracts for service over the COI. In *Sacramento Municipal Utility District v. Pacific Gas and Electric Company*, 105 FERC ¶ 61,358 (2003), a customer had, for 40 years, received service over the COI under a bilateral contract. Long before the contract was due to expire, the parties had executed a memorandum of understanding that contemplated ongoing service after the contract's expiration. When the contract expired, we rejected the customer's attempt to receive ongoing service under a bilateral arrangement outside of the CAISO tariff without examining whether the customer had met the terms of the memorandum of understanding. We took this approach because the CAISO tariff was purposefully designed to eliminate encumbrances as would result from continued service under bilateral arrangements.⁶⁴ In a related case, we rejected the customer's argument that the customer should be protected from the congestion charges that would apply under the CAISO tariff (the same argument that PG&E makes here on Vernon's behalf). As found by the United States Court of Appeals for the District of Columbia Circuit, the customer's attempt to avoid congestion charges amounted to an impermissible, collateral attack on the CAISO tariff.⁶⁵ These cases demonstrate that a customer may receive service outside of the CAISO tariff only when the customer has a preexisting enforceable contractual right to do so. Vernon, which has not even intervened in the present proceeding, has demonstrated no such entitlement, and we are not persuaded by PG&E's assertion that one exists.

61. Turning to TANC's claim against PG&E under the South of Tesla Principles, that claim is not properly considered here. This proceeding assesses the reasonableness of PG&E's proposed rate schedule for service to Vernon, which we are rejecting.

⁶³ See Exchange Agreement § 5.2.2 and § 6.2.

⁶⁴ *Sacramento Municipal Utility District*, 105 FERC ¶ 61,358, at P 21-23 (2003), *reh'g denied*, 107 FERC ¶ 61,237, at P 12-13 (2004) *aff'd*, *Sacramento Municipal Utility District v. FERC*, 428 F.3d 294, 297-98 (D.C. Cir. 2005).

⁶⁵ *Sacramento Municipal Utility District v. FERC*, 474 F.3d 797, 800 (D.C. Cir. 2007).

The Commission orders:

(A) PacifiCorp's proposed termination of the Capacity Agreement is hereby accepted and suspended for five months to be effective December 31, 2007, subject to further order, as discussed in the body of this order.

(B) PG&E's proposed amendments to the Coordinated Operation Agreement are hereby accepted and suspended for five months to be effective December 31, 2007, subject to further order, as discussed in the body of this order.

(C) The California Companies' proposed termination of the Pacific Intertie Agreement and the proposed Interim Agreement are hereby accepted effective July 31, 2007.

(D) The proposed, temporary extensions of the interconnection agreements between PacifiCorp and PG&E and between PG&E and SoCal Edison are hereby accepted effective July 31, 2007.

(E) PG&E's proposed termination of the Exchange Agreement is hereby accepted effective July 31, 2007. PG&E's proposed firm transmission agreement for service to Vernon is hereby rejected.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter 1), a paper hearing shall be held as discussed in the body of the order. Each party's presentation should separately state the facts and arguments advanced by the party and include any and all exhibits, affidavits, and/or prepared testimony upon which the party relies. The statement of facts must include citations to the supporting exhibits, affidavits and/or prepared testimony. All materials must be verified and subscribed as set forth in 18 C.F.R. § 385.2005 (2006).

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter 1), an investigation of PacifiCorp's system-wide rates for all transmission services shall be held as discussed in the body of the order. The investigation shall be held in abeyance pending our determination with respect to the Coordinated Operation Agreement.

(H) The Secretary is directed to publish in the *Federal Register* a notice of the Commission's initiation of this FPA section 206 proceeding.

(I) The refund effective date established pursuant to section 206(b) of the FPA will be January 1, 2008.

(J) Docket Nos. ER07-973-000 and ER07-968-000 are hereby consolidated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.