

170 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Modesto Irrigation District and
Turlock Irrigation District

Docket No. EL15-55-003

v.

Pacific Gas and Electric Company

ORDER ON REHEARING AND CLARIFICATION

(Issued March 20, 2020)

1. In a May 15, 2019 order,¹ the Commission responded to a remand by the United States Court of Appeals for the Ninth Circuit (Ninth Circuit), to address the issue of whether Pacific Gas and Electric Company (PG&E) breached certain Interconnection Agreements with Turlock Irrigation District (Turlock) and Modesto Irrigation District (Modesto) and (together, the Districts) by failing to study the Adverse Impacts of a Long-Term Change to operations on its System. In the Remand Order, the Commission found that PG&E breached the Interconnection Agreements as alleged by the Districts, and thus directed PG&E to undertake a study in accordance with section 9.11.1 of the Interconnection Agreements.

2. PG&E filed a request for rehearing of the Remand Order. Requests for clarification were filed by the Districts and by the California Department of Water Resources (DWR). In this order, we deny PG&E's request for rehearing and grant the requests for clarification.

I. Background

3. Turlock and Modesto are California irrigation districts that are members of the Transmission Agency of Northern California (TANC) and have percentage shares of

¹ *Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 167 FERC ¶ 61,151 (2019) (Remand Order).

TANC's entitlement to capacity on the California-Oregon Transmission Project.² The Districts use their California-Oregon Transmission Project entitlements to transmit energy generated from resources located in the Pacific Northwest. 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.³ Section 9.11 of each Interconnection Agreement addresses Avoidance of Adverse Impacts and provides specific requirements and procedures by which each party should avoid adversely impacting the other party's electric system.⁴

² The California-Oregon Transmission Project is a 340-mile, 500 kV alternating current transmission line that runs from Captain Jack substation (in southern Oregon) to Tracy Substation (in central California). TANC owns an 87% 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) and 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.

³ The Turlock and Modesto Interconnection Agreements became effective on January 1, 2009, and April 1, 2009, respectively and both have a term of 15 years.

⁴ Section 9.11.1(a) of the Interconnection Agreements provides in relevant part:

[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 provides in relevant part:

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

4. Section 9.11.2 of the Interconnection Agreements provides that either party may request a joint study of any proposed “Modification, New Facility Addition, or Long-Term Change to Operations that may reasonably be expected to result in an Adverse Impact.” If an Adverse Impact is identified through either study process, section 9.11.3 imposes the obligation on the Primary Party to avoid, fully mitigate, or compensate the Coordinating Party for all costs incurred due to the Adverse Impact.

5. Under a previous Comprehensive Agreement with DWR, DWR’s generation plants and water pumping loads were subject to certain Remedial Action Scheme curtailment arrangements, which allowed PG&E to automatically interrupt operation during certain system contingencies. DWR’s participation 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, and upon its expiration, DWR’s participation in the Remedial Action Scheme ceased.⁵

6. On March 18, 2015, the Districts filed a complaint pursuant to Federal Power Act (FPA) sections 202, 206, 306 and 309,⁶ alleging that PG&E breached section 9.11 of the Interconnection Agreements by failing to 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 by refusing to study the potential Adverse Impacts⁷ on the Districts’ Systems resulting from the loss of DWR’s

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

⁵ 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 & Elec. Co.*, 149 FERC ¶ 61,276 (2014), *order on reh’g*, 151 FERC ¶ 61,252 (2015), *aff’d sub nom. Transmission Agency of N. Cal. v. FERC*, 697 F.App’x 11 (D.C. Cir. 2017).

⁶ 16 U.S.C. §§ 824a, 824e, 825e, 825h (2018).

⁷ An “Adverse Impact” is defined in section 4.2 of 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

participation after the Districts invoked their rights under the Interconnection Agreements to demand such study.

7. The Commission initially denied the Districts' complaint.⁸ The Commission found that Adverse Impact under section 4.2 of the Interconnection Agreements specifies defined actions, specifically noting actions that (1) materially degrade the reliability of the Coordinating Party's System or (2) materially reduce the ability of the Coordinating Party's System to physically transfer power into, out of, or within said System.⁹ The Commission observed that "Coordinating Party's System" refers to the Districts' Systems and because "the Districts do not own or control any portion of the California-Oregon Transmission Project ... the California-Oregon Transmission Project [could not] be considered part of the Districts' Systems as defined in the Interconnection Agreements."¹⁰ The Commission also stated that the Districts' rights to use a portion of capacity on the California-Oregon Transmission Project did not make the California-Oregon Transmission Project a part of their "Systems."¹¹

8. On August 3, 2015, the Districts requested rehearing of the Complaint Order. In March 2016, the Commission denied rehearing and affirmed its rulings from the Complaint Order.¹² The Districts timely petitioned the Ninth Circuit for review of the Commission's two orders.

9. On September 6, 2018, the Ninth Circuit issued its decision.¹³ The Ninth Circuit determined that the Commission applied an "overly narrow" interpretation of the term

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

⁸ *Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.*, 152 FERC ¶ 61,016 (2015) (Complaint Order).

⁹ *Id.* P 51.

¹⁰ *Id.* PP 52-53.

¹¹ *Id.* P 54.

¹² *Modesto Irrigation Dist. v. Pac. Gas. & Elec. Co.*, 154 FERC ¶ 61,215 (2016) (Rehearing Order).

¹³ *Turlock Irrigation Dist. v. FERC*, 903 F.3d 862 (9th Cir. 2018) (*Turlock*).

Adverse Impact in concluding that an Adverse Impact must be a direct, physical effect on a line or component inside the Districts' Systems and did not include a physical effect on a line or component outside the Districts' Systems that makes it more difficult for the Districts to transfer power into their Systems.¹⁴ *Turlock* found that the Commission distinguished between impacts to the internal reliability of the Districts' Systems and impacts to the Districts' ability to import power into their Systems with only the former qualifying as an Adverse Impact under the Interconnection Agreements.

10. The Ninth Circuit highlighted the definition of Adverse Impact in section 4.2 of the Interconnection Agreements as an effect on a District's System from a Long-Term Change to Operations that "(1) materially degrades reliability of the [District's] System *or* (2) materially reduces the ability of the [District's] System to physically transfer power into, out of, or within said System . . ." (emphasis added).¹⁵ The Ninth Circuit found that the disjunctive "or" makes clear that reliability degradation is only one type of Adverse Impact, and that a reduction in the ability to transfer power into or out of a District's System is a second, and distinct, type of Adverse Impact.¹⁶ The Ninth Circuit explained that the Commission's reading of the second prong of section 4.2 was essentially as repetition of the first prong – as only concerning a degradation of the physical components of a District's System. The Ninth Circuit noted that the use of "or" made clear that, if reliability impacts involve degradation of physical components internal to the Districts' Systems, then reductions in transfer capability must involve something different.¹⁷ The Ninth Circuit concluded that the plain meaning of section 4.2 includes impacts outside of the Districts' Systems that reduce their ability to transfer power over the California-Oregon Transmission Project and into their Systems.¹⁸

11. Thus, the Ninth Circuit concluded that the Commission improperly disposed of the complaint without analyzing whether changes to the Remedial Action Scheme may result in reductions in transmission capacity over the California-Oregon Transmission Project. The Ninth Circuit therefore granted the Districts' petition and instructed the Commission, on remand, to apply a broader definition of "Adverse Impact" to include reductions in import capability over the California-Oregon Transmission Project, and to apply "the

¹⁴ *Id.* at 872.

¹⁵ *Id.* at 871.

¹⁶ *Id.*

¹⁷ *Id.* at 870-71.

¹⁸ *Id.*

proper standard for requesting a study in determining whether PG&E breached the Interconnection Agreements.”¹⁹

12. On May 15, 2019, the Commission issued its Remand Order. In light of the Ninth Circuit’s instructions to apply a broader definition of “Adverse Impact” to include reductions in import capability over the California-Oregon Transmission Project, and to apply “the proper standard for requesting a study,” the Commission reexamined the provisions of the Interconnection Agreements. The Commission subsequently concluded that impacts occurring outside of the Districts’ Systems may constitute Adverse Impacts pursuant to section 4.2 of the Interconnection Agreements, even though they do not directly impact the physical components of the Districts’ Systems, provided that the elements of the definition of “Adverse Impact” are otherwise satisfied.²⁰ Consistent with this holding, the Commission agreed with the Ninth Circuit’s conclusion that a reduction in import capability over the California-Oregon Transmission Project could fall within the definition of an Adverse Impact.²¹

13. The Commission also found that PG&E’s reprogramming of the Remedial Action Scheme, i.e., the action of reprogramming the control equipment to no longer interrupt DWR’s pumping loads and generation, meets the definition of a “Long-Term Change to Operations”²² and, in turn, that “Long-Term Change to Operations” may result in a reduction in import capability over the California-Oregon Transmission Project.²³

14. Therefore, the Commission found that the record supports finding that PG&E’s re-programming of the Remedial Action Scheme may result in an Adverse Impact to the Districts’ Systems, thus triggering the circumstance that allowed the Districts the right under sections 9.11.1(b) and 9.11.2 to demand a study from PG&E, and that by refusing

¹⁹ *Id.* at 874.

²⁰ Remand Order, 167 FERC ¶ 61,151 at P 36 & n.65 (citing definition of Adverse Impact); *see supra* P 6.

²¹ Remand Order, 167 FERC ¶ 61,151 at P 36 & n.66 (citing *Turlock*, 903 F.3d at 870 (“[W]e conclude that the contract’s use of the term Adverse Impact can include reductions in import capability over the California-Oregon [Transmission] Project.”)).

²² A Long-Term Change to Operations is defined as an “[a]ction intentionally taken, or an event permitted, by a Party that materially alters, on a long-term basis, the configuration or other operational characteristics of its System.” *Turlock Interconnection Agreement* § 4.24; *Modesto Interconnection Agreement* § 4.23.

²³ Remand Order, 167 FERC ¶ 61,151 at PP 37-38.

to undertake a study, PG&E has breached the Interconnection Agreements.²⁴ Accordingly, the Commission directed PG&E to undertake a study on the potential Adverse Impacts to the Districts' Systems due to PG&E's re-programming of the Remedial Action Scheme, and to mitigate or compensate the Districts for all costs incurred due to any Adverse Impact identified by the study, pursuant to the terms of the Interconnection Agreements.²⁵

II. PG&E's Request for Rehearing

15. In its rehearing request, PG&E enumerates three errors in the Remand Order. According to PG&E, the Commission erred and acted arbitrarily and capriciously with respect to (1) finding that PG&E breached its Interconnection Agreements by refusing to undertake a study of possible "Adverse Impacts" resulting from the decision by DWR to terminate participation in a Remedial Action Scheme on PG&E's transmission system; (2) finding that impacts on facilities outside of the Districts' systems may constitute Adverse Impacts; and (3) directing PG&E to undertake a study of potential "Adverse Impacts" to the Districts' Systems.²⁶ PG&E argues that it has not breached its Interconnection Agreements and that no Adverse Impact had occurred. PG&E asserts that both the Ninth Circuit and the Commission read language out of context, and that the Commission should have looked to the fact and the plain meaning of the contract in its rehearing.²⁷

16. PG&E asserts that the Commission must support its findings with substantial evidence, and give meaningful consideration to the facts and circumstances of the case.²⁸ PG&E goes on to state that, in the context of contract interpretation, Commission orders must be supported by the plain meaning of a contract and that the Commission must

²⁴ *Id.* P 39.

²⁵ *Id.* P 40.

²⁶ Rehearing Request at 1-2.

²⁷ *Id.* at 6-7.

²⁸ *Id.* at 6 (citing *Interstate Commerce Comm'n v. J-T Transport Co.*, 368 U.S. 81, 129 (1961) (finding agency's expertise by itself is not enough; the agency must support its findings with substantial evidence), and *San Diego Gas & Elec. Co. v. FERC*, 904 F.2d 727, 731 (D.C. Cir. 1990)).

consider the purpose and commercial context of the contract.²⁹ Finally, PG&E asserts that the Commission should interpret a contract so as to give meaning to all of its terms.³⁰

17. PG&E argues that impacts outside of the Districts' Systems that do not directly impact those Systems' physical components are not Adverse Impacts.³¹ PG&E thus argues that the Commission was incorrect in applying a broader definition of Adverse Impacts despite the remand from the Ninth Circuit to do so, and in its determination that the Interconnection Agreements cover effects outside the Districts' Systems that may impact their ability to transfer power into or out of their Systems.³² PG&E argues that the concept of Adverse Impact was intended to assure that PG&E would give notice to the Districts of any changes PG&E made to its system that negatively affected the Districts' ability to transfer power into or out of their Systems. According to PG&E, nothing about DWR's Remedial Action Scheme termination negatively affects the Districts' ability to transfer power into or out of their Systems, so there was no trigger to provide that notice.³³

18. PG&E asserts that it made no Long-Term Change to Operations of its System. PG&E argues that the termination by DWR of its participation in the Remedial Action Scheme did not meet the Interconnection Agreements' definition of a Long-Term Change to Operations. PG&E asserts that in reaching that finding, the Commission ignored the plain language of the Agreements which PG&E states makes clear that actions by third parties are not included in the definition of Long-term Change to Operations. PG&E argues that DWR's termination of its participation in the Remedial Action Scheme was a third-party action outside of PG&E's control, and cannot be a Long-Term Change to Operations, because that definition explicitly excludes "actions taken by a Third Party, including the [California Independent System Operator Corporation (CAISO)], that are

²⁹ *Id.* at 6-7 (citing *Santisas v. Goodin*, 951 P.2d 399, 405 (Cal. 1998) (referencing Cal. Civ. Code § 1636 (1998); *Reliant Energy Servs. v. Enron Canada. Corp.*, 349 F.3d 816, 822 (Fifth Cir. 2003)).

³⁰ *Id.* (citing *Transitional Learning Cmty. at Galveston, Inc. v. OPM*, 220 F.3d 427, 431 (5th Cir. 2000)).

³¹ *Id.* at 5-6.

³² *Id.*

³³ *Id.* at 11; *see also id.* at 8 (asserting that the notice provision of section 9.11.1(a) was not triggered).

beyond the control of the parties.”³⁴ PG&E thus argues the Commission and the Ninth Circuit³⁵ erroneously characterized PG&E’s reprogramming to remove DWR’s participation from the Remedial Action Scheme as a Long-Term Change in Operations under the Interconnection Agreements.³⁶ PG&E contends that it had no choice but to reprogram the Remedial Action Scheme to remove DWR facilities once the Commission accepted the notice of termination for the Comprehensive Agreement and doing so was the result of an action by a third party, DWR, beyond PG&E’s control, and thus did not trigger an evaluation of possible Adverse Impacts.³⁷

19. PG&E argues that termination by DWR of its participation in the Remedial Action Scheme did not meet the Interconnection Agreements’ definition of a Modification to PG&E’s System. PG&E argues that it did not remove or physically change the facilities on PG&E’s System or on the Modesto and Turlock Systems.³⁸ Regarding Modifications, PG&E argues that it made none to its system whatsoever, no new facilities were added, and none were removed or modified.³⁹ PG&E asserts that anything that happened occurred because of the termination of the Comprehensive Agreement with DWR, and thus nothing changed with respect to the configuration of PG&E’s system before and after that event.⁴⁰

20. PG&E attempts to distinguish the Panoche Energy Center (Panoche) example used by the Ninth Circuit (and adopted by the Commission in finding that Adverse Impacts should be read more broadly) by stating that, in that instance,⁴¹ PG&E was taking an affirmative action to interconnect Panoche to its system and the parties agreed that there

³⁴ *Id.* at 4 (citing Turlock Interconnection Agreement § 4.24).

³⁵ *Id.* at 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 4 (citing Turlock Interconnection Agreement § 4.24; Modesto Interconnection Agreement § 4.23).

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 7.

⁴¹ *Turlock*, 903 F.3d at 871. The Ninth Circuit used Panoche as an example of what could be an Adverse Impact and reasoned that Adverse Impacts could encompass physical effects both within and outside of their Systems. *See id.*

could be a physical effect on PG&E's system that would constrain the ability of the Districts to transfer power into or out of their Systems.⁴² PG&E states that, in contrast, it did not take any affirmative action regarding DWR's termination of its participation in the Remedial Action Scheme.⁴³ PG&E states that there is no impact on the ability of the Districts' Systems to transfer power into or out of their Systems or on the physical components of the Districts' Systems or the "operational effects" described by the Ninth Circuit. Therefore, there was no trigger for PG&E to provide notice and to study the potential for adverse impacts.⁴⁴

III. Motions for Clarification

21. DWR states that paragraph 37 of the Remand Order⁴⁵ could be read to imply that the Commission agrees with PG&E's statement that "it was DWR's decision to end its participation in the Remedial Action Scheme upon termination of the Comprehensive Agreement."⁴⁶ DWR suggests that a better reading of Paragraph 37 is that the Commission reached no conclusion about the accuracy of PG&E's statement. However, DWR continues that, even if PG&E's statement were true – that DWR had so decided – PG&E's actions would still constitute a Long-Term Change in Operations.⁴⁷

22. The Districts also seek clarification as to whether the Commission's Remand Order requires PG&E solely to conduct the study directed in that order.⁴⁸ The Districts point out that sections 9.11.1(b) and 9.11.2 of each of the Districts' individual Interconnection Agreements require that the study be conducted either by: (1) a third

⁴² Rehearing Request at 10.

⁴³ *Id.*

⁴⁴ *Id.* at 10-11.

⁴⁵ Remand Order, 167 FERC ¶ 61,151 at P 37 ("Although PG&E points out that it was DWR's decision to end its participation in the Remedial Action Scheme upon termination of the Comprehensive Agreement, PG&E reprogrammed Remedial Action Scheme equipment to no longer interrupt DWR pumping loads and generation, and such action qualifies as disarming or materially modifying a Remedial Action Scheme.").

⁴⁶ DWR's Motion for Clarification at 6 (quoting Remand Order, 167 FERC ¶ 61,151 at P 37).

⁴⁷ *Id.*

⁴⁸ Districts Motion for Clarification at 4.

party mutually agreed upon by the parties to the Interconnection Agreement; or (2) the parties to the Interconnection Agreements on a joint basis.⁴⁹ The Districts state that section 9.11.1(b) further requires that the “Parties shall promptly undertake a joint study between the Parties, and the Primary Party shall provide its complete cooperation.”⁵⁰ Accordingly, the Districts request that the Commission clarify the Remand Order to direct that: (1) PG&E and the Districts conduct a study either using an agreed upon third party or on a joint basis, pursuant to section 9.11 of the Interconnection Agreements, and (2) PG&E and the Districts promptly undertake the study and provide their complete cooperation with the study.⁵¹

IV. Discussion

A. Procedural Matters

23. On July 1, 2019, the Districts filed a motion for leave to answer and answer to PG&E’s request for rehearing. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (d)(1) (2019), prohibits an answer to a request for rehearing. Accordingly, we deny the Districts’ motion to answer and reject their answer to PG&E’s rehearing request.

B. PG&E Rehearing

24. We deny rehearing. Although PG&E asserts that the Commission ignored the plain meaning of the Interconnection Agreements, PG&E essentially focuses on whether PG&E, in its own estimation, believed that it was not making a Long-Term Change to Operations on its System that may reasonably result in an Adverse Impact to the Districts’ Systems. PG&E’s arguments are relevant to consideration of whether it should have provided notice to the Districts under section 9.11.1(a) of the Interconnection Agreements. However, the Commission in the Remand Order found that PG&E breached the Interconnection Agreements by failing to undertake a study as provided for under section 9.11.1(b), which considers the perspective of the Coordinating Party, here, the Districts. As stated in the Remand Order:

[S]ection 9.11.1(b) of the Agreements requires that, if Districts have a reasonable belief that PG&E did not provide the notice required by section 9.11.1(a), Districts may demand a study if based upon their “reasonable

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 4-5.

belief” that the Long-Term Change to Operations “may result or may have resulted in an Adverse Impact” on its System.⁵²

Thus, section 9.11.1(a), the section that PG&E relies on in its rehearing arguments, focuses on the intent of the Primary Party, while section 9.11.1(b) focuses on the Coordinating Party and the Coordinating Party’s belief. PG&E’s rehearing arguments fail to acknowledge the distinction between these two provisions. In this proceeding we assess whether PG&E breached the agreements based on the language of, and the standard for initiating a study inherent in, section 9.11.1(b).

25. Further, to the extent PG&E seeks to litigate whether, in fact, terminating participation in the Remedial Action Scheme resulted in an Adverse Impact, the Districts were not required to make such a showing; they need only have had a reasonable belief that PG&E failed to provide notice and proceeded with a Long-Term Change to Operations that “*may result or may have resulted in*” an Adverse Impact.⁵³ Similarly, section 9.11.2 refers to “any proposed Modifications, New Facility Additions, or Long-Term Change to Operations *that may reasonably be expected to result in an Adverse Impact.*”⁵⁴ As discussed below,⁵⁵ the Districts’ reasonable belief that PG&E’s actions could result in an Adverse Impact led to their request for a study, and PG&E’s refusal, in the face of that belief, constituted a breach.

26. Equally unavailing is PG&E’s assertion that the term “Adverse Impact” under the Interconnection Agreements was not intended to cover changes occurring outside the Districts’ Systems. As an initial matter, the Ninth Circuit already ruled that Adverse Impacts should not be so narrowly construed. From a technical perspective, the Districts’ ability to transfer power into their Systems may be affected by changes occurring outside of their boundaries,⁵⁶ and this specific scenario could result from PG&E’s re-programming of its Remedial Action Scheme. Such a scenario is encompassed by the plain meaning of section 4.2 of the Interconnection Agreements, given the reference to a reduction of transfer capability. Inclusion of impacts occurring outside the Districts’ Systems within the definition of Adverse Impacts is consistent with the overall purpose of the Interconnection Agreements, which is to govern the interrelationship between

⁵² Remand Order, 167 FERC ¶ 61,151 at P 35.

⁵³ *Id.* (citing Interconnection Agreements, § 9.11.1(b) (emphasis added)).

⁵⁴ Interconnection Agreements § 9.11.2 (emphasis added).

⁵⁵ *See* P 28.

⁵⁶ *See* Remand Order, 167 FERC ¶ 61,151 at P 38 & n.69.

PG&E's System and the Districts' Systems.⁵⁷ It would not make sense to execute an interconnection agreement that permits PG&E to change its System's processes in a manner that adversely impacts the Districts' ability to import power into their Systems. To exclude components external to the Districts' Systems from the definition of Adverse Impact, yet implicate the Districts' ability to maintain reliability and power transfer obligations would render meaningless the protection afforded to the Districts in section 4.2.

27. Moreover, the Districts' prior dealings with PG&E concerning Panoche provided context contributing to their understanding of the types of impacts that would implicate the relevant provisions in the Interconnection Agreements. Having previously encountered PG&E's willingness to ensure that the Panoche facility would not reduce the Districts' ability to transfer power into and out of their territories further supports the reasonableness of their belief that PG&E must, under the Interconnection Agreements, study the impact of re-programming the Remedial Action Scheme on the import capability over the California-Oregon Transmission Project.

28. PG&E tries to distinguish this situation by stating that with regard to Panoche, the Parties agreed that interconnecting Panoche could yield a physical effect on PG&E's system that would affect the Districts' ability to import power into their Systems, and that PG&E was taking an affirmative action of interconnecting Panoche to its system. Here, PG&E asserts, it did not take any affirmative action with respect to the termination of DWR's participation in the Remedial Action Scheme. As an initial matter, while PG&E highlights that the interconnection of Panoche “‘*could* have exacerbated loading on PG&E's system,”⁵⁸ PG&E fails to respond to the testimony in this case of its affiant Pandey that, following the Remedial Action Scheme modification, under certain conditions, there would be a need to maintain or reduce import capability over the California-Oregon Transmission Project.⁵⁹ Thus, PG&E did not refute its own affiant who explained that the Remedial Action Scheme modification could lead to an effect on import capability, which, as noted, the Ninth Circuit held to be an adverse impact.⁶⁰

⁵⁷ See Interconnection Agreements § 5 (Scope).

⁵⁸ Rehearing Request at 10 (citing *Turlock*, 903 F.3d at 866) (emphasis in original).

⁵⁹ See Remand Order, 167 FERC ¶ 61,151 at P 38.

⁶⁰ See *supra* P 11.

29. Further, we disagree that PG&E took no affirmative action with respect to DWR's ending its participation in the Remedial Action Scheme and the subsequent re-programming of PG&E's control equipment. In arguing that its actions were not a Long-Term Change to Operations because that term excludes actions by Third Parties, PG&E states that it "had no choice but to re-program that Remedial Action Scheme to remove DWR's facilities from participation."⁶¹ However, PG&E, and no other entity, re-programmed its control equipment to no longer interrupt DWR pumping loads and generation, and it is that action by PG&E which qualifies as "disarming or materially modifying a Remedial Action Scheme" for purposes of the Interconnection Agreements.⁶² In other words, even if PG&E's conduct was a response to DWR, it nevertheless constituted an action for present purposes. Hence, we affirm our earlier finding that action by PG&E to re-program its control equipment upon the expiration of the Comprehensive Agreement implicated section 9.11.1 of the Interconnection Agreements.

30. In sum, PG&E has not substantiated its claim that its re-programming of the Remedial Action Scheme was not a Long-Term Change to Operations or that its actions were not reasonably perceived by the Districts as an Adverse Action. Consequently, we affirm the Commission's conclusion that PG&E breached the Interconnection Agreements by refusing to undertake the study requested by the Districts. PG&E must participate in a study to assess the potential Adverse Impacts to the Districts' Systems.

C. Clarification Requests

31. Regarding DWR's request, we clarify that the Commission did not reach any conclusions about PG&E's assertions as to whether it was DWR's decision to end its participation in the Remedial Action Scheme. The language to which DWR refers in paragraph 37 of the Remand Order merely references PG&E's position on the issue and is not intended as a determination by the Commission.

32. With respect to the Districts' request for clarification, the Commission did not intend to imply that PG&E, solely, would undertake the study of Adverse Impacts.⁶³ Therefore, we grant clarification on this issue. As the Districts note, the relevant provisions of the Interconnection Agreements provide that the Parties may choose a mutually agreeable Third Party to conduct the study (within 10 business days) and jointly engage the Third Party, or, if after 10 business days the Parties are unable to agree upon a

⁶¹ Rehearing Request at 8.

⁶² Remand Order, 167 FERC ¶ 61,151 at P 37 (discussing the definition of Long-Term Change to Operations).

⁶³ *See id.* P 40.

Third Party to conduct the study, they will promptly undertake a joint study. The Parties may also proceed pursuant to the Joint Study Process described in section 9.11.2 of the Interconnection Agreements. In either case, the Commission expects a study to be undertaken promptly.

The Commission orders:

(A) PG&E's request for rehearing of the Complaint Order is hereby denied, as discussed in the body of this order.

(B) DWR's and the Districts' requests for clarification are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.