169 FERC ¶ 61,128
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City and County of San Francisco	EL15-3-002
v.	
Pacific Gas and Electric Company	
Pacific Gas and Electric Company	ER15-702-002 ER15-703-002 ER15-704-005 ER15-705-002 ER15-735-002 (Consolidated)

OPINION NO. 568

ORDER ON INITIAL DECISION

(Issued November 21, 2019)

1. On October 7, 2014, the City and County of San Francisco (San Francisco or City) filed a complaint against Pacific Gas and Electric (PG&E) pursuant to sections 206 and 306 of the Federal Power Act (FPA).[1] San Francisco alleged that, upon expiration of an Interconnection Agreement between the parties that was entered into in 1987

[1] 16 U.S.C. §§ 824e, 825e (2018).

(1987 Interconnection Agreement), PG&E would unreasonably deny service to San Francisco under PG&E's Wholesale Distribution Tariff (WDT).[2] Subsequently, on December 23, 2014, PG&E filed, pursuant to section 205 of the FPA,[3] notices of termination relating to the expiring Interconnection Agreement, as well as a series of replacement agreements to provide interconnection and wholesale distribution service to San Francisco.[4] On March 31, 2015, the Commission set the complaint for hearing and settlement judge procedures, accepted and suspended the notices of termination and replacement agreements, and consolidated PG&E's section 205 filings with the complaint proceedings (consolidated proceeding).[5] An Initial Decision issued on November 15, 2016.[6]

2. This order addresses briefs on and opposing exceptions to the Initial Decision. As discussed herein, we affirm in part, and overturn in part, the determinations of the Presiding Administrative Law Judge (Presiding Judge), and direct PG&E to file a compliance filing within 60 days of the date of this order. In addition, we find that San Francisco has not shown, based on this record, that PG&E will unreasonably deny service to the City upon expiration of the 1987 Interconnection Agreement between the parties, and thus we deny the complaint.

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[2] The WDT provides the terms and conditions under which PG&E will interconnect an eligible customer's distribution facilities to PG&E's distribution system, as well as the terms and conditions for wholesale distribution service over PG&E's distribution facilities.

[3] 16 U.S.C. § 824d.

[4] In Docket Nos. ER15-702-000, ER15-703-000, ER15-704-000, ER15-705-000, and ER15-735-000, PG&E filed: (1) a notice of termination of the Interconnection Agreement with San Francisco; (2) a series of replacement agreements that provide for continued wholesale distribution service to San Francisco; and (3) notices of termination for eight separate delivery points that will transition from service under the 1987 Interconnection Agreement to a WDT Service Agreement.

[5] *City and Cnty. of San Francisco v. Pac. Gas & Elec. Co.*, 150 FERC ¶ 61,255 (2015) (March 31 Order).

[6] *City and Cnty. of San Francisco v. Pac. Gas & Elec. Co.*, 157 FERC ¶ 63,021 (2016) (Initial Decision).

I. Background and Procedural History

A. The Parties

1. San Francisco

3. San Francisco is a municipal corporation organized and existing under the laws of the State of California. San Francisco owns and operates an electric utility that is managed by the San Francisco Public Utilities Commission, which is responsible for the construction, management, operation, and use of all properties, assets, and facilities used to provide utility services in the City.[7] San Francisco has historically provided electric service to City agencies and related public entities, City properties and tenants on those properties, and entities providing services on behalf of or in coordination with the City.[8] San Francisco currently delivers about 1,000,000 MWh annually to approximately 2,200 retail customers in and around San Francisco.[9]

2. PG&E

4. PG&E is an investor-owned utility subject to the Commission's jurisdiction. PG&E has numerous tariffs and agreements on file with the Commission, including its WDT. PG&E serves approximately 5.4 million electricity distribution customers in Northern and Central California. For many decades, PG&E has contracted with San Francisco to transmit power to the City, and to provide San Francisco with transmission and distribution services to deliver Hetch Hetchy power to San Francisco customers.[10]

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[7] San Francisco Complaint at 1, 6.

[8] *Id*. at 6.

[9] *Id*. at 7. According to San Francisco, this represents about 17 percent of the total electricity load within San Francisco, with the remaining 83 percent served by PG&E (citing San Francisco Public Utilities Commission, *San Francisco's 2011 Updated Electricity Resource Plan: Achieving San Francisco's Vision for Greenhouse Gas Free Electricity* at p. 37 (2011), http://sfwater.org/Modules/ShowDocument.aspx?documentID=40).

[10] *Id*. at 6. See, e.g., U.S. v. City & Cnty. of San Francisco, 310 U.S. 16, 27-28 (1940).

B. The Raker Act

5. On December 19, 1913, Congress enacted the Raker Act, authorizing San Francisco to develop a water and power supply system on federal lands in the Hetch Hetchy Valley in the Sierra Nevada Mountains near Yosemite National Park.[11] Section 9(l) of the Raker Act requires San Francisco to sell excess electricity from the Hetch Hetchy Project to the Modesto and Turlock Irrigation Districts and to municipalities within those districts for "municipal public purposes," after which it may dispose of any excess electrical energy for commercial purposes.[12]

C. The 1987 Interconnection Agreement and the WDT

6. In 1987, PG&E and San Francisco entered into the 1987 Interconnection Agreement, which governed the interconnection of PG&E's and San Francisco's transmission and distribution systems, use of PG&E's transmission and distribution systems by San Francisco, and power-related services provided by PG&E to San Francisco.[13] Notably, under the 1987 Interconnection Agreement, PG&E provided wholesale distribution service to San Francisco's load without the need for San Francisco to own or control intervening facilities at each point of delivery.[14] The 1987 Interconnection Agreement provided that it would terminate as of July 1, 2015.[15]

7. On November 27, 2013, San Francisco submitted an application for wholesale distribution service under PG&E's WDT to transition those customers who, at that time, were taking service under the 1987 Interconnection Agreement (approximately 100 MW of load). On March 13, 2014, PG&E indicated to San Francisco that approximately 25 percent of San Francisco's total proposed load was not eligible for service under the WDT because those customers either: (1) did not have intervening facilities between PG&E's facilities and the customers' facilities; and/or (2) did not possess adequate

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[11] Raker Act of 1913, Pub. L. No. 63-41, 38 Stat. 242.

[12] *Id.*

[13] *See* PG&E Rate Schedule FERC No. 114.

[14] Intervening facilities are distribution facilities that are installed between the Distribution Provider-owned Distribution Facilities and the Distribution Customer's end-use customer's load. They may include poles, meters, transformers, and other equipment required for interconnection. *See* WDT, § 2.20 (Intervening Distribution Facilities).

[15] *See* PG&E Rate Schedule FERC No. 114, § 9.26.2 ("This Agreement shall terminate as of July 1, 2015.").

meters.[16] At that time, PG&E advised San Francisco that it intended to serve the points of delivery it had deemed ineligible for service under the WDT pursuant to a separate, voluntary bilateral agreement providing equivalent wholesale distribution service.

8. The WDT, which became effective when the California Independent System Operator Corporation (CAISO) assumed operational control of PG&E's transmission facilities on April 1, 1998, contains the rates, terms, and conditions for wholesale distribution service over PG&E's distribution facilities. Specifically, the WDT acknowledges that certain customers receiving transmission service under PG&E's Transmission Owner Tariff may also require distribution service. According to section 1.1 of the WDT, PG&E provides distribution service to loads "for the receipt of capacity and energy at designated Point(s) of Receipt and the transmission of such capacity and energy to designated Point(s) of Delivery."[17] Section 1.2 states that service is available to "wholesale entities taking transmission service through CAISO to (1) new distribution customers which request distribution service; and (2) existing distribution customers which request new distribution service or service to additional Point(s) of Receipt or Delivery."[18]

D. The Complaint

9. On October 7, 2014, San Francisco filed the complaint in Docket No. EL15-3-000. San Francisco contended that PG&E would, upon expiration of the 1987 Interconnection Agreement between the parties, unreasonably deny service to San Francisco under the WDT by instead providing "equivalent" service to certain loads under a separate bilateral arrangement outside of the WDT.[19]

10. According to San Francisco, PG&E indicated that approximately 25 percent of San Francisco's load was ineligible for WDT service because, according to PG&E, that

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[16] San Francisco Complaint at 10 (citing Ex. J at 2).

[17] WDT, § 1.1. The WDT defines Points of Delivery as: "Point(s) on the Distribution Provider's Distribution System where capacity and energy transmitted by the Distribution Provider will be made available to the Receiving Party under this Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Distribution Service." *Id.* § 2.29.

[18] *Id.* § 1.2.

[19] San Francisco Complaint at 1-2, 16. At the time San Francisco submitted the complaint, PG&E had not yet filed its proposed replacement agreements and the terms and conditions of "equivalent" service for these loads were not clear.

load did not qualify for grandfathered service under section 212(h) of the FPA[20] and therefore was ineligible for service under the WDT unless San Francisco constructed new intervening facilities and/or meters that San Francisco stated would be unnecessary and expensive.[21] San Francisco asserted that all of its load was eligible for grandfathering under section 212(h) because PG&E had been serving the same customers for decades. San Francisco requested that the Commission: (1) find that all of its load is eligible for grandfathering under section 212(h), and thus qualifies for WDT service; and (2) require PG&E to expeditiously tender wholesale distribution service agreements that include reasonable and nondiscriminatory terms. To the extent that the Commission found that PG&E was acting in accordance with its WDT on the matters detailed above,

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[20] 16 U.S.C. § 824k(h). PG&E used the date contained in section 212(h), i.e., October 24, 1992, to determine which delivery points would or would not be subject to the requirement of owning or controlling intervening facilities. As discussed below, the Commission's section 212(h) precedent is not directly applicable to this proceeding. Nevertheless, because the WDT references this statutory provision, we address it insofar as it reflects the parties' intent in the context of the WDT.

[21] Section 212(h) of the FPA, enacted on October 24, 1992, provides in relevant part:

> (h) PROHIBITION ON MANDATORY RETAIL WHEELING AND SHAM WHOLESALE TRANSACTIONS No order issued under this chapter shall be conditioned upon or require the transmission of electric energy:
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> (1) directly to an ultimate consumer, or
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> (2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:
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> (A) … a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); …. a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and
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> (B) such entity was providing electric service to such ultimate consumer on October 24, 1992, or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

San Francisco alternatively requested that the Commission find that the provisions of the WDT are unjust, unreasonable, and unduly discriminatory due to the denial of service under the WDT to San Francisco.[22]

11. In its answer to the complaint, PG&E countered that: (1) San Francisco's interpretation of grandfathering was contrary to Commission precedent in *Suffolk County* because the grandfathering exception only applied to delivery points that existed prior to the enactment of the Energy Policy Act of 1992, and not for new delivery points;[23] (2) PG&E's proposed voluntary accommodation to serve San Francisco's load under a bilateral agreement is just and reasonable and consistent with the grandfathering requirements of the WDT;[24] and (3) PG&E's metering requirements under its WDT are just and reasonable.[25]

E. PG&E's Notices of Termination and Proposed Replacement Agreements

12. On December 23, 2014, PG&E filed in Docket No. ER15-702-000 a notice of termination of the 1987 Interconnection Agreement with San Francisco and notices of termination for eight separate delivery points that would transition from service under the 1987 Interconnection Agreement to a WDT Service Agreement.[26] On the same day, in Docket Nos. ER15-703-000 and ER15-735-000, PG&E also filed eight unexecuted replacement agreements that provide for continued wholesale distribution service to all San Francisco points of delivery previously served under the 1987 Interconnection Agreement. Specifically, in Docket No. ER15-704-000, PG&E filed the WDT Interconnection Agreement, which governs the interconnection of PG&E's and

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[22] San Francisco Complaint at 1, 4.

[23] PG&E Answer at 23 (citing *Suffolk Cty. Elec. Agency*, 77 FERC ¶ 61,355 (1996) (*Suffolk County I*); *Suffolk Cty. Elec. Agency*, 96 FERC ¶ 61,349 (2001) (*Suffolk County II)*; *Suffolk Cty. Elec. Agency*, 102 FERC ¶ 61,349 (2003) (*Suffolk County III*); *Suffolk Cty. Elec. Agency*, Opinion No. 467-A, 108 FERC ¶ 61,173 (2004) (*Suffolk County IV*)) (collectively, *Suffolk County*).

[24] PG&E Answer at 40.

[25] *Id*.

[26] Concurrently with its filing of the notice of termination of the 1987 Interconnection Agreement, PG&E also filed in Docket Nos. ER15-703-000 and ER15-735-000 notices of termination of related agreements it had on file with the Commission. San Francisco's complaint was pending before the Commission at time.

San Francisco's distribution systems, and the WDT Service Agreement with appendices that contain the San Francisco points of delivery previously served under the 1987 Interconnection Agreement and for which PG&E proposed to provide either WDT or WDT-equivalent[27] service to San Francisco. The WDT Service Agreement also included the associated monthly charges, the details of the facilities required to provide wholesale distribution service for each delivery point for a 10-year term. In Docket No. ER15-705-000, PG&E filed a Transmission Interconnection Agreement; and five Transmission Facility Agreements,[28] which detail and set terms for the facilities at the existing points of interconnection covered by the Transmission Interconnection Agreement (collectively, replacement agreements).

13. Under the WDT Service Agreement, PG&E proposes to provide either WDT or WDT-equivalent service to San Francisco's approximately 2,000 points of delivery by cataloguing the delivery points into five separate categories: (1) WDT Qualified Load; (2) Non-WDT Qualified Municipal Load; (3) Non-WDT Qualified Non-Municipal Load; (4) Prospective WDT Load; and (5) Other Unmetered Load. In the event that a San Francisco point of delivery is not covered by one of the aforementioned categories, PG&E states that it will terminate distribution service to the point of delivery and transition that point of delivery to PG&E's retail service.[29]

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[27] As explained further below, PG&E's WDT-equivalent service is WDT service with certain restrictions for changes in service going forward. PG&E will provide WDT service under the same rates terms and conditions to both non-WDT qualified municipal load delivery points and non-WDT qualified non-municipal load delivery points in service as of June 30, 2015 under the expiring 1987 Interconnection Agreement without the need for San Francisco to own or control intervening facilities. The caveat for those non-WDT qualified non-municipal load delivery points is that PG&E will provide the service without the need for San Francisco to own or control intervening facilities or WDT-compliant meters *so long as (1) the original delivery point continues to serve the same end-use customer, and (2) the load does not exceed 125 percent of the customer's average annual load on June 30, 2015* (emphasis added).

[28] The five Transmission Facility Agreements are for the following points of interconnection: (1) San Andreas Substation; (2) Hetch Hetchy Project Interconnections; (3) Crystal Springs Pump Station; (4) San Francisco Airport; and (5) San Francisco Airport Millbrae Annex Substation.

[29] PG&E Answer at 4; *see also* PG&E proposed WDT Service Agreement, App. D, § D.1.3(c).

14. Under the first category (WDT Qualified Load), PG&E proposed to provide WDT service to San Francisco delivery points that meet all requirements specified under the WDT, or that qualify for grandfathering under section 212(h) of the FPA.[30] In order to meet all the requirements under the WDT, PG&E explained that San Francisco must have served the customer on October 24, 1992, and that have metering that complies with the metering provisions in section 20 of the WDT as these provisions existed before they were revised in a later settlement.[31] PG&E stated that this category also encompasses new delivery points that meet the applicability and eligibility requirements set forth in PG&E's WDT.[32]

15. Under the second category (Non-WDT Qualified Municipal Load), PG&E proposed to provide WDT-equivalent service to San Francisco's municipal load delivery points in service as of June 30, 2015, but that: (1) were not served on October 24, 1992; and/or (2) do not have compliant metering. PG&E stated that it will provide WDT-equivalent service to non-WDT qualified municipal loads without the need for San Francisco to own or control intervening facilities or WDT-compliant meters as long as the original delivery point continues to serve a municipal load customer.

16. Under the third category (Non-WDT Qualified Non-Municipal Load), PG&E proposed to provide WDT-equivalent service to San Francisco's non-municipal load delivery points in service as of June 30, 2015, under the 1987 Interconnection Agreement.[33] PG&E stated that it will provide WDT-equivalent service to non-WDT qualified non-municipal loads without the need for San Francisco to own or control intervening facilities or WDT-compliant meters as long as the original delivery point continues to serve the same end-use customer, and where the load does not exceed 125 percent of the customer's average annual load on June 30, 2015.[34]

17. In addition, PG&E stated that WDT-equivalent service offered under categories two and three is associated with, and limited to, the original delivery points served under the 1987 Interconnection Agreement at the time of its termination. PG&E explained that, because these delivery points were served under the 1987 Interconnection Agreement, which did not require compliance with section 212(h) of the FPA or the metering

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[30] *See* PG&E proposed WDT Service Agreement, App. C.

[31] PG&E Answer at 40.

[32] *Id.* at 51.

[33] *See* PG&E proposed WDT Service Agreement, App. D, § D.1.1.

[34] PG&E Prepared Answering Testimony of David E. Rubin at 11.

requirements under the WDT, PG&E proposed to provide WDT-equivalent service to these delivery points without the need to comply with section 212(h) or the comply with metering requirements under the WDT.[35]

18. The fourth category of customers (Prospective WDT Load) included those delivery points: (1) that are not municipal load customers and were not served under the 1987 Interconnection Agreement; (2) that do not meet the grandfathering provisions; and (3) where San Francisco has not demonstrated ownership or control of intervening facilities.[36] PG&E stated that it will provide provisional, 90-day WDT-equivalent wholesale distribution service, during which time San Francisco must demonstrate that it owns or controls intervening facilities. If San Francisco makes such a showing, the delivery point is moved to the first category of WDT Qualified customers. If San Francisco fails to demonstrate that it owns or controls intervening facilities for the delivery point, PG&E will terminate service to the delivery point after 90 days. In addition, PG&E noted that any San Francisco point of delivery that changes status from another "Non-WDT Qualified" customer (i.e., categories two and three) to a Prospective WDT Load customer will continue to receive WDT-equivalent service on 90-day provisional basis. If, after this time, San Francisco has failed to demonstrate that it owns or controls intervening facilities, PG&E stated that it will terminate distribution service to the point of delivery and transition that point of delivery to PG&E's retail service.[37]

19. Under the fifth category (Other Unmetered Load), PG&E proposed to provide WDT-equivalent service to certain San Francisco delivery points that do not meet the requirements for metering under the WDT, such as streetlights, traffic signals, and street furniture. PG&E proposed to provide WDT-equivalent service to existing or future customers in this category, without San Francisco needing to own or control intervening facilities.[38]

20. In support of its proposal, PG&E stated that the continued grandfathered status of a delivery point under PG&E's proposed WDT Service Agreement is dependent on the "class" of customers served as of June 30, 2015, which is the termination date of the

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[35] PG&E Prepared Answering Testimony of Yilma Hailemichael at 22 (Hailemichael Test.).

[36] PG&E proposed WDT Service Agreement, App. D, § D.1.3.

[37] Hailemichael Test. at 5; *see also* PG&E proposed WDT Service Agreement at App. D, § D.1.3(c).

[38] PG&E proposed WDT Service Agreement, App. E.

1987 Interconnection Agreement.[39] Specifically, grandfathering status is available only to San Francisco's points of delivery that were in service on October 24, 1992, and that San Francisco's points of delivery initiating service after that time are not eligible for grandfathered service and that the grandfathered status of a qualified point of delivery cannot be transferred to another point of delivery. PG&E asserted that these customers in service on October 24, 1992 include "governmental departments and agencies, public housing tenants, municipal transportation systems, police stations, fire departments, public schools, city parks and public libraries."[40] However, PG&E noted that, under its proposal (referred to as the "point of delivery approach"), the continuing grandfathered status of a delivery point is dependent upon the customer class served by San Francisco as of October 24, 1992. Based on this interpretation, PG&E established three principles by which it determines the ongoing eligibility of a delivery point grandfathering status:

1) Any San Francisco delivery point served on June 30, 2015 under the expiring 1987 Interconnection Agreement that continues to serve municipal load customers, even if the specific municipal load customer changes, retains its grandfathered status.

2) Any delivery point served on June 30, 2015 at which the customer subsequently changes to a non-municipal load customer would lose its grandfathered status.

3) Where a municipal load customer moves from a grandfathered delivery point to an existing delivery point/building that did not previously serve municipal load customers (i.e., a delivery point that is not grandfathered) or to a new delivery point/new building, the customer cannot transfer its grandfathered status, and San Francisco would be required to own or control intervening facilities to serve that customer at the new, non-grandfathered location.[41]

F. Hearing Order and Order on Rehearing and Waiver

21. In the March 31 Order, the Commission set San Francisco's complaint for hearing and settlement judge procedures.[42] In that order, the Commission also accepted PG&E's notices of termination for filing, suspended them for a nominal period to become effective June 30, 2015, subject to refund, and accepted PG&E's replacement agreements for filing

[39] PG&E Initial Brief at 18.

[40] *Id.* at 24 (citing PG&E Docket No. ER15-704-000, Ex. PGE-9 at 19).

[41] *Id*. at 18.

[42] March 31 Order, 150 FERC ¶ 61,255 at P 55.

and suspended them for a nominal period to become effective July 1, 2015, subject to refund. In addition, the Commission set PG&E's section 205 filings for hearing and settlement judge procedures and consolidated those filings with San Francisco's section 206 complaint proceeding.

22. On April 17, 2015, San Francisco filed a request for rehearing, motion for clarification, and motion for expedited decision of the Commission's March 31 Order. San Francisco stated that the Commission erred: (1) in its application of the standard for determining the length of the suspension found in *West Texas Utilities Company*;[43] (2) by failing to suspend the section 205 filings for the full five months; (3) by failing to clarify that the March 31 Order is subject to a further Commission order; and (4) by failing to clarify that PG&E is required to file a notice of termination prior to terminating service to any San Francisco point of delivery. On May 21, 2015, PG&E filed a motion for leave to answer and answer to San Francisco's rehearing request, and a request for limited tariff waiver asking that certain provisions in the replacement agreements be waived for the duration of the proceeding.

23. On June 30, 2015, the Commission issued an order denying San Francisco's rehearing request, and granting PG&E's request for limited waiver.[44] The Commission ordered the waiver to be effective July 1, 2015, and to last through the duration of this proceeding.[45] The Commission reasoned that the waiver would address San Francisco's concerns that some of its customers would no longer be grandfathered under the WDT should the replacement agreements go into effect during the pendency of the consolidated proceeding. The Commission further found that the waiver permitted San Francisco customers to be served under the WDT without the risk of being deemed ineligible for service or requiring San Francisco to demonstrate ownership or control of intervening facilities until such time as the Commission issued a final decision in the consolidated proceeding.[46]

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[43] 18 FERC ¶ 61,189 (1982).

[44] *City & Cnty. of S.F. v. Pac. Gas & Elec. Co*., 151 FERC ¶ 61,274 (2015) (June 30 Order).

[45] *Id.* P 24.

[46] *Id*. P 23.

G. Settlement of Non-Rate WDT Issues in Docket Nos. ER13-1188-000, *et al.*

24. On March 31, 2015, in a separate proceeding, PG&E filed an uncontested settlement (WDT Settlement) in Docket No. ER13-1188-000, *et al*. The WDT Settlement addressed the non-rate terms and conditions associated with PG&E's WDT rate case.[47] Of relevance here, the WDT Settlement addressed the following issues: (1) the effective date for the WDT; (2) which existing customers are eligible to serve retail customers; (3) whether PG&E could prohibit an entity otherwise eligible for WDT service from owning or controlling intervening facilities; (4) the metering requirements and distribution access, providing an expedited interconnection process for those points of delivery under an existing WDT service agreement; (5) service initiation fees for adding points of delivery to existing WDT service agreements; and (6) whether infrequent usage should be considered continued service. The issues withheld from the WDT Settlement as pending were the eligibility of San Francisco's small, predictable unmetered loads for service under the WDT, and the availability of, and terms for, pre-application assistance by PG&E.[48]

25. As relevant here, pursuant to the WDT Settlement, section 14.2 of the WDT (Intervening Facilities Requirements) was modified to require eligible customers (e.g., San Francisco) seeking service under the WDT to demonstrate *bona fide* ownership or control of intervening facilities, except where the eligible customer meets the criteria for grandfathering under section 212(h), in which case the applicant must provide evidence demonstrating that the criteria is met for each point of delivery for which it claims eligibility for grandfathering. Section 2.16 of the WDT provides that, for load entities, an eligible customer is "any electric utility as defined in Section 3(22) of the [FPA] . . . provided, that any entity applying for service to serve retail customers must be authorized by California or Federal law to furnish, sell, or distribute electric energy to retail customers and must have obtained applicable regulatory approvals, if any, to provide such service." Section 2.16 also dictates that "[w]ith respect to Distribution Service that the Commission would otherwise be prohibited from ordering by Section 212(h) of the [FPA] (16 U.S.C. § 824k(h)), such service shall be provided only if provided pursuant to a state requirement that the Distribution Provider offer the Distribution Service, or pursuant

[47] The parties to the Settlement included: PG&E; San Francisco; Calaveras Public Power Agency; the California Department of Water Resources State Water Project; the Power and Water Resources Pooling Authority; the Tuolumne Public Power Agency; and the Western Area Power Administration. Commission Trial Staff (Trial Staff) filed comments in support of the WDT Settlement.

[48] *See* WDT Settlement, Art. IV, § 4.2.

to a voluntary offer of such service by the Distribution Provider."[49] The Commission approved the WDT Settlement on July 1, 2015.[50] As relevant in the instant proceeding, these revised eligibility requirements from the WDT Settlement were the basis for PG&E's conclusion that 25 percent of San Francisco's load was ineligible for wholesale distribution service under its WDT.[51]

H. Initial Decision

26. On November 15, 2016, the Presiding Judge issued his Initial Decision in this proceeding. The Initial Decision addressed two primary issues. First, it assessed how the grandfathering provision of section 212(h)(2)(B) of the FPA should be interpreted and applied to PG&E's proposal to provide wholesale distribution service to San Francisco. The Presiding Judge found that the grandfathering provision applies to the class of customers that was eligible to receive wholesale distribution service on October 24, 1992, regardless of where in the City those customers may be located now or in the future, rather than to delivery points served on that date.[52] The Presiding Judge further found that the class of customers that PG&E was serving on October 24, 1992 is "municipal public purpose load;"[53] however, the Presiding Judge determined that he was without authority to furnish a definition for municipal public purpose load in place of the Commission.

27. Second, the Initial Decision addressed what intervening facilities San Francisco must own or control to be eligible for service under PG&E's WDT. The Presiding Judge found that, where grandfathering does not apply to a particular delivery point, San

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[49] WDT, § 2.16; *see also* WDT, § 1.2 ("Service hereunder shall not be available if the Commission would be prohibited from ordering such service under section 212(h) of the Federal Power Act").

[50] *Pac. Gas & Elec. Co.*, 152 FERC ¶ 61,010 (2015).

[51] *See* San Francisco Complaint at 10 (citing Ex. J at 2).

[52] Initial Decision, 157 FERC ¶ 63,021 at P 137.

[53] As the Presiding Judge noted, the parties have used "municipal public purpose load, "municipal load," and "muni load" synonymously. In this order, we will use "municipal load" or "municipal public purpose load." *Id.* P 142.

Francisco's ownership or control of either a "service entrance conductor" or "bus duct" is sufficient to allow San Francisco to provide underground secondary service.[54]

28. The Presiding Judge also made other findings regarding PG&E's proposed replacement agreements. Specifically, the Presiding Judge found that: (1) San Francisco had not shown that the service that PG&E proposed providing through "voluntary accommodation" is unjust and unreasonable and unduly discriminatory to San Francisco; and (2) PG&E's proposed replacement agreements are just and reasonable, but recommending a compliance filing adopting certain changes.[55]

29. Finally, the Presiding Judge concluded that the testimony from San Francisco witness, James Hoecker, was barred under Rule 403 of the Federal Rules of Evidence,[56] because it is duplicative of Commission decisions where he sat as a voting member of the Commission, and also barred under Rule 2103(a) of the Commission's Rules of Practice and Procedure.[57]

30. San Francisco, PG&E and Trial Staff filed Briefs on Exceptions to the Initial Decision on December 15, 2016. San Francisco, PG&E and Trial Staff also filed Briefs Opposing Exceptions on January 4, 2017.

I. Joint Stipulations of San Francisco and PG&E

31. On August 11, 2016 and December 20, 2017, San Francisco and PG&E filed joint stipulations (Joint Stipulations). In each of the Joint Stipulations, the parties indicated that they were making an effort to narrow the disputed issues in this proceeding. In the August 11, 2016 Joint Stipulation, the parties agreed to certain revisions to the WDT Interconnection Agreement and the WDT Service Agreement.[58] In the December 20, 2017 Joint Stipulation, the parties jointly stipulated that, at the conclusion of this proceeding, PG&E will submit a compliance filing to implement a series of modifications

[54] *Id.* P 234.

[55] *Id*. PP 169-170, 296.

[56] Fed. R. Evid. 403.

[57] 18 C.F.R. § 385.2103(a) (2019).

[58] August 11 Joint Stipulation at 2-3.

to the WDT Interconnection Agreement and the Transmission Interconnection Agreement.[59]

32. Under the WDT Interconnection Agreement, the parties agree that PG&E will: (1) add a new section 6.4.3 (Automatic Load Shedding); (2) revise sections 4.10 (Cost) and 15.1 (Accounting Procedures) to allow for certain costs allocated to San Francisco to be determined in accordance with generally accepted accounting principles; (3) revise section 4.36 (Uncontrollable Force) to conform the definition of Uncontrollable Force to the one set forth in PG&E's tariff;[60] (4) revise section 8.8 (Operating Records) to reflect the San Francisco Sunshine Act;[61] (5) revise section 15.2 (Audit Rights) to extend the timeline for initiating an audit from two years to three;[62] (6) revise section 8.2.2 (Modification-Related Work) to require true-ups to be performed for Work Performance Agreements that involve estimated costs at or above $75,000; and (7) section 34 (Continuing Right of San Francisco Upon Termination) to clearly identify the WDT Service Agreement[63]

33. Under the Transmission Interconnection Agreement, the parties agree that PG&E will: (1) revise section 4.14 (Cost) to allow for certain costs allocated to San Francisco to be determined in accordance with generally accepted accounting principles;[64] (2) revise section 4.2 (Hetch Hetchy Project) to clarify that the San Francisco transmission system interconnects with Modesto Irrigation District and Turlock Irrigation District; (3) make grammatical revisions to section 10.7.3 (Participation in Underfrequency Load Shedding);[65] (4) make ministerial revisions to section 10.9.2 (Area Voltage Schedules), section 10.10.1 (Metering Responsibility) and 10.10.2 (Meter Ownership); (4) revise section 10.11 (Obligation to Provide Telemetry Data) to remove references regarding the delivery and release of telemetry data; (5) revise section 15.2 (Audit Rights) to extend the

[59] December 20 Joint Stipulation at 1

[60] *Id.* at 2-3.

[61] August 11 Joint Stipulation at 3.

[62] December 20 Joint Stipulation at 5.

[63] *Id*. at 8; August 11 Joint Stipulation at 2.

[64] December 20 Joint Stipulation at 2.

[65] *Id*. at 3.

timeline for initiating an audit from two years to three;[66] (6) revise section 4.23 (Long-Term Change to Operations) to add supplemental information to the examples and events that qualify as a Long-term Change to Operations;[67] and (7) revise section 10.5.2 (Modification-Related Work) to require true-ups to be performed for Work Performance Agreements that involve estimated costs at or above $75,000.[68]

34. With respect to the WDT Service Agreement, the parties agree that PG&E will make revisions to: (1) section 7.0 (Term); (2) section 10.2 (Construction Responsibilities of Distribution Customer); and (3) section 11.1.2, addressing certain cost responsibilities.[69] The parties also agree the reserved capacity for demand metered points of delivery interconnected or most recently modified pursuant to the 1987 Interconnection Agreement will be set at the historical peak load of the past five years. The parties note that they continue to reconcile their data on these reserved capacity values. In addition, the parties jointly stipulate that the issue of departing load charges should not be adjudicated by the Commission, as the application of these charges is a matter of state law.[70]

J. Partial Settlement

35. On June 20, 2019, the Commission approved an uncontested Partial Settlement in Docket No. ER17-910-001[71] that addressed a variety of issues related to PG&E's provision of wholesale distribution service to San Francisco. As relevant here, the parties in that filing implemented several of the revisions they agreed to in the August 11, 2016 Joint Stipulation noted above. In addition, among other things, Article 2 of the Partial Settlement revises section 15.2 of the WDT Interconnection Agreement to address audit rights, and Article 6 of the Partial Settlement addresses intervening facilities for unmetered load, requiring PG&E in section 6.1 to accept fuses as the required "Protective Device/Disconnection Switch" described in the WDT for eligible unmetered loads of 150 watts or less, until an approved submersible disconnect switch becomes available.[72]

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[66] *Id*. at 4-5.

[67] *Id*. at 6-7.

[68] *Id*. at 8.

[69] August 11 Joint Stipulation at 2.

[70] December 20 Joint Stipulation at 9.

[71] *Pac. Gas & Elec. Co.*, 167 FERC ¶ 61,236 (2019) (Partial Settlement Order).

[72] *Id*. P 38.

Article 7 of the Partial Settlement details changes regarding unmetered load in Appendix E of the WDT, including provisions related to rates and billing, inventory, energy calculations, and other matters.[73]

II. Discussion

36. We affirm in part, and reverse in part, the Presiding Judge's determinations in the Initial Decision. For the reasons discussed below, we find that PG&E's replacement agreements, which were accepted for filing in the March 31 Order, are just and reasonable and therefore will continue in effect, as modified by the compliance filing we order herein. We also deny San Francisco's complaint that PG&E will unreasonably deny San Francisco service under PG&E's WDT by providing equivalent service to certain loads.[74] For the reasons explained below, we find that PG&E acted reasonably to accommodate San Francisco under the Replacement Agreements and therefore has not unreasonably denied San Francisco service.

A. Grandfathering & Voluntary Accommodation

1. The Issues

37. The specific replacement agreement that PG&E filed that is relevant to the grandfathering issues discussed in this Opinion is the WDT Service Agreement that contains approximately 2,000 points of delivery previously served under the 1987 Interconnection Agreement, and for which PG&E proposes to provide either WDT or WDT-equivalent service to San Francisco. The parties did not contest the Presiding Judge's finding that San Francisco must meet the requirements of section 212(h)(2)(B) of the FPA and that PG&E's WDT requires it to offer wholesale distribution service without the need for intervening facilities for San Francisco's end-use customers that fall within the grandfathering exception of section 212(h)(2)(B).[75] However, the parties disagreed, and continue to disagree, about the scope of the grandfathering provision as applied to San Francisco's customers and their corresponding delivery points in the WDT Service Agreement.[76]

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[73] *Id*. P 39.

[74] San Francisco Complaint at 1-2.

[75] Initial Decision, 157 FERC ¶ 63,021 at P 132.

[76] *Id.*

38. As mentioned above, the WDT, on file with the Commission, references grandfathering under section 212(h)(2)[77] and specifies requirements for the ownership or control of intervening facilities and, while not directly before us, the WDT and its language referencing section 212(h) is applied to the WDT Service Agreement.[78] Thus, in determining whether the replacement agreements are just and reasonable, we consider the applicable language reflected in the WDT referencing section 212(h) of the FPA and proposed WDT Service Agreement.

2. Initial Decision

a. FPA Section 212(h)

39. The Presiding Judge found that the Commission's section 212(h) precedent substantially supported San Francisco's argument that the WDT's grandfathering provision applies to the class of customers, specifically, municipal public purpose load pursuant to San Francisco's obligations under the Raker Act, that was eligible to receive wholesale distribution service on October 24, 1992, regardless of where in the City those customers may be located now or in the future.[79]

40. In so finding, the Presiding Judge considered the parties' arguments, the applicable Raker Act sections, section 212(h)(2)(B) of the FPA and its legislative history, and relevant case law.[80] The Presiding Judge found that the Commission's precedent, particularly

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[77] *See* WDT, § 2.4 (Completed Application); § 14.2 (Intervening Facilities Requirements); § 15.4 (Response to an Application); § 15.5.1 (Rejection of a Point of Delivery Related to Grandfathering or Intervening Facilities); § 15.5.1.1 (Resolution Process For Disputes Related to Grandfathering or Intervening Facilities); § 15.5.1.2 (Expedited Resolution Process For Disputes Related to Grandfathering and Intervening Facilities; and § 15.5.1.3 (Filing and True-up under the Resolution Process For Disputes Related to Grandfathering and Intervening Facilities).

[78] *See* WDT Service Agreement, § 16.

[79] The Presiding Judge did not discuss Trial Staff's MW proposal in his findings. *See infra* P 57.

[80] *See*, *e.g.*, *Suffolk County II*, 96 FERC at 62,301 (finding that it is the class of customers that are to be grandfathered under section 212(h)(2)(B)). Additional precedent considered by the Presiding Judge included: *U.S. DOE –Western Area Power Admin.*, 95 FERC ¶ 61,382 at 62,419 (2001) (*Western*) (finding that an applicant qualified for a transmission order to increase the amount of power it wanted to sell from the amount of power it had been selling to customers on October 24, 1992); *City of Palm Springs*, 76

Suffolk County I, II, and *IV*, substantially supported San Francisco's argument that grandfathering applies to the class of customers that was eligible to receive wholesale distribution service on October 24, 1992, regardless of where in the City those customers may be located now or in the future.[81] The Presiding Judge found that *Suffolk County I* made many substantive findings and legal conclusions, although it was a preliminary order and not a final order.[82] Similarly, the Presiding Judge explained that *Suffolk County II* was also not a final order.[83] The Presiding Judge found, however, that *Suffolk County IV* was a final order that carried precedential weight, and he was duty bound to follow Commission precedent.[84]

41. In *Suffolk County*, the Commission considered whether it had the authority to require the Long Island Lighting Company (LILCO) to provide transmission service to Suffolk County Electrical Agency (Suffolk County) so that Suffolk County could sell power to customers, finding that the grandfathering exception in section 212(h)(2)(B)

FERC ¶ 61,127 (1996), *reh'g denied*, 84 FERC ¶ 61,225 (1998) (*Palm Springs*) (declining to issue section 211 transmission order to applicant where applicant sought to expand customer base beyond those served on October 24, 1992 and did not own intervening facilities); *Cleveland Elec. Illuminating Co.*, 76 FERC ¶ 61,115 (1996) (*CEI I*) (opining that, while section 212(h) did not apply to the facts, if it did, the utility would qualify for a transmission order because it is a subdivision of the state and owned intervening facilities); *Cleveland Elec. Illuminating Co.*, 82 FERC ¶ 61,254 (1998) (*CEI II*) (opining on rehearing of *CEI I* that section 212 prohibits sham retail wheeling and each proposed transaction must be examined carefully) (collectively, *CEI*); *Pac. Gas & Elec. Co. v. City and Cnty. of San Francisco*, 206 Cal.App.4th 897 (2012) (*Ferry Building*) (finding that, since the majority of tenants in a renovated city property were commercial, the use of electricity at the property was no longer municipal load).

[81] Initial Decision, 157 FERC ¶ 63,021 at P 135.

[82] *Suffolk County II*, 96 FERC at 62,300 (citing *Suffolk County I*, 77 FERC at 65,552).

[83] *Id*.

[84] *See Seaway Crude Pipeline Co. LLC*, Opinion No. 546, 154 FERC ¶ 61,070, at PP 22 & 23 (2016) (*Seaway*) (citing *D'Amico v. Schweiker*, 698 F.2d 903, 907 (7th Cir. 1983); *Mullen v. Bowen*, 800 F.2d 535, 540 n.5 (6th Cir. 1985); *Nash v. Bowen*, 869 F.2d 675, 680 (2nd Cir. 1989) ("[the administrative law judge] is governed, as in the case of any trial court, by the applicable and controlling precedents")).

applied to the class of customers served on October 24, 1992, and not just to the specific customers actually served on that date.[85]

42. The Presiding Judge found that PG&E's interpretation of the grandfathering clause was too narrow, as the Commission in *Suffolk County* had not limited the applicability of grandfathering based on individual delivery points. Rather, the Presiding Judge found that the precedent "substantially support[ed] San Francisco's argument that grandfathering applies to the class of customers that was eligible to receive wholesale distribution service on October 24, 1992, regardless of where in the City those customers may be located now or in the future."[86] Thus, the Presiding Judge considered the class of customers that San Francisco was serving on October 24, 1992, and determined that the class was "municipal public purpose load,"[87] a term that the parties disputed, and that they continue to dispute, as discussed below.

43. The Presiding Judge placed great weight on the Commission's stated concern in *Suffolk County II* about discriminating against customers of the same class within a service territory.[88] The Commission stated:

> [S]urely, in the almost nine years since October 24, 1992, some residential customers have died or moved out, while new residential customers have moved into (or within) the service area. LILCO's interpretation, in addition to being impossible to implement, would be unfair to individual retail customers. Accordingly, for grandfathering purposes, we interpret "customers eligible to receive service" as the class of customers eligible to receive service.[89]

44. The Presiding Judge stated that the Commission could have limited this statement to customers moving into a specified set of buildings (delivery points), but the Commission did not do so.[90]

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[85] *Suffolk County II*, 96 FERC ¶ 61,349 at 62,301.

[86] Initial Decision, 157 FERC ¶ 63,021 at P 135.

[87] *Id*. PP 141-142 (citing San Francisco Reply Brief at 12-13).

[88] *Id.* P 136.

[89] *Suffolk County II*, 96 FERC at 62,301 (emphasis in original).

[90] Initial Decision, 157 FERC ¶ 63,021 at P 136.

45. The Presiding Judge stated that, when the Commission affirmed *Suffolk County I* and *Suffolk County II* in *Suffolk County IV*, it emphasized that "entities who were providing retail service on the date this section was enacted (i.e., October 24, 1992)" were exempted from section 212(h) and "entitled to obtain a transmission order under section 211 to serve all **potential** customers within the class it had been serving."[91] Thus, the Presiding Judge found that according to Commission precedent, it is the class of customer that is grandfathered and not merely specific delivery points. Further, the Presiding Judge explained, the number of customers within the grandfathered class can grow with time.[92] Thus, the Presiding Judge stated he must squarely reject PG&E's individual delivery point approach, as such an approach was rejected by the Commission in *Suffolk County I, II*, and *IV*.

46. The Presiding Judge found that the Commission's pronouncements in the *Suffolk County* and *Western* cases have more precedential value than the legislative history and prior Commission decisions upon which PG&E relies, such as *Palm Springs* and *CEI I and CEI II.* Accordingly, although the Presiding Judge found the legislative history and *Palm Springs* and *CEI I* and *CEI II* to support PG&E, he determined that he must follow Commission precedent in its later decisions in *Suffolk County and Western*.[93]

47. Consistent with *Suffolk County*, the Presiding Judge found that: (1) San Francisco was providing retail service on October 24, 1992; and (2) San Francisco is grandfathered under section 212 and is entitled to obtain a transmission order under section 211 to serve *all* potential customers within the class it has been serving. Pursuant to *Suffolk County,* the Presiding Judge found that San Francisco should be permitted to serve the same class of customers that it served in 1992 and PG&E should be ordered to provide the requested transmission services to that end.[94] In addition, while the Presiding Judge found the legislative history and *Palm Springs* and *CEI* to support PG&E, the Presiding Judge also found he must follow Commission precedent in its later decisions in *Suffolk County* and *Western*.[95]

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[91] *Id*. P 137 (citing *Suffolk County IV*, 108 FERC at 62,036 (citing *Suffolk County I*, 77 FERC at 62,549) (underscore in original; bold added)).

[92] *Id*. (citing *Suffolk County II*, 96 FERC ¶ 61,349 at 62,301; *Western*, 95 FERC ¶ 61,382 at 62,419).

[93] *Id.* P 139 (citing *Seaway,* 154 FERC ¶ 61,070).

[94] *Id.*

[95] *Id*.

b. Municipal Public Purpose Load

48. Next, the Presiding Judge found that the class of customers that San Francisco was serving on October 24, 1992 is municipal public purpose load. The Presiding Judge stated that the term "municipal public purpose" is not defined in the Raker Act.[96] The Presiding Judge noted San Francisco's contention that PG&E's definition of municipal load in this proceeding is substantially narrower than the definition of "Municipal Load" under the 1987 Interconnection Agreement.[97] The Presiding Judge stated that the 1987 Interconnection Agreement defined municipal load as "[p]ower required for City's municipal public purposes pursuant to the Raker Act, as may be designated by City, both inside and outside of City," and that San Francisco contended PG&E had served all the points in its application for WDT service pursuant to that agreement.[98]

49. The Presiding Judge noted that *Suffolk County* did not address the Raker Act, but he found that San Francisco's expansive reading of the "municipal public purpose" term from the Raker Act, as applied to the Commission's expanded reading of section 212(h) in *Suffolk County*, distorted the meaning of "municipal public purpose" because some of the members of the class of customers are private entities engaged in business endeavors with the City. The Presiding Judge found that projects run by third party tenant-customers in partnership with San Francisco or private entities, including non-profit organizations who rent property owned by the city, "tugged on the query of what is a municipal public purpose." The Presiding Judge disagreed with San Francisco's assertion that its monetary activities with third parties qualify as a "municipal public purpose" wherever its city charter authorizes it to do so, stating that there was "a quandary of determining where municipal public purpose begins and ends."[99]

50. The Presiding Judge stated that he was asked to interpret the meaning of the term "municipal public purpose" as it is used in the Raker Act and apply it to the WDT.[100] However, while the Raker Act uses the term "municipal public purpose" multiple times, it does not define it. The Presiding Judge noted that San Francisco and PG&E seemed to have made an effort to define the term in the 1987 Interconnection Agreement, and that

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[96] *Id*. P 142.

[97] *See* PG&E Rate Schedule FERC No. 114.

[98] Initial Decision, 157 FERC ¶ 63,021 at P 142.

[99] *Id*. P 143.

[100] *Id*. P 144.

definition was much discussed in *Ferry Building*.[101] However, the Presiding Judge said that the definition of "municipal load" as discussed in *Ferry Building* was a contractual term, and that there was little legal authority to apply the state court's interpretation of the contract term to the present case.[102]

51. The Presiding Judge stated he had no authoritative guidance on whether to apply the more narrow approach of *Ferry Building* in conjunction with Order No. 888,[103] or to follow the Commission's more expanded reasoning in *Suffolk County*. The Presiding Judge stated that he was further constrained by *Seaway*,[104] where the Commission explained that the due process concerns laid out in *Butz v. Economou*[105] establish that an administrative law judge or hearing examiner must follow precedent, subject to correction, in order to limit the possibility of bias in a proceeding.[106]

52. Thus, the Presiding Judge stated that he was without authority to furnish his definition of "municipal public purpose" and that such a function lies with the Commission or others.[107] The Presiding Judge found that defining this term is within the prerogative of the Commission and that it has not delegated such rulemaking authority to

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[101] *See Ferry Building*, 206 Cal.App. 4th at 902 ("Municipal Load is defined as '[p]ower required for City's municipal public purposes pursuant to the Raker Act, as may be designated by the City, both inside and outside of City. For purposes of this Agreement, such load shall not include load served by the City as resale load'").

[102] Initial Decision, 157 FERC ¶ 63,021 at P 144.

[103] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Entities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[104] *See Seaway*, 154 FERC ¶ 61,070 at P 25.

[105] *Butz v. Economou,* 438 U.S. 478, 512 (1978).

[106] Initial Decision, 157 FERC ¶ 63,021 at P 145.

[107] *Id.* P 146 (citing *Chevron v. Nat. Resources Def. Council*, 467 U.S. 837, 844 (1984)).

the Presiding Judge. The Presiding Judge noted that, assuming arguendo that he does have such authority, there was nothing in the record allowing him to create a definition for such a term. According to the Presiding Judge, the record only included definitions created by the parties that lack legal bases and definitions from expired contracts.[108]

53. However, although the Presiding Judge found himself unable to define the term "municipal public purpose," he nonetheless suggested that when defining municipal load, the Commission consider the definition set forth in PG&E's proposed WDT Service Agreement:[109]

> Municipal Public Purpose End-Use Customers ("Muni-Load") are served at metered Points of Delivery providing power to [San Francisco's] governmental departments and agencies, public housing tenants, municipal transportation system, police stations, fire departments, public schools, city parks and public libraries. Non-governmental private persons (other than [San Francisco] public housing tenants) and non-governmental private corporations are not Municipal Public Purpose End-Use Customers. Small Unmetered Street Loads served under Appendix E are not Municipal Public Purpose End-Use Customers.

3. Briefs on Exceptions

a. PG&E

54. PG&E argues that the Presiding Judge erred in finding that legislative history and Commission precedent support San Francisco's position on grandfathering. PG&E complains that "class of customer" is not mentioned either in the legislative history and section 212(h), or in Commission precedent.[110] PG&E argues that the only reasonable way to interpret the Commission's use of the phrase "class of customers eligible to receive service" is that, for each delivery point that existed and was being served by San Francisco as of October 24, 1992, San Francisco is entitled to grandfathered status.[111] According to PG&E, any individual customers who are members of the "class" of customers that San Francisco was serving on October 24, 1992 can move into or out of

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[108] *Id.*

[109] WDT Service Agreement, App. D.1.1 at 19.

[110] PG&E Brief on Exceptions at 10.

[111] *Id.* at 12.

that delivery point without the need for San Francisco to install, own or control intervening transmission or distribution facilities.[112] PG&E asserts that the Commission's use of the term, "class of customer" should only be interpreted to mean the categories of customers San Francisco was serving on October 24, 1992.[113]

b. San Francisco

55. San Francisco argues that the Initial Decision erred in declining to adopt San Francisco's definition of municipal load. San Francisco asserts that municipal load should be based on the customers served or eligible to be served by San Francisco on October 24, 1992,[114] and believes that adoption of the definition in the WDT Service Agreement would omit some categories of customers traditionally served.[115] San Francisco asserts that the definition of municipal load should include: (1) City agencies and related public entities; (2) City-owned properties and tenants of those properties; and (3) entities providing services on behalf of or in coordination with the City.[116]

c. Trial Staff

56. Trial Staff argues that the Initial Decision misapplies limited Commission precedent on grandfathering to the facts and circumstances in this proceeding.[117] Although the Presiding Judge found that *Suffolk County* did not support PG&E's individual delivery point approach, Trial Staff disagrees, arguing instead that the precedent in *Suffolk County* is extremely limited, and is based on a set of specific facts distinguishable from the facts present in this proceeding.[118] Like PG&E, Trial Staff points out that section 212(h)(2)(B) does not mention "class of customer."[119] Trial Staff

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[112] *Id*.

[113] *Id.* at 13.

[114] San Francisco Brief on Exceptions at 25.

[115] *Id*. at 29.

[116] *Id*. at 25-29.

[117] Trial Staff Brief on Exceptions at 9.

[118] *Id*. at 9-10.

[119] *Id*. at 10.

states that PG&E's point of delivery approach is a reasonable approach to determine who is grandfathered, but believes that such an approach would bar some eligible customers from grandfathered WDT service, lead to more disputes, and be difficult to administer.[120]

57. Trial Staff argues that its MW cap proposal is not inconsistent with the applicable law and precedent because the facts of this case are different from prior cases, thus warranting a departure from precedent.[121] Trial Staff asserts that the MW cap proposal produces a reasonable result given the unique circumstances presented here and the limited Commission precedent.[122]

58. Trial Staff also disputes the Initial Decision's identification of municipal public purpose load as the customer class that San Francisco was serving on October 24, 1992 as lacking a definition in the record,[123] and thus arguing this identification cannot be a finding regarding that particular customer class.[124] Accordingly, Trial Staff argues it is necessary to consider another approach, namely, PG&E's individual delivery point approach, to determine which load qualifies for grandfathered service.[125]

4. Briefs Opposing Exceptions

a. PG&E

59. PG&E states that San Francisco's definition of "municipal public purpose load" is vague and potentially limitless.[126] According to PG&E, terms in San Francisco's definition like "related public entities" and "providing services on behalf of or in

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[120] *Id*. at 17-20.

[121] *Id*. at 21. In its Initial Brief, Trial Staff argued that, for the delivery points that were not deemed WDT-Qualified, rather than place restrictions on them as proposed by PG&E, an annual megawatt cap could be placed on any additional proposed load. Trial Staff asserted that up to the cap, the additional load would receive WDT service without the need for intervening facilities. Trial Staff Initial Brief at 21.

[122] Trial Staff Brief on Exceptions at 26.

[123] *Id*. at 13.

[124] *Id*. at 15.

[125] *Id*.

[126] PG&E Brief Opposing Exceptions at 8.

cooperation with the City" are without criteria or detail in the record to determine to whom they would apply.[127] PG&E complains that "City-owned properties or tenants on those properties" could apply to both public and private entities currently on city property and on any property that the city might purchase in the future, thereby increasing the customers within this definition.[128] PG&E further states that private corporations on City property cannot be considered "municipal public purpose customers."[129] Conversely, PG&E claims that the definition contained in the WDT Service agreement is limited to bona fide City government entities.[130] Finally, PG&E asserts that there is no credible evidence demonstrating that San Francisco will lose customers over time under the point of delivery approach proposed by PG&E and that, consistent with the FPA, San Francisco need only install intervening facilities to qualify for WDT service.[131]

b. San Francisco

60. San Francisco states that PG&E's and Trial Staff's claim that the point of delivery approach is consistent with legislative history and Commission precedent is incorrect and would give PG&E an unfair competitive advantage by eroding San Francisco's customer base over time.[132] San Francisco further states that PG&E's point of delivery approach would require San Francisco to build potentially duplicative electrical delivery facilities when municipal public purpose customers move to new buildings with existing facilities in order for San Francisco to continue WDT service, resulting in a complex set of service agreements for the same customers.[133]

61. In response to PG&E's argument that legislative history favors the point of delivery approach, San Francisco states that section 212(h)(2) of the FPA refers to "ultimate customers," and not "delivery points."[134] San Francisco argues that the

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[127] *Id*. at 9-10.

[128] *Id*. at 10.

[129] *Id*. at 11.

[130] *Id*. at 12.

[131] *Id*. at 13.

[132] San Francisco Brief Opposing Exceptions at 7-8.

[133] *Id*. at 8-9.

[134] *Id*. at 9.

legislative history shows that Congress was primarily concerned with sham or "paper" entities when it enacted section 212(h), which San Francisco is not.[135] San Francisco contends that one purpose of section 212(h) is to preserve transmission arrangements between parties that were in place on October 24, 1992.[136] Under the Raker Act, San Francisco states that it has been providing service to municipal public purpose load customers for decades and thus clearly meets this purpose.[137] San Francisco further argues that statements made by a senator are not controlling when considering legislative history.[138]

62. San Francisco claims that PG&E and Trial Staff mischaracterize the Commission's precedent on section 212(h) in stating that the precedent did not explicitly reject a point of delivery approach.[139] According to San Francisco, *Suffolk County* rejected an interpretation of grandfathering that would deny service to customers who moved into (or within) a service area.[140] San Francisco further argues that the point of delivery approach would lead to discrimination against San Francisco customers by treating them differently based on their location and inconsistent with how PG&E treats other WDT customers who receive WDT service, but do not have intervening facilities.[141] Finally, San Francisco states that Trial Staff's proposed annual MW load cap is not consistent with Commission precedent where the Commission expressly rejected proposals to limit the amount of energy that could be grandfathered.[142] With regard to the definition of municipal load, San Francisco reiterates that PG&E's definition is not based on those customers eligible to receive service by San Francisco on October 24, 1992, and thus is unduly restrictive.[143]

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[135] *Id*. at 9-11.

[136] *Id*. at 12.

[137] *Id*. at 15-16.

[138] *Id*. at 14.

[139] *Id*. at 20.

[140] *Id*. at 22.

[141] *Id*. at 23-25.

[142] *Id*. at 28-29 (citing *Suffolk County I*, 77 FERC at 65,550).

[143] *Id*. at 27.

c. Trial Staff

63. Trial Staff states that San Francisco's proposed definition of "municipal public purpose" load has no basis in law, is overly expansive, and that the Initial Decision properly concluded that San Francisco failed to support it.[144] Trial Staff contends that San Francisco's definition applies to all municipal public purpose load regardless of where they are located now or in the future and that such an expanded definition could include private entities engaged in business endeavors with the city.[145] Trial Staff supports the Presiding Judge's conclusion that projects run by third party tenant-customers in conjunction with the City or private entities, may "tug on the query of what is a municipal public purpose."[146] Regarding San Francisco's claim that monetary activities with third parties may constitute "municipal public purpose," Trial Staff notes that the Raker Act specifically excludes from municipal purposes the sale of electricity to private persons or corporations.[147] Finally, Trial Staff states that defining municipal public purpose load as the class of customers served on October 24, 1992 is inconsistent with legislative history because the legislative history discussed maintaining, not expanding, the amount, source and delivery points of an existing power sale contract for its current term. Trial Staff claims that legislative history recognizes that the grandfathering provision was meant to allow the Commission to "continue, but not expand, existing retail wheeling arrangements and to maintain the 'status quo.'"[148]

64. Trial Staff also opposes adoption of PG&E's definition of "municipal public purpose" load because it is the basis of PG&E's grandfathering proposal that is overly restrictive, could result in future disputes, and could be difficult to administer.[149] Trial Staff reiterates that PG&E's grandfathering proposal imposes restrictions on delivery points eligible for grandfathered service.[150]

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[144] Trial Staff Brief on Exceptions at 4.

[145] *Id*. at 6.

[146] *Id*.

[147] *Id*. at 7.

[148] *Id*. at 8 (citing legislative history).

[149] *Id*. at 9.

[150] *Id*.

5. Additional Briefing

65. On August 24, 2018, the Commission issued an Order on Additional Briefing and Establishing Briefing Schedule for the parties to explain their intent in utilizing the reference to section 212(h) in the WDT's grandfathering provision.[151]

66. In response, San Francisco, PG&E, and Trial Staff (Joint Respondents) filed a joint brief, explaining that references to section 212(h) of the FPA were meant to define the requirements and boundaries of eligibility for service under PG&E's WDT.[152] Joint Respondents state that they intended to clarify that a delivery or interconnection point is entitled to WDT service if the end-use customer meets the criteria for grandfathering under section 212(h) or if the wholesale customer owns or controls intervening facilities to serve that delivery point pursuant to section 212(h), and would be ineligible if section 212(h) would prohibit the Commission from ordering wholesale service to that delivery point. Joint Respondents state that "[i]t was the intent of the parties that . . . eligibility for WDT service through grandfathering was based on [section 212(h)]" and that the intent of the reference to section 212(h) in the WDT was to ensure that the Commission's interpretation of the statute was incorporated into the WDT's eligibility rules. Joint Respondents note, however, that the settlement did not define grandfathering for purposes of the WDT.[153]

6. Commission Determination

67. The central issue in this proceeding is whether PG&E's application of the WDT Settlement's grandfathering provision (which was included in the WDT and, subsequently, in the replacement agreements) is just and reasonable. Specifically, the parties disagree as to the scope of which customers are grandfathered under the WDT and replacement agreements. For the reasons discussed below, we reverse the Initial Decision in part and find that PG&E's proposal is just and reasonable, and consistent with the structure of the WDT. Although San Francisco would have us apply the Commission's precedent interpreting section 212(h) to determine the scope of San Francisco's customers who are grandfathered, we decline to do so here. That precedent is not applicable to our decision here, which interprets the references to section 212(h)(2)(B) in the WDT Settlement, WDT, and replacement agreements in the

[151] *City and Cnty. of San Francisco v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,132 (2018).

[152] Joint Brief of San Francisco, PG&E, and Trial Staff at 2.

[153] *Id.* at 3-4.

context of the text and structure of the WDT, and thus we overturn the Presiding Judge's finding on this issue.[154] While the WDT settlement, WDT, and replacement agreements reference section 212(h) to delineate which customers are eligible for WDT service without the need for intervening facilities, they do not explain how that reference should be interpreted and applied.

68. We find that PG&E's application of the grandfathering provision using a point of delivery approach to determine whether customers under existing, revised, or new delivery points qualify for WDT service under the WDT Service Agreement is just and reasonable and consistent with the language and structure of the WDT, as discussed more fully below. Under its proposed approach, PG&E uses October 24, 1992 as the relevant date for determining which customers are served under its WDT. The replacement agreements are new contracts and, as such, need not have the same terms as the 1987 Interconnection Agreement, so long as those terms are just and reasonable. In this case, we find it reasonable that relocating a customer previously served under the 1987 Interconnection Agreement would be creating a new delivery point, and that these new delivery points (which are new and not grandfathered) must conform to PG&E's current WDT requirements, or be excluded from receiving wholesale distribution service from

[154] While the parties say that they want the Commission to incorporate the Commission's interpretation of section 212(h) into the WDT's eligibility rules, we find that the Commission's 212(h) precedent is inapt because this is not a "section 212(h) case." Although section 212(h) is referenced in the WDT, this is not a proceeding in which the Commission has been requested to mandate either interconnection service under section 210 or transmission service under section 211. Instead, PG&E is providing service willingly; the dispute is over the terms of such service. Indeed, the parties do not cite any Commission precedent on section 212(h) that is not in the context of sections 210 and 211 of the FPA. Because that precedent was developed in the context of an application under section 211, we find that it does not shed light on whether the relevant agreements are just and reasonable for the purposes of PG&E's section 205 filing and San Francisco's section 206 complaint. Accordingly, we conclude that the parties' arguments regarding section 212(h) and the cited Commission precedent are distinguishable from the circumstances presented in this case. This includes the parties' discussion of *Suffolk County*, which stemmed from a section 211 application. Similarly, this order should not be viewed as interpreting the scope of section 212(h) or the precedent thereunder beyond the salient point that they are not applicable in this proceeding for the reasons discussed below. Instead, as also discussed herein, we are focusing on the rates, terms, and conditions of the replacement agreements, whose terms and conditions are derived in turn from the WDT.

PG&E.[155] It bears noting that PG&E's proposed replacement agreements accommodate San Francisco by offering to continue serving nearly all delivery points in existence on June 30, 2015, the termination date of the 1987 Interconnection Agreement. Those delivery points in existence on October 24, 1992 receive service under the WDT; those served under the 1987 Agreement that were established after October 24, 1992 receive WDT-equivalent service.[156] In addition, PG&E proposes to voluntarily serve new unmetered load without the need for intervening facilities, thereby accommodating a larger number of San Francisco customers with such service than would have otherwise been the case absent this accommodation.

69. San Francisco would have us find that the WDT's grandfathering provision, which references section 212(h), applies to all customers requesting new or revised service, regardless of their location, ownership structure, or other modifications to their existing delivery points. We disagree. San Francisco's customer class approach, as embodied in *Suffolk County*,[157] fails to reasonably implement the WDT because it would automatically grandfather *all* San Francisco customers, thereby negating the WDT's point of delivery framework.[158] Moreover, although the WDT references section 212(h)(2)(B), it does not make any reference to a class of customer approach or otherwise reference the

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[155] As noted above, consistent with section 2.16 of the WDT, PG&E may provide voluntary service to San Francisco which it has agreed to do, by proposing to provide WDT equivalent service to customers with delivery points in categories two, three, four, and five above. *See supra* PP 14-19 (discussing categories).

[156] Initial Decision, 157 FERC ¶ 63,021 at P 57.

[157] *Suffolk County II*, 96 FERC at 62,301

[158] While the points of delivery had previously been contemplated in the WDT, the WDT Settlement discussed above included a number of new changes to the WDT that provide further support that PG&E (and customers such as San Francisco that did not oppose the Settlement) intended for the WDT to apply that approach. For example, WDT section 14.2 was added as part of the WDT Settlement and provides that, "[t]o the extent that an Eligible Customer intends to invoke this Grandfathering provision, the Eligible Customer . . . must provide evidence demonstrating that, for each Point of Delivery for which is claims eligibility for Grandfathering, the criteria of 16 U.S.C. § 824k(h)(2) are met." *See also* WDT, § 15.2(ix) (describing contents of completed application to include demonstration of ownership or control of intervening facilities "unless a Point of Delivery is exempt from ownership or control" of intervening facilities) (added pursuant to WDT Settlement); WDT, § 15.5.1 ("Rejection of Point of Delivery Related to Grandfathering or Intervening Facilities") (same).

Commission's precedent on section 212(h).[159] Therefore, we find that the references in the WDT to section 212(h)(2)(B) should not be read to override the express point of delivery approach that is embodied in the WDT in many places.

70. As noted, the WDT frames distribution service in terms of delivery points.[160] For example, in defining distribution service, the WDT states that distribution service "under this [WDT] is the distribution of capacity and energy to … Point(s) of Delivery."[161] The WDT also requires customers that invoke the section 212(h) grandfathering provision to provide evidence why "each point of delivery" is eligible for grandfathering.[162] Because service under the WDT is framed in terms of delivery points, and is applied here pursuant to the replacement agreements, the circumstances here are distinguishable from the class of customer approach discussed in *Suffolk County* and advocated for by San Francisco. The incorporation of section 212(h)(2)(B) into PG&E's WDT is most reasonably read as providing certainty for the time period when grandfathering points of delivery would occur, rather than read as superseding the point of delivery framework in the WDT. An approach to WDT service based on the class of customer is not expressly contemplated in the WDT, and, if adopted, would require a fundamental reinterpretation of the WDT

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[159] The section 212(h) precedent relied upon by the Presiding Judge was established in the context of a request for transmission service under section 211. Here, PG&E has filed replacement agreements to provide continued service to San Francisco under section 205, not in the context of a section 211 request for transmission service.

[160] *See, e.g.*, WDT, § 1.1 (distribution service is for the receipt of capacity and energy at designated points of receipt and the transmission of such capacity and energy to designated points of delivery); § 2.29 (points of delivery are the points on the distribution provider's distribution system where capacity and energy transmitted by the distribution provider will be made available to the receiving party under the WDT); § 2.32 (receiving party is the entity receiving capacity and energy transmitted by the distribution provide to points of delivery); § 14.2 (customers invoking grandfathering provision must provide evidence demonstrating that each point of delivery for which it claims eligibility for grandfathering that the requirements of FPA section 212(h)(2) are met); § 15.5.1 (referencing customers' rights to dispute rejection of points of delivery if the point of delivery qualifies for section 212(h) grandfathering treatment).

[161] *Id.* § 2.15. Points of Delivery are "Point(s) on the Distribution Provider's Distribution System where capacity and energy transmitted by the Distribution Provider will be made available to the Receiving Party under this Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Distribution Service." *Id.* § 2.29.

[162] *Id.* § 14.2.

solely for San Francisco – an outcome that we do not find supported based on the record before us.

71. For these reasons, we find that PG&E's position regarding WDT service is just and reasonable because it gives effect to the language of the WDT, and reject San Francisco's argument that PG&E's approach is unjust and unreasonable. San Francisco's argument is grounded in its interpretation of *Suffolk County*, but it fails to grapple with the language of the WDT, which, as explained above, focuses on a point of delivery approach to wholesale distribution service. Finally, having found PG&E's approach just and reasonable, we are not obligated to accept San Francisco's alternative interpretation of the grandfathering provision.[163]

72. With regard to the definition of municipal load, we agree with the Presiding Judge that the replacement agreements are just and reasonable, and we thus affirm the Initial Decision on this point and accept PG&E's definition of municipal load as expressed in the replacement agreements. PG&E's definition effectively distinguishes between what is to be considered municipal load under the replacement WDT Service Agreement and what is not. And, although this is not the same definition as set forth in the 1987 Interconnection Agreement, which is one of San Francisco's points of contention, a new contract may well have new terms and definitions that are not the same as those in an expired contract. But the mere fact that those new terms and definitions are different from what was previously agreed to by the parties does not render them unjust and unreasonable.

73. Next, we find that PG&E's voluntary accommodation to provide WDT-equivalent service to San Francisco delivery points that are not grandfathered or have intervening facilities is just and reasonable. PG&E's WDT Service Agreement provides that San Francisco's points of delivery previously served under the 1987 Interconnection Agreement may receive WDT or WDT-equivalent service.[164] PG&E has categorized San Francisco's customers into WDT-Qualified customers and non-WDT Qualified customers in a way that does not alter their wholesale service or the rates they pay but instead allows them to be tracked going forward: WDT-Qualified customers meet the criteria for service under PG&E's WDT as the result of grandfathering or ownership or

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[163] *See, e.g.*, *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one"); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (utility need only establish that its proposed rate design is reasonable, not that it is superior to alternatives). For this reason, we also do not address Trial Staff's MW cap proposal.

[164] Initial Decision, 157 FERC ¶ 63,021 at PP 4, 164-165.

control of intervening facilities, while San Francisco's existing non-WDT Qualified loads, including unmetered loads, do not meet the WDT's criteria. PG&E's proposed cataloged system will effectively provide San Francisco with a 22-year grandfathering extension, allowing all San Francisco points of delivery in service during the term of the 1987 Interconnection Agreement (i.e., through June 30, 2015) to benefit from grandfathering as long as those delivery points do not change.[165]

74. Finally, San Francisco has had notice of PG&E's intent to continue its service under terms and conditions of its WDT after the 1987 Interconnection Agreement expired since 2005, when PG&E filed an unexecuted Amended and Restated Agreement and an unexecuted Service Agreement with San Francisco under the WDT.[166] That proceeding resulted in an uncontested settlement that was approved by the Commission on January 18, 2008.[167] As part of that settlement, both parties agreed not to oppose termination of the 1987 Interconnection Agreement as of July 1, 2015, clearing the path for San Francisco to take service under the WDT CAISO's tariff after that date. Thus, San Francisco has known to prepare for a change in circumstances.

B. Intervening Facilities

1. The Issue

75. Another issue addressed by the Presiding Judge was whether San Francisco's ownership or control of either a service entrance conductor or bus duct is sufficient to satisfy the intervening facilities requirement set forth in section 14.2.1 (Intervening Facilities) of PG&E's WDT. Intervening facilities are defined in PG&E's WDT as the "Distribution Facilities that are installed between the Distribution Provider-owned Distribution Facilities and the Distribution Customer's end-use customer's Load."[168] Under the 1987 Interconnection Agreement, PG&E provided wholesale distribution service to all of San Francisco's end-use customers without the need to own or control

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[165] *Id*. P 167 (citing PG&E Initial Brief at 26). According to PG&E, if a municipal load customer subsequently changes to a non-municipal load customer, the customer would lose its grandfathered status. Likewise, if a municipal load customer moves from a grandfathered delivery point to a delivery point that is not grandfathered, or a new delivery point, the customer would lose its grandfathered status. PG&E Initial Brief at 18.

[166] *Pac. Gas & Elec. Co.*, 112 FERC ¶ 61,225, at PP 6-15 (2005).

[167] *Pac. Gas & Elec. Co.*, 122 FERC ¶ 61,047 (2008).

[168] WDT, § 2.20 (Intervening Distribution Facilities).

intervening facilities. However, PG&E's proposed replacement agreements, which reference the provisions of section 212(h) of the FPA, dictate that San Francisco's new and non-WDT qualified end-use customers must own or control intervening facilities to qualify for service under PG&E's WDT.

76. The parties dispute whether a service entrance conductor or a bus duct accomplishes the physical delivery of power from PG&E to an end-use customer for underground secondary service. Section 14.2.1 of the WDT (Intervening Facilities) describes the intervening facilities that are required in a number of distribution service scenarios. Section 14.2.1 establishes a "rebuttable presumption that the Intervening Facilities identified and associated with each scenario described therein are required for that type of service."[169]

77. A footnote to the table in section 14.2.1 of the WDT includes detailed descriptions of the type of wire or device required for each type of distribution service scenario. The footnote provides examples of the type of wire that will be required. For underground-to-underground secondary service, it lists the service entrance conductor. However, PG&E argues that the service entrance conductor terminology used in the footnote is a mistake. PG&E stated that the term service *lateral* conductor was the intended term and is the correct wire and should have been used instead of the service entrance conductor term.[170] San Francisco disagreed, arguing that either a service entrance conductor or a bus duct (which in certain cases is classified as either a service entrance conductor and/or a service entrance lateral) is sufficient for delivering energy to an end-use customer, and contending that Trial Staff also agreed that the service entrance conductor is sufficient to meet the intervening facilities requirement.[171]

78. Next, the parties dispute whether an applicant for wholesale distribution service (here, San Francisco) can meet the intervening facilities obligation by demonstrating control of an existing customer-owned facility. Specifically, San Francisco argues that ownership or control of either a service entrance conductor or bus duct is sufficient to satisfy section 212(h)'s intervening facilities requirement, as well as the requirements of the WDT. PG&E argues that such a demonstration is not sufficient.[172]

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[169] Initial Decision, 157 FERC ¶ 63,021 at P 174.

[170] *Id*. P 176.

[171] *Id*. P 178 (citing San Francisco Initial Brief at 39).

[172] *See, e.g.*, *id*. PP 180-181, 184, 199.

2. Initial Decision

79. As an initial matter, the Presiding Judge found that the parties have no dispute regarding PG&E's intervening facilities requirements associated with primary voltage service and secondary overhead service. Furthermore, the Presiding Judge found that the only remaining dispute between PG&E and San Francisco concerning intervening facilities pertains to the requirements associated with underground secondary service.[173]

80. The Presiding Judge adopted the testimony and opinions of Trial Staff witness Hsiung (Ms. Hsiung) addressing underground secondary service facilities, and concluded that both service entrance conductors and bus ducts qualify as intervening facilities under the WDT and meet the statutory requirements of section 212(h)(2)(B) of the FPA as long as San Francisco acquires ownership or control of the facilities in question.[174] The Presiding Judge stated that, as long as San Francisco owns or controls the service entrance conductor or bus duct, either wire or device may serve as a bridge between the wholesale distribution utility (i.e., San Francisco) to deliver power to the ultimate customer and therefore qualify as intervening facilities.[175]

81. Finally, the Presiding Judge noted that the Commission has the authority to determine whether to revise the alleged drafting error in the footnote contained in section 14.2.1 of PG&E's WDT.[176]

3. Brief on Exceptions

a. PG&E

82. PG&E contends that service entrance conductors and/or bus ducts are not functionally sufficient to satisfy the requirement in the WDT to own or control intervening facilities.[177] PG&E explains that the term "service *entrance* conductor" used in the footnote of section 14.2.1 is a mistake, and should be revised to "service *lateral*

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[173] *Id*. P 171.

[174] *Id.* P 234.

[175] *Id.*

[176] *Id.* P 222.

[177] PG&E Brief on Exceptions at 21-22.

conductor."[178] PG&E states that its witness testified, and San Francisco's witnesses did not dispute, that a "service drop" is a required intervening facility for overhead secondary service, and the functional equivalent of a service drop for underground secondary service is a "service lateral" or "service conductor."[179] However, unlike a service lateral, PG&E contends that an end-use-customer-owned service entrance conductor (or bus duct) does not perform the same function of delivering power from PG&E's distribution network to the retail customer in either a secondary overhead or secondary underground scenario.[180] PG&E requests that the Commission correct this error, or alternatively, order PG&E to correct the error in a compliance filing.[181]

83. PG&E argues that the Initial Decision's finding fails to include an evaluation of section 212(h) and the Commission orders interpreting its intervening facilities requirements.[182] PG&E contends that, under section 212(h) of the FPA, service entrance conductors and bus ducts cannot properly be deemed intervening facilities because they are not distribution facilities used by utilities to deliver power to their end-use customers. PG&E explains that the parties agree that the underlying purpose of intervening facilities is to prevent retail wheeling by providing a bridge between the Distribution Provider (i.e., PG&E) and the Distribution Customer's (i.e., San Francisco's) end-use customers. Therefore, PG&E avers that the lack of a bridge effectuates retail wheeling, because this equipment is part of an end use customers' facility and one end of the bridge – and therefore cannot also function as the bridge itself.[183]

84. PG&E disagrees with the Presiding Judge's finding that San Francisco can comply with the intervening facilities requirements by virtue of controlling its end-use customer's distribution facility.[184] PG&E states that there is no Commission decision that suggests

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[178] *Id*. at 18-21.

[179] *Id.* at 28 (citing Malahowski Testimony, Ex. PGE-20 at 14:19-27) (Malahowski Test.)).

[180] *Id*.

[181] *Id*. at 7.

[182] *Id*. at 19.

[183] *Id.* at 20-21, 22; *see also id.* at 30 (arguing that a service entrance conductor or bus duct cannot be such a bridge because it is PG&E system and facilities that deliver the power directly to a San Francisco customer).

[184] *Id.* at 21.

that acquiring control of the incumbent utilities' customer-owned facilities or equipment should be enough to convert existing retail service into legitimate wholesale service.[185] PG&E adds that the Commission has never held that a piece of equipment or facility owned by a retail customer could be relied upon as an intervening facility to establish eligibility for a utility seeking wholesale service.[186] PG&E contends that in previous Commission orders addressing intervening facilities, the Commission has always found that the utility must rely upon the actual *distribution facilities* that it owned or controlled (or planned to install) in order to serve its end-use customers.[187]

85. Therefore, PG&E requests that the Commission reject this finding because applicants seeking wholesale distribution service to qualify simply by "taking control" of existing end-use customer facilities is not what Congress intended when it established the rules of wholesale service and the intervening facility requirement of section 212(h) of the FPA.[188] PG&E notes that such a finding would not affect any other customer, because San Francisco is the only WDT customer that takes secondary underground service under PG&E's WDT.[189]

4. Briefs Opposing Exceptions

a. San Francisco

86. San Francisco maintains that the service entrance conductor and bus duct are sufficient to meet the intervening facilities requirement.[190] San Francisco's first argument is that PG&E should be required to comply with the plain language of its WDT.[191] Citing the section 14.2.1 table and accompanying footnote in the WDT, San Francisco notes that for secondary underground service, the WDT identifies the

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[185] *Id.* at 32.

[186] *Id.*

[187] *Id.* at 32-33 (citing *Palm Springs*, 76 FERC ¶ 61,127; *CEI II*, 82 FERC ¶ 61,254; *Laguna Irrigation Dist.*, 84 FERC ¶ 61,226 (1998)).

[188] *Id*. at 32.

[189] *Id.* at 20.

[190] San Francisco Brief Opposing Exceptions at 30.

[191] *Id*. at 31.

service entrance conductor as an acceptable intervening facility.[192] San Francisco also highlights language from the Initial Decision that describes the WDT language as "plain and clear" and suggests that PG&E cannot "avail itself of sources outside the WDT to change the meaning, or terms, of the language inside the WDT."[193] According to San Francisco, since there is no ambiguity about these WDT provisions, the filed-rate doctrine dictates that PG&E follow the terms and conditions of the WDT as filed.[194]

87. San Francisco further contends that PG&E has failed to support its assertion that the relevant tariff language is erroneous. San Francisco notes that the language was developed as part of extensive settlement negotiations and was accepted by the Commission in 2015.[195] Regarding the testimony of PG&E witness Malahowski (Mr. Malahowski), San Francisco argues that since Mr. Malahowski was not involved in the settlement process and may not have been familiar with the drafting of section 14.2.1, Mr. Malahowski could not testify with authority that the plain language of the WDT fails to capture the parties' intent.[196]

88. San Francisco also argues that the issue of revising the language of the WDT is not properly before the Commission. According to San Francisco, PG&E has not filed under sections 205 or 206 of the FPA to revise its WDT in this or any other proceeding.[197] Unlike in the settlement proceedings, in which several WDT customers were involved, the instant filings involve unexecuted bilateral agreements between PG&E and San Francisco.[198] San Francisco states that PG&E's observation that San Francisco is the only WDT customer currently served by PG&E's secondary underground distribution is insufficient support for amending the WDT because all

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[192] *Id*.

[193] *Id*. at 31 (citing Initial Decision, 157 FERC ¶ 63,021 at P 223).

[194] *Id*. at 31-32.

[195] *Id*. at 32.

[196] *Id*. at 32-33.

[197] *Id*. at 33.

[198] *Id*.

current and future WDT customers should have the right to apply for underground secondary service and be notified of changes to the terms of that service.[199]

89. San Francisco's second major argument is that PG&E's remaining justifications for revising its tariff should be rejected. San Francisco asserts that PG&E's interpretation of Commission precedent in *Laguna, Palm Springs,* and *CEI* is incorrect.[200] According to San Francisco, these cases did not hold that wholesale customers such as San Francisco must own or control service laterals or 12-kV lines to satisfy the intervening facilities requirements of section 212(h)(2) of the FPA.[201] Specifically, in *Laguna* and *CEI,* although customers were not barred from using certain facilities in situations in which a transmitting utility had already installed equipment, these cases did not hold that construction of these facilities was necessary to meet the intervening facilities requirement.[202] San Francisco argues that in *Palm Springs,* the Commission ruled that a duplicative meter was inadequate to satisfy the requirements of section 212(h)(2) for the interconnections at issue in that proceeding, but the Commission did not specify what additional facilities would have been sufficient. San Francisco asserts that the Commission has never found that facilities that actually deliver power could not be classified as intervening facilities.[203] Accordingly, argues San Francisco, service entrance conductors and bus ducts meet the intervening facilities test.[204]

90. San Francisco also claims that PG&E mischaracterizes the testimony of Ms. Hsiung and the Initial Decision's reliance on that testimony. San Francisco states that contrary to PG&E's criticisms that Ms. Hsiung's testimony over-relies on PG&E's WDT and is irrelevant because it did not include an evaluation of section 212(h) of the FPA, Ms. Hsiung's testimony was rooted in her engineering and technical experience as to the function of service entrance conductors and bus ducts.[205]

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[199] *Id*. at 33.

[200] *Id*. at 34-35.

[201] *Id*. at 36.

[202] *Id*. at 35.

[203] *Id*. at 35-36.

[204] *Id*. at 38.

[205] *Id*. at 38-39.

91. San Francisco contends that PG&E's arguments regarding the ownership of facilities has no basis in section 212(h) of the FPA, Commission precedent, or section 14.2.1 of PG&E's WDT.[206] Referencing PG&E's discussion of its retail requirements in its Brief on Exceptions, San Francisco states that PG&E failed to explain why the ownership requirements in its retail rules are relevant for determining what should be classified as an Intervening Facility for the purpose of qualifying for wholesale service pursuant to federal law. Since the WDT requires that San Francisco "own or control" the facilities that deliver power to San Francisco customers, San Francisco argues that it should not matter who owns the facilities.[207] San Francisco argues that the real issue is whether the entity seeking wholesale distribution service owns or controls a "bridge" between PG&E's and the end-use customers' facilities.[208] Therefore, San Francisco maintains, once it obtains ownership or control of either a service entrance conductor or a bus duct, this facility serves as a bridge between PG&E and the customer, and the intervening facilities requirement of section 212(h)(2) is satisfied.[209]

92. Finally, San Francisco claims that PG&E's comparison between overhead and underground secondary facilities is flawed and that its reliance on the drawing presented by Mr. Malahowski is unsupported.[210] Regarding overhead and underground facilities, San Francisco reiterates that the decision to classify the service drop and service entrance conductors as intervening facilities was the outcome of settlement negotiations. Additionally, San Francisco maintains that, per Ms. Hsiung's testimony, a service entrance conductor could serve a similar function whether installed overhead or underground and would qualify as an intervening facility. Regarding Mr. Malahowski's exhibit PGE-50, San Francisco references PG&E's attorney who stated that the stylized diagram was "just intended…to be high level for illustrative purposes," was nontechnical, and was more representative of a single family house than the building or connections of a large industrial customer such as those at issue in this proceeding.[211]

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[206] *Id*. at 42.

[207] *Id*.

[208] *Id*.

[209] *Id*. at 41-44.

[210] *Id*. at 46-47.

[211] *Id*. at 44-48.

b. Trial Staff

93. Trial Staff opposes PG&E's exceptions and asserts that the Commission should uphold the Initial Decision's findings and conclusions on this issue. Trial Staff opines that San Francisco can satisfy its obligations under both the WDT and the FPA by owning or controlling service entrance conductors and/or bus ducts for underground service.

94. Trial Staff asserts that the plain and clear terms of the WDT specify the equipment that San Francisco must own or control at non-grandfathered delivery points to meet the intervening facilities requirement.[212] Trial Staff observes that section 14.2.1 of the WDT explains that there is a rebuttable presumption that disconnect switches, protective devices, poles, transformers, and conductors, wires, or service drops constitute intervening facilities depending on the voltage level (primary or secondary) and the location (overhead or underground) of the interconnection point.[213] An annotation to section 14.2.1 specifically lists a service *entrance* conductor, rather than a service *lateral* conductor, as an example of the type of wire[214] that can serve as an Intervening Facility for underground-to-underground secondary service.[215] Trial Staff notes that, as San Francisco's witness Mr. Maslowski observed at hearing, PG&E's position "is in conflict with the table in the WDT that was discussed, negotiated and is filed in the WDT."[216] In this case, Trial Staff finds that the annotation to section 14.2.1 is useful and provide greater clarity to this provision. For these reasons, Trial Staff recommends that the Commission not disregard or alter the annotation to section 14.2.1 of the WDT.[217]

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[212] Trial Staff Brief Opposing Exceptions at 11.

[213] *Id*.at 11-12 (citing PG&E Brief on Exceptions at 28).

[214] *Id*. at 12. PG&E's WDT requires a "Conductor, *Wire*, or Service Drop" for overhead and underground interconnections at primary or secondary service levels. *See* WDT, § 14.2.1.

[215] Trial Staff Brief Opposing Exceptions at 12 (citing PG&E Brief on Exceptions at 29).

[216] *Id*. (citing Tr. 296:24-25, 297:1 (Maslowski)).

[217] *Id*. at 14.

95. Trial Staff states the Commission has held that "[s]ection 212(h) does not require any minimum amount of facilities."[218] For example, Trial Staff explains, in *Palm Springs*, the Commission considered whether metering equipment constitutes a transmission or distribution facility adequate to meet the non-grandfathered component of section 212(h)(2)(B) of the FPA. Importantly, the Commission recognized that "Congress did not define what constitutes 'distribution facilities' or what it meant by facilities that an entity would 'utilize . . . to deliver all such electric energy to such electric consumer' for purposes of section 212(h)(2)(B)."[219] Lacking clear statutory guidance, Trial Staff asserts that the Commission found that "the character of particular facilities and their use is a question of fact that may vary from case to case."[220] Therefore, Trial Staff concludes that the Commission's precedent grants the Presiding Judge in this proceeding considerable latitude in determining whether service entrance conductors and bus ducts qualify as intervening facilities.[221]

96. Trial Staff next argues that, contrary to PG&E's assertions, service entrance conductors and bus ducts qualify as intervening facilities under the WDT if San Francisco acquires ownership or control of those facilities.[222] Trial Staff notes that the record clearly establishes that San Francisco must demonstrate ownership or control of a particular intervening facility to satisfy section 212(h)(2)(B) of the FPA and the WDT. Trial Staff points to Ms. Hsiung's testimony, in which she found that "[i]n order for any facility to qualify as intervening facilities under the WDT, the WDT customer (in this case, San Francisco) must obtain ownership or control of such facilities."[223]

97. Trial Staff contends that a common-sense analysis based upon an understanding of basic engineering supports the Initial Decision's conclusion that service entrance conductors and bus ducts can serve as intervening facilities.[224] Trial Staff argues that a

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[218] *Id*. at 16-17 (citing *CEI II*, 82 FERC at 62,018).

[219] *Id*. at 17 (citing *Palm Springs*, 76 FERC at 61,701, *reh'g denied*, 84 FERC ¶ 61,225).

[220] *Id*.

[221] *Id*. at 17. Trial Staff notes that, in *Palm Springs*, the Commission qualified the scope of its decision, holding, "We do not here reach the extent of distribution facilities that would need to be owned or controlled by an entity in order to meet section 212(h)(2)(B)." *Palm Springs*, 76 FERC at 61,704 n.10.

[222] *Id*. at 21.

[223] *Id*. at 22 (citing Hsiung Test., Ex. S-9 at 10:1-3).

[224] *Id*. at 19.

service entrance conductor is an essential component in a power distribution system, and that the delivery of power to end-use customers depends on it.[225] Trial Staff points to Mr. Maslowski's testimony, who demonstrated that if a service entrance conductor was removed from a distribution system, power could not be delivered to that end-use customer.[226]

98. Finally, Trial Staff contends that PG&E's Brief on Exceptions mischaracterizes the purpose of Ms. Hsiung's testimony asserting that the purpose of the testimony was "to provide analyses and expert testimony on electrical engineering matters," not legal interpretations.[227]

5. Commission Determination

99. We affirm the Presiding Judge's determination that service entrance conductors or bus ducts qualify as intervening facilities, but we do so pursuant to our analysis of the WDT and the replacement agreements, as well as the factual record compiled at hearing, and not under FPA section 212(h), for the reasons discussed in the preceding section.

100. As mentioned above, the parties have no dispute regarding PG&E's intervening facilities requirements for primary service and overhead secondary service; rather, they have differing interpretations of the provisions of the WDT regarding the requirements associated with underground secondary service. We agree with the Presiding Judge, Trial Staff, and San Francisco that service entrance conductors and bus ducts may perform the same technical function of delivering power to end-use customers. Furthermore, Trial Staff's and San Francisco's engineering witnesses testified that service entrance conductors, bus ducts, and service lateral conductors could accomplish the same technical goals when used to facilitate underground secondary service.[228] We find that PG&E has not provided sufficient physical, technical, or engineering evidence to support a different conclusion. Accordingly, we affirm the Presiding Judge's finding.

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[225] *Id*.

[226] *Id*. (citing Tr. 344:8-13) (Maslowski).

[227] *Id*. at 22-23.

[228] *See* Initial Decision, 157 FERC ¶ 63,021 at PP 233-234 (explaining that testimony from Trial Staff's and San Francisco's witnesses that service entrance conductors and bus ducts qualify as intervening facilities for underground secondary service was persuasive).

101. Section 14.2 of PG&E's WDT provides that "customers shall be required to demonstrate bona fide ownership or control" of certain intervening facilities. We agree with the Presiding Judge, Trial Staff, and San Francisco that this provision allows customers receiving WDT service to own and/or control the intervening facilities.[229] Although we appreciate PG&E's observation that an end-use customer, rather than San Francisco, may commonly own the facilities, our interpretation of section 14.2 of the WDT is that, as long as San Francisco can demonstrate *control* over a facility, San Francisco would be in compliance with the WDT. PG&E has not convinced us that San Francisco would be unable to make such a demonstration if an end-user actually owned the facility in question.

102. Finally, we find PG&E's request that the Commission modify, or direct PG&E to modify, section 14.2 of the WDT to be beyond the scope of this proceeding. Should PG&E wish to modify this language, it should make a filing pursuant to FPA section 205 with the appropriate justification and support.

C. Revisions to the Replacement Agreements

1. The Issues

103. As previously explained, PG&E filed eight unexecuted agreements to replace the expiring 1987 Interconnection Agreement. The replacement agreements consist of: (1) the WDT Service Agreement, which provides for service under the WDT; (2) the WDT Interconnection Agreement, which governs the interconnection of PG&E's and San Francisco's distribution systems; (3) a Transmission Interconnection Agreement, which governs the interconnection of PG&E's and San Francisco's transmission systems; and (4) five Transmission Facilities Agreements, which detail and set terms for the facilities at the existing points of interconnection covered by the Transmission Interconnection Agreement.

104. San Francisco contends that the replacement agreements are not just and reasonable. In its Initial Brief, San Francisco provided a section-by-section listing of asserted flaws in PG&E's proposed WDT Service Agreement (Appendix A), WDT Interconnection Agreement (Appendix B), Transmission Interconnection Agreement (Appendix C), and five Transmission Facilities Agreements (Appendix D), and offered proposed changes in the form of redline edits to each agreement. In addition to the asserted flaws noted below with regard to the WDT Service Agreement, San Francisco generally insisted that the replacement agreements contained language that was unfair, confusing, ambiguous,

[229] Initial Decision, 157 FERC ¶ 63,021 at PP 235, 236, 241.

missing information, contrary to Commission precedent, not necessary, or otherwise unjust, unreasonable, and unduly discriminatory and preferential.[230]

105. In response, PG&E contended that the replacement agreements are just, reasonable, and not unduly discriminatory as filed. PG&E's witness Hailemichael (Mr. Hailemichael) argued that the redline changes proposed by San Francisco in each agreement reflected San Francisco's preference in word choice or allocation of responsibilities between the parties, and San Francisco's purported "flaws" did not render the agreement unjust, unreasonable, or unduly discriminatory.[231] PG&E asserted that, where it agrees changes may be warranted, it has offered to make those changes. Specifically, PG&E stated that it had agreed with San Francisco to certain minor changes to clarify language in the WDT Interconnection Agreement, including: (1) section 8.8 (to acknowledge San Francisco's Sunshine Ordinance); (2) section 13 (to revise the metering provisions to reference PG&E's WDT Tariff and the Settlement in Docket No. ER13-1188-000; and (3) section 34 (to clarify San Francisco's continuing rights upon termination of the WDT Interconnection Agreement).[232] In addition, PG&E stated that it agreed to make certain revisions to its Transmission Facilities Agreements.[233] In addition, PG&E stated that it had agreed with San Francisco to revise the title page of the San Andreas Transmission Facilities Agreement to adjust the maximum demand value of the Harry Tracy Water Treatment Plant to 7.2 MW. PG&E also stated that it had agreed to revise section 4.20 of the Hetch Hetchy Transmission Facilities Agreement to clarify that the San Francisco transmission system interconnects with Modesto Irrigation District and Turlock Irrigation District.

106. Finally, during hearing and settlement judge procedures, PG&E and San Francisco represented that they reached stipulations on language changing certain provisions of the WDT Service Agreement to: (1) add the default term provision in section 7.0; (2) incorporate language regarding construction responsibilities of the distribution customer in section 10.2; and (3) establish a new section to 11.1.2 to address cost responsibility for altered or rearranged direct assignment facilities and equitable adjustments for connection of additional customers.[234]

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[230] San Francisco Initial Brief at 60; *id*. at App. A, B, C, D.

[231] PG&E Initial Brief at 46-47 (citing Hailemichael Answering Test., Ex. PGE-5 at 22:18-24:3).

[232] *Id.* at 47 (citing Hailemichael Answering Test., Ex. PGE-5 at 46-47).

[233] *Id*.

[234] PG&E Initial Brief at 41.

107. With respect to the WDT Service Agreement, the parties also disputed issues relating to departing load charges, reserved capacity, unmetered load, cost of ownership charges, and the power factor requirements, each of which is discussed below.

i. Departing Load Charges

108. The parties disputed the incorporation of departing load charges (also referred to as "non-bypassable charges") set forth in PG&E's proposed WDT Service Agreement. The parties agreed that the proper application of the charges is a matter of California state law. In light of this consideration, San Francisco argued that such charges should not be included in the WDT Service Agreement or assessed by PG&E. San Francisco added that PG&E's WDT contains a standard reservation of rights, which the Commission has approved.[235] PG&E disagreed, explaining that its inclusion of departing load charges reflects its opinion about what it will be able to recover pursuant to appropriate California-approved charges consistent with state law and approved tariffs.[236] PG&E asserted that it had included this provision in the agreement as a reservation of rights, so that San Francisco would not be surprised by a later assertion by PG&E that such charges are owed.[237]

109. Trial Staff did not file testimony on this issue.

ii. Reserved Capacity

110. The parties dispute the reserved capacity values for San Francisco's delivery points, which are set forth in Appendix B of the WDT Service Agreement. According to PG&E, the WDT requires applicants to identify the reserved capacity amount at each point of delivery to: (1) ensure that distribution service can be provided safely and reliably; and (2) allow PG&E to determine, in advance, as part of the application process, whether PG&E will be required to upgrade or make changes to its distribution system (at the customer's expense) in order to provide the requested distribution service.[238]

111. San Francisco argued that PG&E incorrectly based its reserved capacity figures for these service connections on one prior year's peak load. San Francisco asserts that

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[235] San Francisco Initial Brief at 61.

[236] PG&E Initial Brief at 44 (citing Docket No. ER15-704-000, Ex. PGE-1 at 20:30 - 21:3).

[237] *Id.*

[238] *Id*. at 42.

this approach is unreasonable because it does not represent the expected peak load and is inconsistent with PG&E's own distribution planning process; it does not provide for reasonable load growth; and it is based on a single year's data that could be anomalous.[239]

112. PG&E clarified that prior to filing its replacement agreements it requested that San Francisco provide it with peak load estimates for each delivery point served under the 1987 Interconnection Agreement. PG&E stated that it intended to use these estimates to compute the reserve capacity values. When San Francisco declined to provide the requested data, PG&E stated that it used historical peak information provided by San Francisco as a proxy for determining the reserve charges. PG&E asserted that in doing so, it relied on section 2.34 of the WDT. However, PG&E states that the reserved capacity figures are not permanent; PG&E witness Mr. Hailemichael stated that "PG&E is willing to consider new values, with the understanding that any higher Reserved Capacity values may require PG&E to evaluate the adequacy of PG&E's existing distribution system to provide any increased Reserved Capacity requested by San Francisco pursuant to section 9.2 of the WDT Interconnection Agreement."[240] In rebuttal testimony, San Francisco's witness, Mr. Maslowski, recommended that the reserved capacity for points of delivery with demand meters be set at the historical peak load in the past five years.[241]

113. Trial Staff did not file testimony on this issue.

iii. Unmetered Load[242]

114. At hearing, the parties disputed the treatment of, and formula for calculating small unmetered loads that San Francisco has historically served using PG&E's distribution facilities.[243] Specifically, PG&E, San Francisco, and Trial Staff together addressed four issues with regard to the unmetered load provision: (1) whether the categories of unmetered load are too narrow and rigid, and whether a new category for "Other

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[239] Initial Decision, 157 FERC ¶ 63,021 at P 258.

[240] Hailemichael Answering Test., Ex. PGE-5 at 17.

[241] Initial Decision, 157 FERC ¶ 63,021 at P 289 (citing Maslowski Rebuttal Test., Ex. SF-152, at 23:13-19) (Maslowski Rebuttal Test.).

[242] As discussed below, the Partial Settlement in Docket No. ER17-910-001 addressed disputed issues on this topic.

[243] Initial Decision, 157 FERC ¶ 63,021 at P 259. The provision addressing unmetered load is set forth in Appendix E of PG&E's proposed WDT Service Agreement.

Unmetered Loads" should be added;[244] (2) whether the formulae for calculating unmetered load are inaccurate and inconsistent with PG&E's treatment of similar loads in its California Public Utilities Commission (CPUC) tariff;[245] (3) whether PG&E's proposed WDT Service Agreement failed to provide wholesale distribution service to unmetered load outside San Francisco's jurisdictional boundaries, consistent with PG&E's prior treatment of unmetered load;[246] and (4) whether PG&E should clarify that San Francisco is not responsible for costs associated with performing an inventory of street lights owned by PG&E.[247]

iv. Cost of Ownership Charges

115. San Francisco contests PG&E's proposal to assess cost of ownership charges[248] to San Francisco for primary voltage facilities at locations converting from secondary voltage service. San Francisco contends that it is inappropriate to apply cost of ownership charges in such cases because it will continue to pay the monthly primary rate, which includes a component for the recovery of PG&E's ongoing costs of owning such facilities.[249] San Francisco proposes revisions to section 11.2 of the WDT Service Agreement to provide that San Francisco will only be responsible for cost of ownership charges in the case of modifications that require new facilities or upgrades and only with respect to the upgrades or new facilities.[250]

116. PG&E asserted that under the 1987 Interconnection Agreement, San Francisco's secondary service was installed in accordance with the provisions of CPUC Electric Rule Nos. 2, 15, and 16, which means that San Francisco made a contribution toward the costs of the installation of the service facilities, subject to revenue justified allowances.[251]

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[244] *Id.* PP 259, 269, 282.

[245] *Id.* PP 259, 271.

[246] *Id.* PP 259, 270, 280-281.

[247] *Id.* PP 259, 271.

[248] Section 11.2 of the proposed WDT Service Agreement addresses cost of ownership charges.

[249] San Francisco Initial Brief, App. A at 6.

[250] *Id*. at 5.

[251] PG&E Initial Brief at 48.

PG&E argued that San Francisco must pay new cost of ownership charges for primary facilities in cases where service connections interconnected under the 1987 Interconnection Agreement transition from secondary to primary service. PG&E contended that only the secondary service charge incorporated and recovered costs associated with PG&E's ongoing costs of ownership and maintenance. PG&E explained that "the monthly primary rate does not include a component for the recovery of PG&E's ongoing costs of owning the *secondary service facilities* that would be dedicated to [San Francisco] (known as Direct Assignment Facilities) if the pre-existing secondary sites were to convert to WDT primary."[252] PG&E argued that, instead, these costs must be recovered through the monthly cost of ownership charges and thus primary service under the WDT also requires PG&E's customers to pay cost of ownership charges. According to PG&E, this is why it is necessary and appropriate to assess cost of ownership charges on any San Francisco conversions of existing secondary service locations to primary service under the WDT.[253]

117. Trial Staff did not file testimony on this issue.

v. Power Factor

118. PG&E's proposed power factor requirements require customers to maintain power within a bandwidth of 0.95 lagging to 0.95 leading.[254] PG&E stated that this requirement is subject to two potential variances: (1) in areas where PG&E's distribution system varies from the power factor requirements, San Francisco delivery points will only have to match PG&E's local power factor in that area;[255] and (2) upon request, PG&E would

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[252] *Id*.

[253] *Id.* at 48-49 (citing Wharton Testimony, Ex. PGE-27 at 5:31-6:7).

[254] Section 13.3 of PG&E's proposed WDT Service Agreement sets forth power factor specifications. According to PG&E, the cost of ownership reflects PG&E's ongoing costs of owning and operating Direct Assignment Facilities, including such items as maintenance costs, replacement costs, and *ad valorem* taxes. The cost of ownership charge is the product of the actual installation costs, which include facilities installed by PG&E as well as facilities installed by San Francisco or others, if any, that are deeded to PG&E, and the monthly cost of ownership rate. *See* Wharton Testimony, Ex. PGE-27 at 5:7-14.

[255] PG&E Initial Brief at 43.

be willing to consider circumstances in which it may be impractical for San Francisco to meet the requirement.[256]

119. San Francisco stated that it is amenable to a requirement for a power factor in the same range as the distribution feeder so long as it does not exceed 0.95 lagging to 0.95 leading, but contended that it should not be responsible for the costs of any study required to determine this power factor.[257]

120. PG&E stated that its power factor requirements apply to all of PG&E's WDT customers, and have remained unchanged since the WDT became effective in 1998. PG&E asserted that the power factor requirements are reasonable because the risks of varying too far from a unity power factor are: (1) increased costs, higher line losses, and potential problems with rotating machinery, if the power factor is leading; and (2) increased costs and higher line losses, if the power factor is lagging.[258] To that end, PG&E noted that its WDT Service Agreement acknowledges the possibility that there may be circumstances where it would be unreasonable or particularly challenging to meet the requirement and establishes an opportunity to seek variance if appropriate.[259]

121. Trial Staff stated that PG&E's proposed power factor requirement in the replacement agreements is just and reasonable and not unduly discriminatory. Trial Staff witness Ms. Hsiung explained that the power factor was equivalent to what PG&E requires of its other customers, and provides an opportunity for San Francisco to seek variances in the power factor range where appropriate.[260]

2. Initial Decision

122. The Initial Decision found that PG&E sufficiently demonstrated that its proposed replacement agreements are just, reasonable, and not unduly discriminatory, but recommended that the Commission order a compliance filing adopting the changes to PG&E's replacement agreements discussed in the Initial Decision. As part of the compliance filing, the Presiding Judge also recommended that the Commission direct

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[256] *Id*. at 43-44 (citing Malahowski Test., Ex. PGE-20 at 25:19-25).

[257] San Francisco Initial Brief, App. A at 7 (citing Maslowski Rebuttal Test., Ex. SF-152 (Rev.), at 25:1- 26:17).

[258] PG&E Initial Brief at 43 (citing Malahowski Test., Ex. PGE-20 at 23:30- 33).

[259] *Id*. at 43-44.

[260] Trial Staff Initial Brief at 32 (citing Hsiung Test., Ex. S-9 at 15:11-20).

PG&E to correct the data pertaining to individual delivery points contained in the WDT Service Agreement appendices after PG&E and San Francisco have engaged in a reasonable error correction and data reconciliation process.[261]

123. In his review of San Francisco's proposed revisions to the replacement agreements, the Presiding Judge noted that many of San Francisco's proposed revisions were not supported by expert witness testimony. Therefore, the Presiding Judge rejected any revisions to the replacement agreements proposed by San Francisco that were not supported by such testimony.[262]

124. The Presiding Judge relied on expert witness testimony to agree with PG&E's provisions addressing the operating range of PG&E's power factor and costs related to direct assignment facilities.[263] In addition, the Presiding Judge identified several questions that arose from San Francisco's allegations that PG&E's replacement agreements are unjust and unreasonable regarding departing load charges, reserved capacity, and unmetered load.[264] Regarding departing load charges, the Presiding Judge found that, regardless of the existence of a "reservation of rights" provision in PG&E's WDT, the potential repetitiveness of the departing load charge did not make the WDT Service Agreement unjust or unreasonable.[265]

125. With respect to reserved capacity, the Presiding Judge noted that PG&E testified that it would consider a higher reserved capacity value with the understanding that San Francisco pay for any studies that might be required to determine the adequacy of PG&E's system to accommodate the higher values.[266] San Francisco responded that reserved capacity points for points of delivery with meters be set at the historical peak for the past five years instead of these points of delivery becoming subject of a study. The

[261] Initial Decision, 157 FERC ¶ 63,021 at P 296.

[262] *Id*. P 286.

[263] *Id*. PP 291-292.

[264] *Id*. PP 286, 288.

[265] *Id*. P 288.

[266] *Id*. P 289 (citing Hailemichael Answering Testimony, Ex. PGE-5 at 17).

Presiding Judge recommended that the Commission direct a compliance filing adopting San Francisco's compromise.[267]

126. As to unmetered load, the Presiding Judge found that Appendix E of the WDT should be revised to include a classification for "Other Unmetered Load" that would capture new types of unmetered load that were not in existence when the WDT was developed. In addition, the Presiding Judge noted PG&E's willingness to accept Trial Staff's recommendation regarding PG&E service for unmetered loads outside of the geographic boundaries of San Francisco, "provided that: the unmetered loads are small Municipal Loads serving Municipal Public Purpose customers; are subject to reasonable estimation; and meet PG&E's CPUC-approved forms and agreements for unmetered service." Therefore, the Presiding Judge recommended accepting PG&E's approach, as just and reasonable and recommended the adoption of this approach on compliance.[268] With respect to the formulas in the WDT Service Agreement for calculating unmetered load, the Presiding Judge found that the formulas filed by PG&E should be updated in accordance with San Francisco's proposed changes.[269]

127. With respect to the Transmission Facilities Agreements, the Presiding Judge noted that PG&E has agreed to revise maximum demand value for the Harry Tracy Water Treatment Plant should be changed to 7.2 MW in the San Andreas Transmission Facilities Agreement. The Presiding Judge recommended that these changes be made in a compliance filing.[270]

128. Finally, with respect to any specific disputes or concerns that were raised by any party in the proceeding but that were not addressed specifically in the Initial Decision, the Presiding Judge noted that he had evaluated all such arguments and had concluded that they either lacked merit or significance by not altering the substance or effect of the Initial Decision.[271]

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[267] *Id*.

[268] *Id.* P 290.

[269] *Id.* P 294.

[270] *Id*. P 295.

[271] *Id*. P 297.

3. Briefs on Exceptions

129. PG&E takes exception to the Initial Decision's finding that the formulas for unmetered load contained in PG&E's proposed WDT Service Agreement should be updated in accordance with San Francisco's proposed changes. PG&E argues that it has had no opportunity to contribute to the process of developing a fair and accurate method to charge San Francisco for the service it provides to San Francisco's unmetered load. To that end, PG&E requests that the Commission order the parties to convene and jointly determine a new approach to the formulas.[272]

130. PG&E does not object to making a compliance filing adopting the Presiding Judge's recommendations regarding the reserved capacity values for San Francisco points of delivery with demand meters, the geographic boundary for unmetered load, an additional classification for "Other Unmetered Load," costs resulting from modifications to direct assignment facilities, and the maximum demand value for the Harry Tracy Water Treatment Plant.[273]

131. San Francisco takes exception to the Initial Decision's finding that PG&E's proposed replacement agreements are just and reasonable. As addressed in detail below, San Francisco requests that the Commission direct PG&E to make a compliance filing to remedy the errors in its proposed replacement agreements related to: (1) the differences between two types of transmission interconnections; (2) underfrequency load shedding; (3) cost causation principles; (4) accurate descriptions of facilities; (5) adverse impacts on each parties' system; and (6) requirements for interconnecting generation.[274]

132. San Francisco argues that PG&E's Transmission Interconnection Agreement is unjust and unreasonable because it fails to reflect the differences between two types of transmission interconnections, transmission operator-to-transmission operator and transmission operator-to-load interconnections.[275] According to San Francisco, the Transmission Interconnection Agreement "makes no distinction between these two types of interconnections," resulting in a conflict or a failure to acknowledge the need for both

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[272] PG&E Brief on Exceptions at 35-36.

[273] *Id.* at 37.

[274] San Francisco Brief on Exceptions at 35-36. While these issues were addressed in San Francisco's Initial Brief, the Presiding Judge did not opine on them in the Initial Decision. In this regard, San Francisco states that the Initial Decision's failure to address issues raised by the City is unwarranted. *Id.* at 37.

[275] *Id.* at 43.

PG&E and San Francisco to operate their respective systems in a manner consistent with North American Electric Reliability Corporation (NERC), Western Electricity Coordinating Council (WECC), and Peak Reliability requirements.[276]

133. In addition, San Francisco contends that PG&E failed to distinguish between underfrequency load shedding requirements[277] in the case of the two different types of interconnections. According to San Francisco, CAISO assigns underfrequency load shedding obligations to each of the transmission operator's in the region. Here, CAISO has assigned underfrequency load shedding obligations to PG&E for some, but not all, of the San Francisco load served under the Transmission Interconnection Agreement, including: (1) San Francisco's load connected to PG&E's distribution system; and (2) San Francisco's load beyond the four transmission operator-to-load interconnections. San Francisco asserts that PG&E proposes to retain underfrequency load shedding responsibility for San Francisco's load connected to PG&E's distribution system, but to assign to San Francisco underfrequency load shedding responsibility for load beyond the four transmission operator-to-load interconnections.[278]

134. San Francisco opposes this proposal, arguing that separating underfrequency load shedding responsibilities for San Francisco's load beyond the transmission operator-to-load interconnections from PG&E's larger underfrequency load shedding program makes application of underfrequency load shedding to those San Francisco loads unworkable.[279] San Francisco explains that underfrequency load shedding programs do not treat all types of load identically. San Francisco notes, for example, the CPUC has developed a prioritization system for the curtailment or interruption of electric end-use load in the event of a shortage of electric supply.[280] San Francisco states that, among other things, this prioritization categorizes both water systems and air transportation systems in the highest priority of service – Priority 1 – which should be protected from curtailment if

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[276] *Id*. at 44.

[277] Underfrequency load shedding requirements provide for load to be dropped gradually in response to unstable system conditions to prevent blackouts and protect overall system reliability. *Id*. at 45 (citing Jenkins Testimony, Ex. SF-76, at 17:8-18:3) (Jenkins Test.)).

[278] *Id.* at 46.

[279] *Id*. at 46-47 (citing Jenkins Test. at 17:5-18:16; Tr. 380:25-384:19, 385:20-386:5).

[280] *Id*. at 46 (citing Ex. SF-90, CPUC Decision No. 91548).

possible.[281] San Francisco explains that its loads beyond the transmission operator-to-load connections are the San Francisco International Airport and major public water supply and water treatment facilities that, consistent with CPUC and public policy, are inappropriate for interruption.[282] San Francisco argues that separating loads will require San Francisco to devise an underfrequency load shedding program with a very small pool of loads comprised primarily of loads that should not be curtailed. Further, San Francisco contends that a small pool of loads does not provide adequate diversity or size to create and effective underfrequency load shedding program.[283]

135. Next, San Francisco argues that three of the provisions in PG&E's proposed Transmission Interconnection Agreement are inconsistent with cost causation principles. First, San Francisco contends that section 9.4 (Obligation to Pay for Service Voltage Upgrades) requires San Francisco to bear the costs of necessary corresponding changes on its own system when PG&E decides to implement a service voltage upgrade on its system, even when the changes are primarily for PG&E's benefit. Second, San Francisco attests that section 10.5 (Obligation to Pay for Operation and Maintenance of Facilities) requires San Francisco to pay for coordination that constitutes a modification, but does not make PG&E responsible for modifications that San Francisco might be required to make at the request of PG&E. Finally, San Francisco argues that section C.3 (Manual Load Shedding) of Appendix C allows PG&E to require San Francisco to participate without compensation in future PG&E Remedial Action Schemes and Special Protection Schemes.[284]

136. San Francisco contends that PG&E's Transmission Interconnection Agreement incorrectly defines the transfer capability of San Francisco's transmission interconnections. San Francisco argues that PG&E should be required to identify the transfer capability of each interconnection between San Francisco's and PG&E's transmission systems, arguing that PG&E typically defines this figure for other utility-to-utility interconnections.[285]

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[281] *Id*. at 46-47 (citing Ex. SF-90 at App. A; Ex. SF-91, CPUC Decision No. 92315 at 4 (clarifying that utilities honor water and sewage utilities' requests for exemptions from the programs)).

[282] *Id*. at 47 (citing Jenkins Test. at 18:4-19:11).

[283] *Id*. (citing Jenkins Test. at 18:4-16.)

[284] *Id*. at 49.

[285] *Id*.

137. San Francisco alleges that PG&E's WDT Interconnection Agreement is unjust and unreasonable because it fails to include requirements for interconnecting generation. San Francisco argues that the inclusion of such requirements is necessary to ensure that interconnection of distributed generation is not unduly delayed because of a lack of clarity in the WDT Interconnection Agreement, and to avoid any subsequent disputes about the requirements of such interconnections.[286]

138. Additionally, San Francisco argues that the definition of adverse impact is limited to impacts on only PG&E's system, and only San Francisco is responsible for avoiding adverse impacts. San Francisco contends that the provision should impose a reciprocal obligation on a party to avoid adverse impacts to the other party's system or facilities.[287]

139. Trial Staff did not address these issues in a brief on exceptions.

4. Briefs Opposing Exceptions

140. PG&E contests San Francisco's allegation that the Transmission Interconnection Agreement fails to acknowledge that it also has four transmission level connected loads where San Francisco and PG&E have a non-transmission operator interconnection. PG&E confirms that section C.2 of Appendix C of the Transmission Interconnection Agreement specifically addresses the obligations associated with that type of transmission interconnection.[288]

141. PG&E disagrees with San Francisco's position that it has failed to justify provisions addressing underfrequency load shedding. PG&E contends that the Transmission Interconnection Agreement stipulates that San Francisco has underfrequency load shedding obligations that CAISO separately allocates to San Francisco as the Transmission Operator of the Hetch Hetchy Project's 115 kV and 230 kV transmission facilities and for its transmission operator-to-transmission operator interconnections. PG&E argues that nothing in the Transmission Interconnection Agreement suggests that any entity other than NERC, WECC, and the CAISO establish the obligations that are associated with San Francisco. PG&E explains that, as San Francisco acknowledged in its brief on exceptions, the underfrequency load shedding obligations are assigned by the CAISO each year based upon the share of San Francisco's

[286] *Id*. at 52 (citing Maslowski Testimony, Ex. SF-42 (Rev.), at 66:21-67:18).

[287] *Id*. at 51.

[288] PG&E Brief Opposing Exceptions at 16-17.

Hetch Hetchy Project load relative to the total coincident electric load in the Balancing Authority Area.[289]

142. PG&E argues that San Francisco should not be relieved of its underfrequency load shedding obligations, despite the size or diversity of its load. Instead, PG&E states that San Francisco will have to coordinate with PG&E to establish an underfrequency load shedding program that is consistent with its obligations to CAISO, and with similarly situated counterparties with whom PG&E has an interconnection agreement.[290]

143. PG&E contests San Francisco's assertion that the Transmission Interconnection Agreement is inconsistent with the Commission's cost causation principles related to voltage upgrades, coordination work, Remedial Action Schemes, and Special Protection Systems. PG&E attests that these provisions are just and reasonable because they follow both Good Utility Practice and mirror the approach PG&E and its other customers use in Transmission Interconnection Agreements on file with the Commission.[291]

144. Finally, PG&E opposes San Francisco's argument that the Transmission Interconnection Agreement incorrectly defines the transfer capability of San Francisco's transmission interconnections. PG&E clarifies that it has no responsibility to identify or define a particular transfer capability at its various transmission interconnections with other utilities. Instead, PG&E states that it participates in regional studies to define the transfer capability between the CAISO control area and interconnected utilities operating in separate control areas on a seasonal basis, because certain utilities in separate control areas serve significant loads and have generation internal to their systems, making it important to ensure there is sufficient transfer capability between the respective control areas during peak loads.[292]

145. With respect to the WDT Interconnection Agreement, PG&E asserts that it has already established requirements for governing the generation interconnections of small, behind the meter, solar installations. Specifically, PG&E witness Mr. Hailemichael stated that PG&E would use the requirements contained in the San Francisco Hunters Point Service Agreement No. 36 — where San Francisco is authorized to attach photovoltaic generators to its distribution system with no requirement for a system impact

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[289] *Id.* at 16 (citing San Francisco Brief on Exceptions at 45).

[290] *Id*. at 17.

[291] *Id*.

[292] *Id*. at 19.

study or for additional terms and conditions to accommodate that generation so long as certain conditions apply.[293]

146. PG&E states that San Francisco's argument that the WDT Interconnection Agreement contains an unfairly unilateral "adverse impacts" provision is unclear. PG&E explains that the provision is not reciprocal because PG&E owns and operates the only distribution system in San Francisco, and thus only PG&E's distribution system can suffer adverse impacts.[294]

147. San Francisco reiterates that PG&E has failed to demonstrate that its revisions to the formulas for calculating unmetered load in Appendix E of the WDT Service Agreement are just and reasonable. San Francisco is unclear with respect to what specific issues PG&E has with San Francisco's proposed revisions, and what relevant information PG&E is requesting from San Francisco given that it has already provided extensive inventories and information to PG&E regarding its unmetered load.[295]

148. San Francisco states that it does not oppose a Commission-managed settlement process to attempt to resolve all of the issues raised regarding the replacement agreements, provided that the Commission retains jurisdiction over the disputes, so that it can rule on the merits later if the parties are unable to agree.[296]

149. Trial Staff did not address these issues in a brief opposing exceptions.

5. Commission Determination

150. We affirm, in part, and overturn, in part, the Presiding Judge's findings on a number of discrete issues to the extent not currently addressed by the Partial Settlement.[297] With respect to the replacement agreements as a whole, we affirm the Presiding Judge's rejection of San Francisco's proposed changes and/or markups to

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[293] *Id*. at 20-21.

[294] *Id*. at 20.

[295] San Francisco Brief Opposing Exceptions at 50-51.

[296] *Id.* at 49.

[297] As relevant here, and as noted above, the Partial Settlement included revisions to Appendix E of the WDT Service Agreement concerning unmetered load.

PG&E's proposed replacement agreements that are not supported by expert witness testimony, again, to the extent not currently addressed by the Partial Settlement.

a. WDT Service Agreement

151. With regard to departing load charges, the Initial Decision found that PG&E's inclusion of the reservation of rights is acceptable, and agreed that PG&E's inclusion of the clause informs San Francisco that departing load charges apply to future customers. At the request of the parties in the December 20, 2017 Joint Stipulation, we will refrain from adjudicating any issues related to departing load charges.[298]

152. Regarding reserved capacity, PG&E has committed to revising the reserved capacity figures for San Francisco points of delivery with demand meters and to setting each of them at its historical peak load for the five years preceding PG&E's filing.[299] We find that these revisions are just and reasonable, and we add that they are supported by both parties. Implementing this proposal will set the reserved capacity values without having to undertake a study. Therefore, we affirm the Presiding Judge's finding on this issue.

153. While the parties disputed four primary aspects of the provisions addressing unmetered load in Appendix E of the WDT Service Agreement, as explained above, we note that the Partial Settlement in Docket No. ER17-910-001 appears to have resolved the disputed issues on this topic. Specifically, the Partial Settlement included extensive revisions to Appendix E of the WDT Service Agreement to the provisions governing unmetered load, and these revisions appear to take into account the disputed issues. As also noted above, the Commission approved the Partial Settlement. Therefore, the disputed issues associated with unmetered load described above appear to be resolved through the Partial Settlement. However, the parties did not expressly indicate whether the Partial Settlement resolved all of the outstanding issues raised in this proceeding concerning unmetered load.[300] Accordingly, in the compliance filing ordered herein, we direct PG&E to inform the Commission whether there are any outstanding issues with respect to the issue of unmetered loads that have not been addressed by the Partial Settlement.

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[298] December 20 Joint Stipulation at 9.

[299] PG&E Brief on Exceptions at 37.

[300] For example, the Partial Settlement does not appear to expressly address the question of whether the categories of unmetered load are too narrow.

154. We direct PG&E to make the agreed upon revisions, where not subsequently addressed by the Partial Settlement, to its WDT Service Agreement within 60 days of the issuance of this order. Specifically, we direct PG&E to submit changes to: (1) revise Appendix E to add a sentence to state that "the types of loads or devices that PG&E historically agreed to serve under this category [were] agreed to by the parties"; and (2) correct the data pertaining to individual delivery points contained in the WDT Service Agreement appendices after PG&E and San Francisco have engaged in a reasonable error correction and data reconciliation process.[301]

155. With respect to the power factor, we affirm the Presiding Judge's finding that the proposed power factor requirement set forth in section 13.3 of the WDT Service Agreement is just and reasonable and not unduly discriminatory.[302] As such, no revisions to the WDT Service Agreement are necessary on this matter. We affirm the Presiding Judge's finding directing PG&E to add a new section 11.1.2 to the WDT Service Agreement to address the cost responsibility for altered or rearranged direct assignment facilities. Specifically, the Presiding Judge found, and the parties agree, that PG&E should shoulder the costs resulting from modifications to direct assignment facilities that are initiated by PG&E.[303]

156. Finally, we note that, as part of the Partial Settlement filing, the parties included several agreed-to revisions to the WDT Service Agreement that were contained in the parties' August 11, 2016 Joint Stipulation. These revisions were accepted by the Commission.[304]

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[301] *See* Initial Decision, 157 FERC ¶ 63,021 at P 296.

[302] *Id*. P 252.

[303] *Id*. P 293.

[304] *See* Partial Settlement Order, 167 FERC ¶ 61,236 at P 3. Specifically, the parties revised the WDT Service Agreement to establish a five-year term with automatic renewals for successive five-year renewals in the absence of advance written notice of an intent to terminate, as well as revisions to sections 10.2 (Construction Responsibilities of Distribution Customer) and 11.3 (Cost Responsibility for Altered or Rearranged Direct Assignment Facilities and Equitable Adjustments for Connection of Additional Customers).

b. Transmission Interconnection Agreement

157. With respect to the Transmission Interconnection Agreement,[305] San Francisco contends that the agreement fails to distinguish between underfrequency load shedding requirements in the case of the two different types of interconnections. We disagree. As PG&E has testified, under proposed section c.2 of Appendix C of the Transmission Interconnection Agreement, PG&E will allocate underfrequency load shedding obligations under CAISO rules to similarly situated counterparties with whom it has an interconnection agreement. PG&E commits to allocate proportional underfrequency load shedding obligations to San Francisco, based upon San Francisco's load associated with the five Transmission Points of Interconnection set forth in Appendix B of the Transmission Interconnection Agreement.

158. San Francisco argues that the Transmission Interconnection Agreement includes provisions that are inconsistent with cost causation principles. We disagree and find that these provisions are just and reasonable because they follow both Good Utility Practice and mirror the approach PG&E and its other customers use in transmission interconnection agreements on file with the Commission. For example, with respect to voltage upgrades undertaken by either party, PG&E's witness Mr. Hailemichael testified that voltage upgrades benefit both parties' transmission systems and that such upgrades are consistent with Good Utility Practice.[306] Furthermore, with respect to costs associated with coordination work, PG&E observes that the relevant provision, section 10.5, does not address modifications initiated by PG&E. Therefore, we find that no changes are necessary here. Finally, we are not persuaded by San Francisco's argument that it is not compensated for its participation in Remedial Action Schemes and Special Protection Systems. San Francisco has not demonstrated why it should be the only utility reimbursed for its participation, especially in light of the fact that no other PG&E customers participating in these programs are compensated.

159. San Francisco posits that the Transmission Interconnection Agreement incorrectly defines the transfer capability of San Francisco's transmission interconnections, and argues that PG&E should be required to list or identify the transfer capability of each interconnection between San Francisco's and PG&E's transmission systems. We disagree. We are persuaded by PG&E's argument that it has no responsibility to identify or define a particular transfer capability at its various transmission interconnections with

[305] The Presiding Judge did not opine on the issues addressed by the parties under the Transmission Interconnection Agreement.

[306] Hailemichael Answering Test., Ex. PGE-5 at 29.

other utilities.[307] We find that there is no need to conduct such studies for San Francisco because, as a utility with very little load relative to its installed generation, it does not need to manage its import capability, and because there is no risk that PG&E would modify its system such that San Francisco would be unable to export its generation to serve its load.

160. Finally, in response to the December 20, 2017 Joint Stipulation, we accept the parties' proposed revisions to the following sections of the Transmission Interconnection Agreement: (1) section 4.14 (Cost); (2) section 4.20 (Hetch Hetchy Project); (3) section 10.7.3 (Participation in Underfrequency Load Shedding); (4) section 10.9.2 (Area Voltage Schedules); (5) section 10.10.1 (Metering Responsibility); (6) section 10.10.2 (Meter Ownership); (7) section 10.11 (Obligation to Provide Telemetry Data); (8) section 15.2 (Audit Rights); (9) section 4.23 (Long-Term Change to Operations); and (10) section 10.5.2 (Modification-Related Work). We direct PG&E to make these revisions to the Transmission Interconnection Agreement within 60 days of the issuance of this order.

c. WDT Interconnection Agreement

161. With respect to the WDT Interconnection Agreement, San Francisco argues that the agreement: (1) fails to include requirements for interconnecting generation; and (2) contains an unfairly unilateral "adverse impacts" provision.[308] Regarding the former argument, we find that PG&E commits to using the requirements governing the generation interconnections of small, behind the meter, solar facilities as set forth in the San Francisco Hunters Point Service Agreement 36. Under this agreement, San Francisco is authorized to attach photovoltaic generators to its distribution system with no requirement for a system impact study or for additional terms and conditions to accommodate that generation so long as certain conditions apply. Consequently, no action is necessary. Regarding the latter argument, we are persuaded by PG&E's argument that the provision is not reciprocal because PG&E owns and operates the only distribution system in San Francisco, and thus only PG&E's distribution facilities can suffer adverse impacts.

162. In response to the December 20, 2017 Joint Stipulation, we accept the parties' proposed revisions to the following sections of the WDT Interconnection Agreement: (1) new section 6.4.3 (Automatic Load Shedding); (2) section 4.10 (Cost);

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[307] PG&E Brief Opposing Exceptions at 18.

[308] The Presiding Judge did not opine on the parties' dispute over the adverse impact provision.

(3) section 15.1 (Accounting Procedures); (4) section 4.36 (Uncontrollable Force); and (5) section 8.2.2 (Modification-Related Work). We direct PG&E to make these revisions to the WDT Interconnection Agreement within 60 days of the issuance of this order.[309]

163. Likewise, in its compliance filing, we direct PG&E to submit agreed-upon changes to revise: (1) section 13, regarding conforming the metering section;[310] and (2) sections 7.1 and 9, to incorporate the reserved capacity figures for San Francisco points of delivery with demand meters and set each of them at its historical peak load for the five years preceding PG&E's filing.[311]

d. Transmission Facilities Agreements

164. We affirm the Presiding Judge's finding directing PG&E to revise: (1) the title page of San Andreas Transmission Facilities Agreement, to change the maximum demand value; and (2) section 4.2 of the Hetch Hetchy Transmission Facilities Agreement, to add Modesto Irrigation District and Turlock Irrigation District as interconnection points.[312] We find that these proposed revisions to these facilities agreements make the agreements more accurate and complete, and have been mutually agreed to by the parties.[313] We direct PG&E to make these revisions to the Transmission Facilities Agreement within 60 days of the issuance of this order.

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[309] The Partial Settlement in Docket No. ER17-910-001 addressed the parties' dispute concerning audit rights in section 15.2 of the WDT Interconnection Agreement. In addition, in the Partial Settlement filing, the parties included revisions to the WDT Interconnection Agreement in sections 8.8 (Operating Records) and 34 (Continuing Rights of San Francisco Upon Termination), which were agreed to by the parties in the Joint Stipulation. The Commission accepted those revisions. *See* Partial Settlement Order, 167 FERC ¶ 61,236 at P 3.

[310] *See* Initial Decision, 157 FERC ¶ 63,021 at P 237.

[311] PG&E Brief on Exceptions at 37.

[312] Initial Decision, 157 FERC ¶ 63,021 at PP 275, 295.

[313] PG&E Initial Brief at 46-47 (citing Hailemichael Answering Testimony, Ex. PGE-5 at 32:4-15); San Francisco Initial Brief, App. C at 5 (citing Jenkins Test. at 19:16-20:9, 30:6-10)).

D. Testimony of Former Commissioner James Hoecker

1. The Issue

165. In pre-filed testimony and at the hearing, San Francisco introduced testimony of former FERC Commissioner James Hoecker.[314] Mr. Hoecker's testimony was offered to support San Francisco's interpretation of the grandfathering provision in section 212(h) and provided the regulatory and public policy context for the dispute between the parties. His testimony included a history of FPA section 212(h) and underlying policies, a discussion of Commission precedent on section 212(h), and his legal opinion as to how section 212(h) should be interpreted and applied in the context of the dispute between PG&E and San Francisco.

2. Initial Decision

166. The Initial Decision excluded Mr. Hoecker's testimony on several grounds.[315] First, the Presiding Judge reasoned that Mr. Hoecker's testimony violated Rule 403 of the Federal Rules of Evidence, which excludes relevant evidence when its "probative value is substantially outweighed by a danger of . . . needlessly presenting cumulative evidence."[316] Further, the Presiding Judge found that the testimony should be excluded pursuant to Rule 2103(a) of the Commission's Rules of Practice and Procedure, which precludes a member of the Commission from testifying as an expert witness in connection with any "proceeding or matter" in which he was involved as a Commissioner.[317]

3. Brief on Exceptions

167. San Francisco argues that the Initial Decision erred in giving no weight to the testimony of Mr. Hoecker. San Francisco argues that, although Mr. Hoecker was a

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[314] *See* Testimony and Exhibits of San Francisco, Ex. SF-1.

[315] Initial Decision, 157 FERC ¶ 63,021 at PP 27, 28.

[316] *Id*. P 27 (citing Fed. R. Evid. 403).

[317] *Id.* P 29 (citing 18 C.F.R. § 385.2103(a) (2019)). Rule 2103(a) provides: "No person having served as a member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission may practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration of while in the service of the Commission." *Id*.

Commissioner and a Chairman at the Commission, none of the proceedings or matters that he participated in as an employee of the Commission are before the Commission in this case, and thus that the Commission should hold that Mr. Hoecker's testimony is not barred by Rule 2103(a).[318]

168. In addition, San Francisco argues that the Initial Decision mischaracterizes Mr. Hoecker's testimony as cumulative and duplicative of Commission decisions. San Francisco asserts that Mr. Hoecker testified about San Francisco's particular need for wholesale distribution service in light of its unique rights under the Raker Act. San Francisco argues that none of these issues are discussed in any of the decisions referenced by the Initial Decision, and that Mr. Hoecker's testimony applies the policies of those decisions to the facts of this case. San Francisco argues that the focus of Mr. Hoecker's testimony is to: (1) describe the historic relationship between San Francisco and PG&E, the resulting business arrangements between them, and the configuration of their respective utility service territories; (2) provide his expert perspective on the objectives and interactions of the Raker Act, FPA section 212(h) of the FPA, and the Commission's open access and nondiscrimination policies; and (3) discuss how the objectives of these legal authorities can be furthered in light of the particular facts in this case. Thus, San Francisco asserts that Mr. Hoecker's testimony is not duplicative or cumulative of prior Commission orders, and should not be excluded.[319]

4. Brief Opposing Exception

169. PG&E notes that it did not move to exclude Mr. Hoecker's testimony at hearing because it was obvious Mr. Hoecker had no knowledge of, or particular expertise with respect to, PG&E's service to San Francisco over many decades.[320] PG&E also noted that Mr. Hoecker was not personally involved in negotiating or implementing any of the various interconnection agreements between the two parties, and had no first-hand knowledge of any of the issues on which he offered testimony.[321] In addition, PG&E states that Mr. Hoecker's testimony concerning the Raker Act and San Francisco's service to municipal loads was based solely on his reading of the Raker Act and

[318] San Francisco Brief on Exceptions at 19-22.

[319] *Id*. at 22-23.

[320] PG&E Brief Opposing Exceptions at 7.

[321] *Id*.

discussions with San Francisco.[322] Thus, PG&E concluded that Mr. Hoecker's testimony should not be given any weight.[323]

170. PG&E agrees with the Initial Decision's concern in applying Rule 2103(a) to Mr. Hoecker's testimony, although PG&E states that the Commission must decide whether Mr. Hoecker is definitively barred under that rule.[324] Finally, PG&E agrees with the Initial Decision that Mr. Hoecker's testimony should be given no weight because it was merely duplicative and cumulative of language in previous Commission decisions.[325]

5. Commission Determination

171. We affirm the Presiding Judge's decision to exclude the testimony from consideration. Initially, we note that, as a matter of longstanding policy, Commission orders speak for themselves.[326] The later testimony of any witness, whether former Commissioner or otherwise, purporting to state what Commission orders mean is not proper evidence.[327] In any event, as discussed above, the topics on which Mr. Hoecker testified are not probative with respect to the issues that have determined the outcome in this Opinion, i.e., whether the replacement agreements for WDT and WDT-equivalent service are just and reasonable.

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[322] *Id*.

[323] *Id*. at 8.

[324] *Id*.

[325] *Id*.

[326] *E.g*., *Gregory Swecker v. Midland Power Cooperative*, 115 FERC ¶ 61,242, at P 4 (2006); *Indianapolis Power & Light Co*., 48 FERC ¶ 61,040, at 61,203 & n.29, *order on reh'g*, 49 FERC ¶ 61,328 (1989); *Florida Gas Trans. Co.*, Opinion No. 431-B, 32 FPC 908, 909 (1964) *rev'd on other grounds*, 362 F.2d 331 (5th Cir. 1966), *modified*, 391 F.2d 114 (5th Cir. 1968).

[327] *Keystone Fuel Oil Co.*, 33 FERC ¶ 61,353, at 61,700 (1985), *vacated on other grounds*, 35 FERC ¶ 61,331 (1986) ("[I]t is well-settled that, in construing a regulation (or a statute, for that matter), the views of individuals who purportedly were privy to its genesis—as draftsmen or the operating officials who enacted the language in question, or in some other capacity—are irrelevant…").

The Commission orders:

(A) The Initial Decision's findings of fact are hereby partially affirmed and partially reversed, as discussed in the body of this order.

(B) PG&E is hereby ordered to submit a compliance filing within 60 days of the issuance of this order, as discussed in the body of this order.

(C) San Francisco's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.