

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,
Plaintiffs,
v.
UNITED STATES THE DEPARTMENT
OF LABOR, et al.,
Defendants.

No. 2:13-cv-02069-KJM-DB

ORDER

The State of California (“State”) has sought a federal grant for two state transit projects. The United States Department of Labor (“DOL”) has refused to certify the State to receive the grant funds. The State argues this refusal of certification was arbitrary and capricious under the Administrative Procedure Act (“APA”). Although the court previously resolved the parties’ cross motions for summary judgment, largely in the State’s favor, one question remains: Whether DOL can properly base its refusal to certify the State to receive grant funds based on an intervening state law’s changes to pension benefit provisions affecting certain employees that work for Monterey-Salinas Transit (“MST”). As explained below, the court grants judgment for the State on this remaining issue.

/////
/////

1 I. BACKGROUND

2 The parties dispute the adequacy of the statutory interpretation in which the DOL
3 engaged to deny the State’s request for funding under § 13(c)(1) of the Urban Mass
4 Transportation Act of 1964, 49 U.S.C. § 5301(a) (“UMTA”). The court has provided an
5 extensive background section in its summary judgment order, *see* Order Aug. 22, 2016, ECF
6 No. 121 (“SJ Order”), at 2-10, and so summarizes only relevant background information here.

7 A. UMTA

8 Congress enacted UMTA in 1964 to revamp deteriorating transit systems
9 throughout the nation. 49 U.S.C. § 5301(a). UMTA created a federal agency, now called the
10 Federal Transit Administration (“FTA”), to disburse funds for large-scale urban rail projects:
11 Transit systems apply for funds related to specific transit projects and the FTA grants funds,
12 subject to certain conditions. *Id.* § 5301(b)(1)-(8). UMTA sparked a national shift towards
13 public operation of mass transportation systems. *See Jackson Transit Auth. v. Amalgamated*
14 *Transit Union*, 457 U.S. 15, 17 (1982); *Kramer v. New Castle Area Transit Auth.*, 677 F.2d 308,
15 310 (3d Cir. 1982) (UMTA was force behind “[t]he whole move away from private transit
16 systems and into public systems” by providing “the financial support to allow the changeover to
17 public transportation companies”).

18 During the legislative process, transit labor unions raised concerns about UMTA’s
19 potential impact on transit employees’ rights. The unions feared local governments would use the
20 newfound federal funding to assume operation of transit entities, and states would either restrict
21 or outright prohibit public employers from bargaining collectively with their employees. Indeed,
22 the National Labor Relations Act, intended to safeguard collective bargaining rights, applied (and
23 continues to apply) only to private employees. Against this backdrop, labor unions warned
24 UMTA could eradicate employees’ hard-earned and bargained-for labor rights, conditions and
25 benefits.

26 To address this concern, Congress drafted § 13(c), which frames the dispute here.
27 *See* 49 U.S.C. § 5333(b); *see also Jackson Transit*, 457 U.S. at 17 (“To prevent federal funds
28 from being used to destroy the collective-bargaining rights of organized workers, Congress

1 included § 13(c) in the Act.”). Before a local government agency receives federal funds for a
2 particular transit system, § 13(c) requires that agency to make “arrangements” to protect the rights
3 and employment status of its employees. *Id.* The DOL is charged with certifying that the
4 arrangements between the government agency and the affected transit employees are “fair and
5 equitable” and that they meet the following five statutory conditions: (1) Preserve the rights,
6 benefits, and privileges transit employees have under existing collective bargaining agreements;
7 (2) continue these employees’ collective bargaining rights; (3) protect employees’ positions from
8 worsening after the federally funded project ends; (4) assure priority reemployment status should
9 the employees lose their jobs; and (5) offer paid training or retraining programs. *Id.* § 5333(b)(1)-
10 (2).

11 The DOL may refuse to certify a state agency if existing state laws threaten any of
12 the five requirements. A denial of certification blocks the applicant from receiving funds. As
13 relevant here, the DOL denied the State’s request for funding for MST based on the first
14 requirement, identified above, finding a particular state law changed, rather than preserved,
15 certain employees’ pension rights in violation of § 13(c)(1). *See* MST Decision, ECF No. 88-5, at
16 8.

17 B. MST’s Collective Bargaining Agreement

18 MST is the consolidated transportation services agency for Monterey County,
19 California. This order pertains only to MST’s “classic employees”: Employees hired after
20 January 1, 2013. Since 1983, MST and the Amalgamated Transit Union (“ATU”) have entered
21 into collective bargaining agreements that protect MST employees’ labor rights. *See*
22 Administrative Record (“AR”) 50, ECF No. 100. As relevant here, a particular ATU-MST
23 agreement was in force when, in December 2012, the State applied for UMTA funding. AR
24 50-51 (listing effective dates of ATU’s agreement with MST as October 1, 2010 through
25 September 30, 2013). The existing ATU-MST agreement memorialized certain pension rights for
26 MST’s classic employees. As relevant here, the agreement defines how MST will calculate a
27 pension using the employee’s final salary and the years the employee worked; it also demarcates
28 a 36-month period during which MST classic employees can purchase “airtime.” AR 793-94,

1 829-31. Airtime is a time credit that adds fictitious years to the true years an employee has
2 worked before retiring; airtime can be used to increase the calculation of an employee's pension.
3 AR 794; *see* 26 U.S.C. § 415(n)(3)(C) (explaining how these "permissive service credits" are
4 calculated); *see also* SJ Order at n.2.

5 C. California Law

6 The DOL refused to certify the State's receipt of funds to benefit MST in part
7 because a state law passed in 2012, the California Public Employees Pension Reform Act
8 ("PEPRA"), changed the airtime rights provision applicable to MST classic employees under the
9 bargaining agreement in place at the time. PEPRA was touted as a "sweeping reform" that
10 limited pension benefits for state employees, increased the retirement age for public employees,
11 required state employees to pay for half of their pension costs, and stopped abusive pension
12 practices. Press Release, Office of Gov. Edmund G. Brown, Jr. (Aug. 28, 2012).¹ This court has
13 discussed PEPRA in more detail in three prior orders and incorporates those discussions by
14 reference here. *See* SJ Order at 3; *California v. U.S. Dep't of Labor*, 76 F. Supp. 3d 1125, 1130
15 (E.D. Cal. 2014) ("Remand Order"), *order enforced sub nom, California v. U.S. Dep't of Labor*,
16 155 F. Supp. 3d 1089 (E.D. Cal. 2016) ("Enforcement Order").

17 The provisions of PEPRA that matter here shortened the time during which MST
18 classic employees could exercise their bargained-for right to purchase airtime, by nine months.
19 *See* Cal. Gov't Code § 7522.46 (public employees may no longer purchase airtime in calculating
20 their retirement benefits if calculation based on a percentage of his or her pre-retirement
21 compensation). PEPRA defines airtime by reference to the federal Internal Revenue Code. *See*
22 *id.* § 7522.46(a) (citing 26 U.S.C. § 415(n)(3)(C)). Under PEPRA, applications for airtime credit
23 were no longer accepted after January 1, 2013. The preexisting ATU-MST bargaining
24 agreement, however, gave MST classic employees the right to buy airtime through September
25 2013. The DOL cites this change as evidence the State did not "preserve" MST classic
26 employees' existing pension rights, as § 13(c)(1) requires.

27 ¹ At the time this order was filed, this press release was available at the following link:
28 <https://www.gov.ca.gov/news.php?id=17694>.

1 D. Procedural History

2 Soon after PEPRA's passage, the State applied for federal funding under UMTA to
3 benefit MST and one other state transit agency, Sacramento Regional Transit District ("SacRT").
4 SJ Order at 2. The DOL refused to certify the State's request for funding to benefit either agency,
5 citing as the basis both §§ 13(c)(1) (requiring "preservation" of employees' bargained for rights)
6 and 13(c)(2) (requiring "continuation" of these rights). *See* MST Decision at 8. The State
7 successfully challenged the DOL's decisions under the APA in this court in 2013, and the court
8 remanded the matter to the DOL for reconsideration. *See* Remand Order at 1089; Enforcement
9 Order at 30. In 2015, the DOL on remand again refused to certify either agency. Again the State
10 sought relief in this court.

11 In early 2016, the DOL and the State cross-moved for summary judgment on the
12 DOL's § 13(c)(1) and 13(c)(2) certification denials as to both transit agencies. ECF No. 99; ECF
13 No. 104. The court resolved the parties' dispute in favor of the State except with respect to the
14 issue now before the court: The DOL's § 13(c)(1) analysis as to MST classic employees. SJ
15 Order at 51. This issue has now been joined by the State's supplementation of its complaint to
16 clarify that it also challenges the DOL's § 13(c)(1) certification denial as to MST's classic
17 employees. *See* First Am. Supp. Compl. *Id.* ¶¶ 81, 109-111, ECF No. 122 (filed Aug. 29, 2016).
18 The parties have briefed the issue, disputing the standard § 13(c)(1) imposes and whether
19 PEPRA's airtime provision precludes satisfaction of that standard. *See* ECF Nos. 123, 124, 128,
20 129.

21 II. SUMMARY JUDGMENT: ADMINISTRATIVE REVIEW

22 When a plaintiff challenges a federal agency's actions under the APA, the district
23 court does not identify and resolve factual disputes; the court instead determines whether the
24 administrative record supported the agency's decision as a matter of law. *Occidental Eng'g Co.*
25 *v. Immigration and Naturalization Serv.*, 753 F.2d 766, 769 (9th Cir. 1985). The court examines
26 the information the agency had before it and determines whether the agency's decision was
27 "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *See*
28 *George v. Bay Area Rapid Transit*, 577 F.3d 1005, 1011 (9th Cir. 2009).

1 The court reviews both the path an agency took to arrive at a decision and the
2 decision itself. *Allentown Mack Sales & Serv., Inc. v. Nat'l Labor Relations Bd.*, 522 U.S. 359,
3 374 (1998) (the APA “establishes a scheme of reasoned decisionmaking”) (citation and quotation
4 marks omitted); *CHW W. Bay v. Thompson*, 246 F.3d 1218, 1223 (9th Cir. 2001) (“[review under
5 the APA] focuses on the reasonableness of an agency’s decision-making processes.”). Courts
6 may set aside agency decisions that, although legally sound, “are not supported by the reasons
7 that the agencies adduce.” *Allentown*, 522 U.S. at 374; *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v.*
8 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). Here, the State challenges the DOL’s
9 interpretation of § 13(c)(1) and the DOL’s process and reasoning as arbitrary and capricious.

10 III. DISCUSSION

11 The parties dispute what § 13(c)(1) requires. The DOL based its certification
12 denial, in part, on its interpretation of § 13(c)(1) as prohibiting “any change” to MST classic
13 employees’ existing pension benefits. *See* ECF No. 128 at 3 (arguing PEPPRA’s airtime provision
14 changed MST classic employees’ benefits, warranting §13(c)(1) certification denial). The State
15 maintains that § 13(c)(1) prohibits certification only if the State “substantially reduces” MST
16 employees’ pension rights. ECF No. 124 at 3. The DOL contends the State’s position contradicts
17 § 13(c)(1)’s plain language.

18 When a court reviews an agency’s legal interpretation, the first step involves
19 assessing the statute’s plain meaning, which binds both the court and the agency. *United States v.*
20 *Mead Corp.*, 533 U.S. 218, 227–28 & n.6 (2001); *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council,*
21 *Inc.*, 467 U.S. 837, 842-43 (1984). If a statute is ambiguous, the court must decide what level of
22 deference to afford the agency’s interpretation. *See Mead*, 533 U.S. at 227-28.

23 This court previously deemed ambiguous § 13(c)(1)’s terms “preserve” and
24 “existing.” *See* SJ Order at 48-49. The court also previously explained why it did not extend
25 *Chevron* deference to the DOL’s interpretation of these ambiguous terms. *Id.* at 18; Remand
26 Order, 76 F. Supp. 3d at 1137. The court finds no basis to reconsider either determination. *See*
27 *United States v. Lummi Nation*, 763 F.3d 1180, 1185 (9th Cir. 2014) (explaining when a court
28 makes a decision in a final order, the court must generally avoid revisiting that decision later on

1 in the same case); *cf. United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998) (district court
2 may depart from law of case if first decision was clearly erroneous; if law, evidence, or other
3 circumstances changed in meantime; or if applying law of case would work manifest injustice).
4 If deference is warranted, it is under the lesser *Skidmore* standard, under which the court can
5 review the DOL’s assessment “with anything from great respect to indifference” depending on
6 how well-reasoned it is. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The court next
7 construes § 13(c)(1)’s ambiguities as relevant here.

8 A. Section 13(c)(1) Test

9 Section 13(c)(1) requires the agency applying for a federal grant to establish
10 provisions necessary for the “preservation” of rights, privileges, and benefits under existing
11 collective bargaining agreements. 49 U.S.C. § 5333(b)(2)(A). What constitutes an “existing
12 agreement” and what it means to “preserve” that right are not obvious from the face of the statute.
13 *See* SJ Order at 48-49. This court previously has resolved the ambiguity concerning what
14 constitutes “existing agreements,” concluding the term refers to agreements existing when a
15 transit agency applies for federal funds. *Id.* at 49. The court must now determine what it means
16 to “preserve” rights under those existing agreements.

17 The statute’s words are always the starting point. *Caraco Pharm. Labs., Ltd. v.*
18 *Novo Nordisk A/S*, 566 U.S. 399, 412 (2012). Section 13(c) provides, in relevant part:

19 (1) As a condition of financial assistance . . . the interests of
20 employees affected by the assistance shall be protected under
21 arrangements the Secretary of Labor concludes are fair and
equitable. . . .

22 (2) Arrangements under this subsection shall include provisions that
may be necessary for—

23 (A) the preservation of rights, privileges, and benefits (including
24 continuation of pension rights and benefits) under existing
collective bargaining agreements or otherwise;

25 (B) the continuation of collective bargaining rights;

26 (C) the protection of individual employees against a worsening of
27 their positions related to employment;

28 (D) assurances of employment to employees of acquired public
transportation systems;

1 (E) assurances of priority of reemployment of employees whose
2 employment is ended or who are laid off; and

3 (F) paid training or retraining programs.

4 49 U.S.C. § 5333(b)(1)-(2).

5 Unless Congress says otherwise, statutory terms carry their ordinary meanings.
6 *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012). At the time the UMTA was enacted,
7 “preserve,” as used in subsection (2)(A) above, could have had multiple “ordinary” meanings.
8 “Preserve” could plausibly have meant “to keep from harm, damage, danger, evil; protect; save,”
9 *Webster’s New World Dictionary of the American Language* 1153 (college ed. 1962); but it also
10 could have meant “to “maintain” or “retain” as in to “preserve silence,” *Webster’s New Collegiate*
11 *Dictionary* 668 (2d. ed. 1955); or it could have meant to “keep in existence or intact; as in to
12 preserve records,” *Webster’s International Dictionary of the English Language* 1956 (2d ed.
13 1955). In other words, the term is ambiguous.

14 The State and the DOL interpret this ambiguous term differently. The DOL
15 subscribes to a rigid definition, explaining that “preservation of rights” means “an employer
16 cannot change rights.” MST Decision at 9; *see also* ECF No. 128 at 4-5 (standing by its position;
17 rejecting the State’s argument that certain changes are permissible). Interpreted as the DOL
18 would have it, the provision would effectively bar improving those rights as well. The State
19 argues instead that changing an employee’s existing bargained-for rights violates § 13(c)(1) only
20 if the change “substantially reduces” those rights. ECF No. 124 at 2.

21 Contextually, neither reading holds up. *See Robinson v. Shell Oil Co.*, 519 U.S.
22 337, 341 (1997) (explaining context matters, both “the specific context in which that language is
23 used and the broader context of the statute as a whole”). The State’s proposed “substantially
24 reduced” language is statutorily indefensible: The text does not support a construction using the
25 verb “reduced” or the strength of the adjective “substantially.” The State’s reading counters
26 § 13(c)(1)’s purpose to preserve and protect existing agreements.

27 The DOL’s interpretation on the other hand is too rigid. To construe § 13(c)(1)’s
28 obligation to “preserve” rights as completely prohibiting an employer’s “changing” rights at all

1 goes too far. As noted, Congress intended to financially support mass transportation, but worried
2 that public ownership of transit agencies would threaten rights private employees had previously
3 won. *Jackson*, 457 U.S. at 23-24. Congress included § 13(c) in UMTA to “prevent federal funds
4 from being used to destroy the collective-bargaining rights of organized workers[.]” *Id.* at 17.
5 Section 13(c) was meant as a “tool to protect [transit workers’] collective-bargaining rights . . . by
6 ensuring that state law preserved their rights before federal aid could be used to convert private
7 companies into public entities.” *Id.* at 27-28 (citing Sen. Morse’s remarks, 109 Cong.Rec. 5673
8 (1963)). This context suggests Congress expected collective-bargaining rights could be lost, and
9 possibly vanish immediately, during the private-to-public shift. This context reveals the purpose
10 of using the word “preserve” in § 13(c)(1) was to prevent eradication of transit employees’ rights
11 or worsening of transit employees’ positions; there is no indication the goal was to freeze the
12 employees’ rights indefinitely. The DOL’s rigid interpretation thus clashes with Congress’s
13 intent, a result the rules of statutory interpretation disfavor. *Util. Air Regulatory Grp. v. E.P.A.*,
14 134 S. Ct. 2427, 2442 (2014).

15 Contextually then, the “preservation” language appears to prohibit only those
16 changes that harm or diminish bargained-for rights. This reading, in turn, allows for changes that
17 are either neutral or positive. *See* SJ Order at 50 (explaining why “Section 13(c)(1) cannot be
18 interpreted to prohibit every “change” to a collective bargaining agreement, even changes without
19 any meaningful effect.”). One may argue if Congress meant to prohibit only negative changes, it
20 would have said so. Congress did use “worsening” in a later provision. 49 U.S.C.
21 § 5333(b)(2)(C) (requiring that individual employees be protected against “worsening of their
22 positions . . .”). Using “worsening” in one provision and “preserving” in another could suggest
23 the latter term prohibits any changes, not just changes that harm existing rights.

24 Scrutinizing each word in isolation, however, can lead a reader astray. *See, e.g.*,
25 *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69-70 (1994). What matters under
26 § 13(c)(1), as adopted by Congress, is the nature and degree of changes employers make to their
27 employees’ existing rights. Hence, a contextually sound statutory reading is that changing an
28 employee’s existing bargained-for rights violates § 13(c)(1) only if the change is negative,

1 meaning it eliminates, reduces, or limits those rights, as well as meaningful, as in a change that is
2 neither trivial nor purely semantic.

3 In sum, the court interprets § 13(c)(1) to provide that the DOL may deny
4 certification where a state entity seeks funding for a transit project, but has not protected the
5 affected transit entity's employees against meaningful negative changes to rights and benefits
6 conferred by their then-existing collective-bargaining agreements. *Id.* Applying this standard,
7 the court assesses whether PEPRA's airtime provision has a meaningfully negative effect on
8 MST's classic employees. If it does, then the DOL's refusal to certify the State under § 13(c)(1)
9 was proper.

10 B. PEPRA's Airtime Changes

11 The State, on MST's behalf, applied for grant funding in December 2012. ECF
12 No. 9-2 at 105-07, AR 157-59. So, the existing agreement at the time was the ATU-MST
13 collective bargaining agreement in effect from October 1, 2010 through September 30, 2013. *See*
14 AR 50-51. The parties agree the existing bargaining agreement allowed MST classic employees
15 to purchase airtime through September 2013. ECF No. 124 at 2 nn.5-6. The parties also agree
16 PEPRA's reduction of that period by nine months is the only change relevant to the court's
17 current narrow inquiry. H'rg Tr., ECF No. 134, at 16:19-25 (DOL's counsel's effective
18 concession that only provision directly relevant here is PEPRA's airtime provision); *see also* Cal.
19 Gov't Code § 7522.46 (airtime provision). While DOL still argues the impact of PEPRA's
20 airtime provision on MST classic employees should be examined in aggregation with other
21 changes PEPRA's enactment caused, *see* Tr. at 17:5-17, the court is not persuaded. Given that
22 only the airtime provision directly impacts MST classic employees' bargained-for rights, and the
23 absence of authority to support DOL's position regarding its aggregation argument, the court
24 examines the airtime provision by itself. More narrowly, then, did the nine-month reduction in
25 time meaningfully and negatively impact MST classic employees' existing bargained-for pension
26 rights or benefits? To answer this question, the court first determines how much deference to
27 give the DOL's exercise of discretion to subject PEPRA's airtime provision to § 13(c)(1)'s
28 preservation of benefits requirement.

1 1. Deference to the DOL

2 The DOL contends PEPRA's elimination of MST classic employees' airtime
3 purchasing power for a nine month period warranted a § 13(c)(1) certification denial. Because
4 the DOL's decision reflects a discretionary application of law, the court reviews the decision
5 under *Skidmore* "with anything from great respect to indifference" depending on how well-
6 reasoned it is. *Skidmore*, 323 U.S. at 140. As explained below, the DOL applied the incorrect
7 legal standard, based its denial on several irrelevant PEPRA provisions, and did not rationally
8 connect PEPRA's alleged impact to the DOL's conclusion. *See* AR 68-69.

9 First, the DOL's inaccurate interpretation of § 13(c)(1) colors its analysis. Instead
10 of examining the nature and meaningfulness of PEPRA's effect on MST employees' pension
11 rights, the DOL broadly relied on the basic fact that PEPRA "changed" government employee
12 pension rights as proof that the State has not "preserved" existing rights. AR 69. As discussed
13 above, however, a § 13(c)(1) analysis properly focuses on the nature and degree of change. The
14 DOL's decision recites various PEPRA provisions, including those reviewed below; the DOL
15 labels these as barriers to § 13(c)(1) compliance, but does not explain how the changes in state
16 law negatively and meaningfully impact MST classic employees' rights. *Id.* Mere recitation of
17 provisions is not reasoned decision making. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 52 (it is
18 not enough for an "agency to merely recite [] terms . . . as a justification for its actions; rather,
19 the "agency must explain the evidence which is available, and must offer a 'rational connection
20 between the facts found and the choice made'" (internal citation omitted). The DOL also still
21 has not addressed whether PEPRA bars MST from negotiating over the airtime changes to
22 preserve employees' rights during the term of the collective bargaining agreement by, for
23 example, making offsetting contributions to a defined benefits plan. *See* SJ Order at 40 (noting
24 DOL refuses to recognize MST's ability to collectively bargain around PEPRA's restrictions).

25 Second, the DOL partially bases its decision on PEPRA provisions that DOL now
26 effectively concedes do not apply to MST classic employees, as explained below. H'rg Tr. at
27 16:19-25 (DOL's counsel's argument only that PEPRA's airtime provision changed MST classic
28 employees' benefits); *see also* ECF No. 128 (briefing focused only on the airtime provision). For

1 example, the DOL cites PEPRA's change to the definition of pensionable compensation. AR 69.
2 But this change does not apply to MST. *See* Cal. Gov't Code § 31461 (enacting pension spiking
3 ban on 1937 Act systems, a type of system that does not apply to any CalPERS participants,
4 including MST employees); *see also* ECF No. 9-5 at 414 (administrative record defining Cal.
5 Gov't Code § 31461's applicability). The DOL also condemned PEPRA's cap on pensionable
6 compensation. AR 69 (citing Cal. Gov't Code § 7522.10(c)). But that too does not apply to
7 classic employees at all, let alone MST's classic employees. *See* Cal. Gov't Code § 7522.10
8 (impacts on retired annuitants; ban on double-dipping); *id.* §§ 7522.57(a)-(d) (ban on double-
9 dipping); *id.* § 7522.72 (pension forfeiture due to felony conviction).

10 Finally, the DOL offers new reasons for its decision on remand. For instance, the
11 DOL cites the flood of government employees' December 2012 applications to purchase airtime
12 credits as evidence of PEPRA's impact. ECF No. 128 at 5. But this finding does not appear
13 anywhere in the DOL's initial denial decision. *See* AR 68-69. The court cannot affirm the
14 DOL's decision based on *post hoc* rationalizations: The DOL must support its decision based on
15 reasons articulated at the time of the first denial order. SJ Order at 51 (noting this concern); *see*
16 *also Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) (noting the Court has
17 "viewed critically" an agency's "post hoc rationalization."), *abrogated on other grounds by*
18 *Califano v. Sanders*, 430 U.S. 99 (1977); *Food Mktg. Inst. v. Interstate Commerce Comm'n*,
19 587 F.2d 1285, 1290 (D.C. Cir. 1978) ("The agency's action on remand must be more than a
20 barren exercise of supplying reasons to support a pre-ordained result.").

21 In sum, the court does not defer to the DOL's decision because it is not well
22 reasoned.

23 2. Independent Review

24 Independently analyzing PEPRA's airtime change leads to the conclusion it does
25 not meaningfully and negatively impact MST classic employees' existing pension rights.
26 Airtime, and the ability to purchase it, is a significant pension benefit. The court thus rejects the
27 State's argument that § 13(c)(1) does not apply because PEPRA's airtime provision effected only
28 a *de minimis* change. ECF No. 124 at 2. Section 13(c)(1) protects a classic employee's "rights,

1 privileges, and benefits.” Even if airtime is considered a “benefit enhancement option,” it is still
2 a benefit: The option to enhance a benefit is a benefit in and of itself.

3 Completely eliminating one’s ability to purchase airtime would have a meaningful
4 and negative impact on one’s pension benefits. *See* SJ Order at 3 n.2 (describing how airtime in
5 general has a “significant” effect on retirement benefit calculations); Remand Order, 76 F. Supp.
6 3d at 1138. But the relevant provision here is not so drastic. PEPRA reduced the timeframe
7 during which MST classic employees could purchase airtime. It shortened the initial 36-month
8 period by nine months. The employees still had 27 months to purchase the airtime to which they
9 were entitled under the bargaining agreement. The change PEPRA effected did not reduce how
10 much airtime employees could buy; it prompted them to buy it sooner. Also, the employees knew
11 about the deadline well before it happened: PEPRA was enacted in September 2012 but went into
12 effect on January 1, 2013, with four months’ notice. SJ Order at 3; ECF No. 124 at 4; ECF
13 No. 128 at 5. And, as plaintiffs argue, MST and its employees could potentially offset any effect
14 on benefits through local negotiations. The air time change was not sufficiently meaningful to
15 trigger § 13(c)(1).

16 In sum, PEPRA did not meaningfully and negatively impact rights the MST
17 classic employees enjoyed under their existing collective bargaining agreements so as to warrant
18 a § 13(c)(1) denial. The DOL misconstrued its statutory mandate to determine that the State had
19 not “preserved” existing bargained-for rights. The court finds the DOL’s § 13(c)(1) denial was
20 improper under the APA.

21 C. Conclusion

22 The court GRANTS the State’s motion for partial summary judgment on the
23 DOL’s § 13(c)(1) denial as to MST classic employees. Given this order, the State has prevailed
24 on all issues.

25 IV. REMEDIES

26 The State requests “a final declaratory judgment and permanent injunction
27 preventing [the DOL] from using PEPRA to deny [§] 13(c) certification to any California transit
28 agency grantee.” ECF No. 129 at 6. The “Supreme Court has cautioned that ‘injunctive relief

1 should be no more burdensome to the defendant than necessary to provide complete relief to the
2 plaintiffs' before the court." *L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir.
3 2011) (quoting *Califano*, 442 U.S. at 702). "This rule applies with special force where there is no
4 class certification." *Id.*

5 Here, the State challenges the DOL's denials of certification as to only two transit
6 agencies: MST and SacRT. This is not a class action. The parties have made arguments
7 particularized to the two agencies about the relevant collective bargaining agreements, on which
8 the court has relied to reach its decision. The court finds no basis for awarding remedies
9 extending beyond the two state transit agencies here.

10 The court enjoins the DOL from relying on PEPRRA, as currently enacted, to deny
11 the State's application for funding under either § 13(c)(1) or § 13(c)(2) to the extent the State
12 intends those funds to benefit MST or SacRT.

13 IT IS SO ORDERED.

14 This resolves ECF No. 99.

15 DATED: January 24, 2018.

16 
17 _____
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28