

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

West-Wide Must-Offer Requirements

Docket No. EL16-27-000

**MOTION TO INTERVENE AND COMMENTS OF THE WESTERN POWER  
TRADING FORUM, ELECTRIC POWER SUPPLY ASSOCIATION AND  
INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE COMMISSION’S  
ORDER INSTITUTING A SECTION 206 PROCEEDING**

Pursuant to 16 U.S.C. § 824e (2012), and the Commission’s Rules of Practice and Procedure, including 18 C.F.R. §§ 385.202, 385.206, and 385.214, the Western Power Trading Forum (“WPTF”), the Electric Power Supply Association (“EPSA”) and the Independent Energy Producers Association (“IEP”) (collectively, “Joint Associations”) submit this motion to intervene and comments responding to the Federal Energy Regulatory Commission’s (“Commission”) Order Instituting a Section 206 Proceeding, 154 FERC ¶ 61,110 (2016) (“Order”).

**I. COMMUNICATIONS**

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## **II. MOTION TO INTERVENE IN DOCKET EL16-27-000**

WPTF is a California nonprofit, public benefit corporation. It is a broad-based membership organization dedicated to enhancing competition in Western electric markets while maintaining the current high level of system reliability. WPTF supports development of competitive markets throughout the West and the development of uniform rules to facilitate transactions among market participants.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

IEP is a nonprofit public benefit corporation formed under the laws of the State of California to encourage the development and use of independent electric resources. Its members own and operate roughly 20,000 megawatts of electric generation capacity in California. IEP has been representing the interests of the developers and operators of renewable and other independent electricity resources before the Commission, other agencies, the Legislature, and the courts since 1982.

Together, the membership of the Joint Associations includes energy service providers, scheduling coordinators, generators, power marketers, financial institutions, energy consultants, and public utilities. The Joint Associations' membership actively participates in electric power markets in the West and across the country. The Joint Associations' intervention in this proceeding is in the public interest and will not be adequately represented by any other party. Therefore, WPTF, EPSA and IEP respectfully request that the Commission grant this motion to intervene.

### III. BACKGROUND

On August 23, 2000, the Commission instituted proceedings under section 206 of the Federal Power Act to investigate, among other things, the justness and reasonableness of energy and ancillary services sales of public utility sellers into the spot markets in California.<sup>1</sup> On April 26, 2001, the Commission imposed a mitigation and monitoring plan which included a requirement that most utilities serving the California market offer all of their capacity in real time, during all hours, if available and not already scheduled.<sup>2</sup> Subsequently, on June 19, 2001, the Commission extended elements of the mitigation plan, including the capacity must-offer obligation, to public and non-public utilities throughout the territory of the Western Electricity Coordinating Council (“WECC”).<sup>3</sup> The Commission’s mitigation plan required that these Western utilities post available energy on their websites as well as on the Western System Power Pool (“WSPP”) website.<sup>4</sup>

The Commission initially set a September 20, 2002, expiration date for the must offer obligation. However, on July 17, 2002, the Commission extended the requirement until “long-term market-based solutions can be fully implemented.”<sup>5</sup> While the Commission did not specify an end date for the must-offer requirement, it did state that it would consider removing the must-offer requirement once adequate infrastructure and market design improvements were made in the West and Western market prices reflected competitive outcomes more consistently.<sup>6</sup> In 2011,

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<sup>1</sup> *San Diego Gas & Electric Co.*, 92 FERC ¶ 61,606 (2000).

<sup>2</sup> *Order* at P 3 and cases cited n.6.

<sup>3</sup> WECC is formerly the Western Systems Coordinating Council (“WSCC”).

<sup>4</sup> *San Diego Gas & Electric Co.*, 95 F.E.R.C. ¶ 61,418 at 62,569 (2001); *Order* at P 4.

<sup>5</sup> *CAISO*, 100 F.E.R.C. ¶ 61,060, at P 36 (2002); *Order* at P 5.

<sup>6</sup> *Id.* at P 35-36.

the Commission noted that the California Independent System Operator's ("CAISO") market design changes superseded the must-offer regime.<sup>7</sup>

In 2015, WSPP requested that the Commission clarify that the must-offer requirement is no longer in effect in the territory of WECC. WSPP asserted that the market dysfunction underlying the requirement no longer exists and that the Commission's specified criteria for eliminating the requirements have been fulfilled.<sup>8</sup>

On February 18, 2016, the Commission issued the Order instituting the instant proceeding under section 206 of the Federal Power Act. In the Order, the Commission indicated that the must-offer obligation remains in effect "despite the changes in the California wholesale power market conditions, and the elimination of the broader must-offer requirement in the CAISO tariff."<sup>9</sup> In the Order, the Commission proposed to rescind the must offer requirement and associated capacity posting requirement as unnecessary.<sup>10</sup> Below the Joint Associations outline our support for the Commission's proposal.

#### **IV. COMMENTS**

The Joint Associations support the Commission's proposal to rescind the West-wide must-offer obligation and related capacity-posting obligations imposed during the California energy crisis of 2000-2001. As the Commission indicated in the Order, both the passage of time and the improved state of the bulk power markets and electric energy infrastructure have rendered these rules unnecessary.<sup>11</sup> In the fifteen years since the Commission imposed the West-wide must-offer obligation, the California bulk power market has been reformed and redesigned,

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<sup>7</sup> See *CAISO*, 136 F.E.R.C. ¶ 61,198 at PP 20 and 26.

<sup>8</sup> See *Order* at P 7.

<sup>9</sup> *Order* at P 6.

<sup>10</sup> *Order* at P 1.

<sup>11</sup> *Order* at PP 1, 9.

vast energy infrastructure improvements have occurred, and new energy markets have been put in place that support competitive market outcomes in California and across the rest of the Western Interconnection.

The must-offer obligation, including the capacity-posting obligation,<sup>12</sup> was always intended to be temporary and expire when Western markets and infrastructure were improved and resulted in competitive outcomes on a more consistent basis.<sup>13</sup> The standard that the Commission sought in order to eliminate the must-offer obligation and capacity-posting requirement has long been satisfied. Over the course of the last 15 years, adequate infrastructure and market design improvements have been made for Western market prices to consistently reflect competitive outcomes. The Commission identifies many positive market and infrastructure changes in the Order, including: the CAISO's Market Redesign and Technology Upgrade, California's resource adequacy program, changes to the California's generation interconnection process, and additional power supply that has resulted in all WECC subregions meeting or exceeding calculated reserve margin targets. In addition, the existence of the Energy Imbalance Market ("EIM") may continue to facilitate competitive outcomes in Western markets.

As the Commission indicates, "adequate infrastructure and market design improvements have been made and Western market prices reflect competitive outcomes on a more consistent basis,"<sup>14</sup> thereby fulfilling the long-standing criteria for rescinding the West-wide must-offer requirement. Furthermore, the Commission's approval of the EIM also demonstrates that the Commission is already comfortable with a voluntary market construct in the Western Interconnection.

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<sup>12</sup> The Commission noted, "[t]o the extent the Commission eliminates the West-wide must-offer requirement, the requirement to post available capacity on the WSPP website or on the utilities' own websites will also be eliminated." *Order* at n.25.

<sup>13</sup> *Cal. Indep. Sys. Operator Corp.*, 100 F.E.R.C. ¶ 61,060, at P 35.

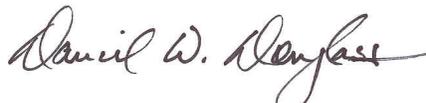
<sup>14</sup> *Order* P 9, quoting *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 at P 35 (2002).

In the absence of a dysfunctional market with unjust and unreasonable rates, it is unjust and unreasonable to retain the West-wide must-offer obligation. The obligation was imposed to help resolve actual market dysfunction during the 2000-2001 energy crisis and was never intended to exist in perpetuity to prevent speculative market problems that could occur sometime in the future. Absent a current, demonstrable, fact-based need to resolve actual, existing market dysfunction the mandatory capacity offer requirement is unjust, unreasonable, and should be eliminated.

**V. CONCLUSION**

The Joint Associations respectfully asks the Commission to consider these comments in support of rescinding the West-wide must-offer requirement and associated posting requirement.

Respectfully submitted,



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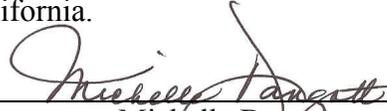
\* person designated to receive service

March 21, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the *Motion to Intervene and Comments of the Western Power Trading Forum, Electric Power Supply Association and Independent Energy Producers Association on the Commission's Order Instituting a Section 206 Proceeding* on all parties of record in proceeding *EL16-27-000* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on March 21, 2016, at Calabasas, California.

  
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Michelle Dangott

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