

154 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

West-Wide Must-Offer Requirements

Docket No. EL16-27-000

ORDER INSTITUTING A SECTION 206 PROCEEDING

(Issued February 18, 2016)

1. In this order, we institute an investigation under section 206 of the Federal Power Act (FPA)<sup>1</sup> to determine whether, due to changes in circumstances, the must-offer obligation imposed in the Western Electricity Coordinating Council (WECC)<sup>2</sup> during the California energy crisis of 2000-2001 is no longer necessary and therefore has become unjust and unreasonable. In adopting a WECC-wide must offer requirement, the Commission found that there was a critical interdependence among the prices in California Independent System Operator Corporation's (CAISO) spot markets with the bilateral prices in California and WECC and that the cornerstone of remedying the dysfunction in the energy markets in the West was to eliminate California's excessive reliance on the spot markets to meet its load.<sup>3</sup> The Commission concluded that there was a need for uniform pricing throughout the Western region and adopted a market monitoring and mitigation plan in the WECC similar to the plan adopted for California, but taking into account the various disparities between California and the WECC markets.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> Formerly the Western Systems Coordinating Council (WSCC).

<sup>3</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,418, at 62,547 (2001).

<sup>4</sup> *Id.* at 62,568.

2. Due to the passage of time and significant changes to California's wholesale markets, the must-offer obligation established for the WECC in 2001 appears to have outlived its usefulness. Moreover, the attendant requirement that each day all public utility sellers in the WECC must post on their website and the Western Systems Power Pool's (WSPP) website the amount of capacity that they have for sale may have become burdensome.<sup>5</sup> As discussed below, we hereby establish a refund effective date pursuant to the provisions of section 206 of the FPA.

### **Background**

3. On April 26, 2001, the Commission established a prospective mitigation and monitoring plan for the California wholesale electric markets. One of the fundamental elements of the plan was the implementation of a must-offer obligation to address the serious market dysfunction that was occurring at that time. The must-offer obligation required most resources serving California markets to offer all of their capacity in real time, during all hours, if they were available and were not already scheduled to run through bilateral agreements.<sup>6</sup>

4. Subsequently, the Commission extended the must-offer obligation, along with other market mitigation measures, to make it applicable West-wide to public and non-public utilities in the WECC.<sup>7</sup> The West-wide must-offer obligation included posting of available energy on both the utilities' and WSPP's websites. The must-offer obligation with the posting requirement was scheduled to expire on September 30, 2002.<sup>8</sup>

5. In a subsequent order, however, the Commission extended the West-wide must-offer obligation for the California markets and the WECC for an unidentified period of time until "long-term market-based solutions can be fully implemented."<sup>9</sup> The

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<sup>5</sup> *Id.* at 62,569.

<sup>6</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,115 (2001), *order on reh'g*, 95 FERC ¶ 61,418 (2001), *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002), *pet. granted in part and denied in part sub nom. Public Utils. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006).

<sup>7</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,418 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060, at P 36 (2002).

Commission noted that it would consider removing the must-offer requirement in the future after adequate infrastructure and market design improvements are made and Western market prices reflect competitive outcomes on a more consistent basis.<sup>10</sup>

6. Since that time, the provisions in the CAISO tariff pertaining to the must-offer obligation underwent significant changes,<sup>11</sup> and eventually the broad must-offer obligation was replaced by offer requirements under the resource adequacy framework, implemented as part of CAISO's Market Redesign and Technology Upgrade (MRTU).<sup>12</sup> However, the West-wide must-offer obligation applicable to the WECC market outside of CAISO, which entails the posting of available energy on both the utilities' and WSPP's web sites,<sup>13</sup> have remained unchanged, despite the changes in the California wholesale power market conditions, and the elimination of the broader must-offer requirements in the CAISO tariff.

7. On March 16, 2015, then Chairman Cheryl LaFleur received a letter from WSPP requesting that the Commission clarify that the must-offer requirement imposed on utilities as part of the Western energy crisis mitigation is no longer in effect. WSPP states that the requirement, in which Western public and non-public utilities were directed to offer available real-time electric energy capacity into the markets and post the availability on their websites and WSPP's website, is no longer necessary because the market dysfunction that necessitated the obligation in the first place, the Western power crisis, no longer exists.

8. On April 14, 2015, the Commission published the 2015 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules<sup>14</sup> requesting public comment,

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<sup>10</sup> *Id.* P 35.

<sup>11</sup> *See, e.g., Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at PP 3-4 (2009).

<sup>12</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC 61,274 (2006) (MRTU Order). *See, also, Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,053 (2008).

<sup>13</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 95 FERC ¶ 61,418 (2001).

<sup>14</sup> *See* Docket No. AD12-6-001. The Biennial Staff Memo was issued pursuant to a November 2011 Plan for Retrospective Analysis of Existing Rules which outlined steps for periodically identifying regulations that may be outmoded, ineffective, insufficient or excessively burdensome and may warrant streamlining, expansion, repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate.

among other things, on whether the Commission should consider modifying or removing the West-wide must-offer requirement. The Commission has received no comments on that issue.

### **Discussion**

9. Our preliminary review indicates that the West-wide must-offer requirement may no longer be just and reasonable and, therefore, we propose to terminate it. As the Commission previously stated, “[w]e will consider removing the must-offer requirement in the future after we determine that adequate infrastructure and market design improvements have been made and Western market prices reflect competitive outcomes on a more consistent basis.”<sup>15</sup>

10. CAISO’s markets have undergone significant changes since the West-wide must-offer requirement was put in place. As stated above, in 2006, the Commission approved CAISO’s MRTU proposal.<sup>16</sup> MRTU, which went live in April 2009,<sup>17</sup> includes, among other things, locational marginal price-based day-ahead and real-time energy and ancillary services markets, a day-ahead residual unit commitment process, and local market power mitigation features. In addition, California has eliminated its reliance on CAISO’s spot markets to meet the load of its public utilities through an aggressive renewable portfolio standard and a resource adequacy program overseen by the California Public Utility Commission (CPUC).<sup>18</sup> As a result of actions taken by California, CAISO has filed numerous tariff changes to implement the state’s resource adequacy program. Those tariff changes, among other things, required load serving entities within CAISO’s balancing authority area to meet resource adequacy requirements, including planning reserve margins established by the CPUC and other local regulatory authorities. In addition, the tariff provisions required load serving entities to meet local resource adequacy requirements. CAISO’s implementation of the CPUC’s resource adequacy program is intended to ensure that there will be sufficient capacity when and where needed to reliably operate the system.<sup>19</sup> These market design

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<sup>15</sup> *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 at P 35.

<sup>16</sup> MRTU Order, 116 FERC ¶ 61,274.

<sup>17</sup> *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,221 (2009).

<sup>18</sup> *See, e.g.*, CPUC’s Biennial RPS Program Update (January 2016), [http://www.cpuc.ca.gov/RPS\\_Reports\\_Docs/](http://www.cpuc.ca.gov/RPS_Reports_Docs/); and CPUC Energy Division, *The 2013-2014 Resource Adequacy Report* (August 2015), <http://www.cpuc.ca.gov/RA/>.

<sup>19</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006).

improvements have contributed to a well-functioning CAISO market which has produced overall competitive energy and ancillary service prices.<sup>20</sup>

11. Furthermore, since the West-wide must-offer obligation was put in place, the Commission has approved significant changes to CAISO's generation interconnection process.<sup>21</sup> The improvements to the generator interconnection process, combined with California's policies promoting renewable energy development, have resulted in robust generation reserve margins in CAISO.<sup>22</sup>

12. In addition, in recent years, a significant amount of new supply has come online in the WECC.<sup>23</sup> As of now, sufficient resources exist or have been proposed in WECC such that all WECC subregions meet calculated reserve margin targets in the 2014-2024 assessment period.<sup>24</sup>

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<sup>20</sup> See, e.g., CAISO Department of Market Monitoring, *2014 Annual Reports on Market Issues and Performance* (June 2015), [http://www.caiso.com/Documents/2014AnnualReport\\_MarketIssues\\_Performance.pdf](http://www.caiso.com/Documents/2014AnnualReport_MarketIssues_Performance.pdf). CAISO Department of Market Monitoring, *2013 Annual Report on Market Issues and Performance* (Apr. 2014), <http://www.caiso.com/Documents/2013AnnualReport-MarketIssue-Performance.pdf>.

<sup>21</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008).

<sup>22</sup> For example, for Summer 2015, CAISO projected a planning reserve margin of 39 percent. California ISO Infrastructure Development, *2015 Summer Load and Resources Assessment 4* (May 7, 2015), <http://www.caiso.com/Documents/2015SummerAssessment.pdf>.

<sup>23</sup> For example, from 2010 to 2014, nearly 10,000 MW of wind and nearly 8,000 MW of solar generation capacity were added in the WECC. See, WECC's *2015 State of the Interconnection*, <https://www.wecc.biz/ReliabilityAssessment/Pages/State-of-the-Interconnection.aspx>. In the non-California subregions of the WECC, installed generation capacity increased by more than 20,000 MW from 2011 to 2014. See, e.g., WECC's reports on *State of Interconnection*, <https://www.wecc.biz/ReliabilityAssessment/Pages/State-of-the-Interconnection.aspx>.

<sup>24</sup> See, e.g., WECC Staff's, *2014 Power Supply Assessment* (September 2015), [https://www.wecc.biz/Reliability/2014PSA\\_draft.pdf](https://www.wecc.biz/Reliability/2014PSA_draft.pdf), showing sufficient resources exist or have been proposed in WECC such that all WECC subregions meet calculated reserve margin targets in the 2014-2024 assessment period.

13. Therefore, given the significant improvements in CAISO's market design and infrastructure outlook in the West, we believe that it may be appropriate at this time to eliminate the West-wide must-offer requirement and the related requirement to post available capacity on the WSPP website or on the utilities' own websites.<sup>25</sup> Entities may submit comments regarding the termination of the West-wide must-offer requirement within 30 days from the date of issuance of this order.

14. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, the Commission is required to establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,<sup>26</sup> we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in this proceeding is published in the *Federal Register*.

15. In addition, section 206 requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision by June 18, 2016.

The Commission orders:

(A) Pursuant to the authority conferred upon the Commission by the Federal Power Act, particularly section 206 thereof, the Commission institutes an investigation into the West-wide must-offer requirement. Entities may submit comments regarding this issue within 30 days from the date of issuance of this order.

(B) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (A) above, under section 206 of the Federal Power Act, in Docket No. EL16-27-000.

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<sup>25</sup> To 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.

<sup>26</sup> See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(C) The refund effective date in Docket No. EL16-27-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (B) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.