157 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

West-Wide Must-Offer Requirements Docket No. EL16-27-000

ORDER TERMINATING WEST-WIDE MUST-OFFER REQUIREMENTS

(Issued October 21, 2016)

1. In this order, we terminate the West-wide must-offer requirement imposed on public and non-public utility sellers in the Western Electricity Coordinating Council (WECC) during the California energy crisis of 2001. In light of the passage of time and significant improvements to California's wholesale electricity markets over that time, the must-offer requirement established for the WECC in 2001 produces little or no benefits today. We also terminate the attendant requirement that all sellers in the WECC must post daily the amount of capacity that they have for sale.

I. Background

2. On April 26, 2001, the Commission established a prospective mitigation and monitoring plan for the California wholesale electricity markets. One of the fundamental elements of the plan was the implementation of a must-offer requirement to address the serious market dysfunction that was occurring at that time. The must-offer requirement mandated that most resources serving California markets must 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.[1]

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[1] *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,115, *order on reh'g*, 95 FERC ¶ 61,418, *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).

3. The Commission extended the must-offer requirement, along with other market mitigation measures, to make it applicable West-wide to public and non-public utilities in WECC.[2] The West-wide must-offer requirement included posting of available energy on both the utilities' and the Western Systems Power Pool Inc.'s (WSPP) websites. In adopting the West-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 and 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.[3]

4. The must-offer and the posting requirements were originally scheduled to expire on September 30, 2002.[4] In a subsequent order, however, the Commission extended the West-wide must-offer requirement for an unidentified period of time until "long-term market-based solutions can be fully implemented."[5] The Commission noted that it would consider removing the must-offer requirement in the future after adequate infrastructure and market design improvements were made and Western market prices reflected competitive outcomes on a more consistent basis.[6]

5. In a February 18, 2016 order, the Commission instituted an investigation under section 206 of the Federal Power Act (FPA)[7] to determine whether, due to changes in circumstances, the West-wide must-offer requirement is no longer necessary and thus has become unjust and unreasonable.[8] The Commission noted that the provisions in the CAISO tariff pertaining to the must-offer requirement has undergone significant changes and the broad must-offer requirement was replaced by offer requirements under the resource adequacy framework, implemented as part of CAISO's Market Redesign and

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[2] *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 95 FERC ¶ 61,418.

[3] *Id*. at 62,547.

[4] *Id*. at 62,549.

[5] *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060, at PP 35-36 (2002).

[6] *Id*.

[7] 16 U.S.C. § 824e (2012).

[8] *West-Wide Must-Offer Requirements*, 154 FERC ¶ 61,110 (2016) (February 18 Order).

Technology Upgrade (MRTU).[9] The Commission further noted, however, that the West-wide must-offer requirement applicable to market participants in the WECC outside of CAISO has remained unchanged despite the changes in the California wholesale power market conditions, and the elimination of the must-offer requirements in the CAISO tariff. The Commission also proposed to eliminate the requirement that sellers post available capacity on both the utilities' and WSPP's web sites. [10]

II. Notice and Responsive Pleadings

6. Notice of institution of this section 206 proceeding in Docket No. EL16-27-000 was published in the *Federal Register*, 81 Fed. Reg. 9193 (2016).

7. Timely, unopposed motions to intervene were filed by the following entities: the City of Santa Clara, California; Southern California Edison Company; Pacific Gas and Electric Company (PG&E); the Edison Electric Institute (EEI); Modesto Irrigation District; WSPP; Portland General Electric Company (Portland General); Avista Corporation (Avista); Arizona Public Service Company (APS); Talen Energy Marketing, LLC; Powerex Corp.; and the Western Power Trading Forum, the Electric Power Supply Association, and the Independent Energy Producers Association (jointly, Joint Associations). The California Public Utilities Commission and San Diego Gas & Electric Company filed unopposed motions to intervene out-of-time.

8. Comments were submitted by PG&E, Joint Associations, Portland General, EEI, WSPP, Avista, and APS.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the unopposed motions to intervene out-of-time filed by the California Public Utilities Commission and San Diego Gas & Electric Company given their interest in the

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[9] *Id*.

[10] *Id*. P 13. In the February 18 Order, the Commission also established a refund effective date pursuant to section 206(b) of the FPA as the date of publication of a notice of this proceeding in the *Federal Register*, which was February 24, 2016.

proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Comments

10. Most commenters agree that, due to significant improvements in CAISO's market design and the infrastructure outlook in the West, the West-wide must-offer requirement has outlived its usefulness. They also agree that the available capacity posting requirement has become burdensome.[11] Joint Associations and WSPP also state that adequate infrastructure and market design improvements have been made and Western market prices reflect competitive outcomes.[12] WSPP argues that the must-offer requirement was imposed to help resolve an actual market dysfunction and was not intended to be a prophylactic measure against speculative future market dysfunction. WSPP further avers that it has no resources or capacity and the available capacity posting requirement imposes unnecessary web-site administration and other costs on it.[13]

11. EEI asserts that the West-wide must-offer requirement was mooted by the changes in the California electricity market and the influx of new resources in the WECC. It argues, therefore, that not only should the available capacity posting requirement be terminated prospectively, but parties should be relieved of this burden retroactively.[14]

12. PG&E argues that the energy market in the West is undergoing substantial change, as evidenced by the expansion of CAISO's energy imbalance market and the prospect of PacifiCorp joining CAISO. PG&E asserts that studies show that California will continue its reliance on electricity imports from the rest of the West.[15] PG&E requests that, if the Commission terminates the West-wide must-offer requirement, the Commission make clear both that generators in the WECC cannot physically withhold capacity to raise prices artificially and that the Commission will not tolerate such behavior.[16] PG&E

[11] APS Comments at 2; Avista Comments at 3; Portland General Comments at 1-2; EEI Comments at 3.

[12] Joint Associations Comments at 5; WSPP Comments at 6-7.

[13] WSPP Comments at 8.

[14] EEI Comments at 4.

[15] PG&E Comments at 3.

[16] *Id*. at 4.

further argues that the termination of the West-wide must-offer requirement should not be viewed as "limiting the need for a must-offer obligation on resource adequacy capacity in the CAISO Energy Imbalance Market and full participating transmission owner markets."[17]

C. **Commission Determination**

13. We find that the West-wide must-offer requirement is no longer just and reasonable and, therefore, we terminate it effective February 24, 2016. We also terminate the related requirement to post available capacity on the WSPP website and on the utilities' own websites, effective February 24, 2016.

14. When the Commission extended the West-wide must-offer requirement, it stated, among other things, that "[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."[18] CAISO's markets have seen significant improvements since the California energy crisis of 2000-2001. These improvements include, 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, as the Commission stated in the February 18 Order, California has eliminated its reliance on CAISO's spot markets to meet the load of its public utilities, and has adopted a robust renewable portfolio standard and a resource adequacy program. These market design improvements have contributed to a well-functioning CAISO market.[19] Furthermore, as also noted in the February 18 Order, the electric supply outlook in CAISO and the rest of the West has significantly improved.[20] As discussed above, most commenters support eliminating these requirements.

15. For these reasons, we find that the West-wide must-offer requirement is no longer necessary. Thus, it is appropriate to eliminate the West-wide must-offer requirement and the related requirement to post available capacity on the WSPP website and on the utilities' own websites.

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

[18] *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 at P 35.

[19] February 18 Order, 154 FERC ¶ 61,110 at P 10.

[20] *Id*. PP 11-12.

16. We will not grant EEI's request to relieve parties of the available capacity posting requirement retroactively. The February 18 Order, pursuant to FPA section 206(b), established a refund effective date of February 24, 2016. Accordingly, the requirement to post available capacity will be terminated as of that date.

17. With regard to PG&E's concern that generators in the WECC should not be able to physically withhold capacity to raise prices artificially, we note that resources in the WECC that have a resource adequacy obligation to CAISO load-serving entities continue to have a must-offer requirement under CAISO's tariff. Furthermore, these and other resources that do not have a resource adequacy contract with CAISO load-serving entities (indeed, under FPA section 222,[21] any entity) are prohibited under the statute and the Commission's regulations from engaging in electric energy market manipulation [22] As for PG&E's argument that the termination of the West-wide must-offer requirement should not be viewed as limiting the need for a must-offer requirement on resource adequacy capacity in the CAISO energy imbalance market and full participating transmission owner markets, we note that this proceeding is limited to terminating the West-wide must-offer requirement established during the California energy crisis. We are not pre-judging any future must-offer proposals related to the energy imbalance market or to new transmission owners joining CAISO.

<u>The Commission orders:</u>

The West-wide must offer requirement and the related requirement to post daily on sellers' websites and the WSPP's website the amount of available capacity are hereby terminated, effective February 24, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[21] 16 U.S.C. § 824v (2012).

[22] 18 C.F.R. § 1c.2 (2016).