

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the  
Resource Adequacy Program, Consider  
Program Refinements and Establish Annual  
Local Procurement Obligations

R.11-10-023  
(Filed October 20, 2011)

**COMMENTS OF THE WESTERN POWER TRADING FORUM  
IN SUPPORT OF THE NRG ENERGY, INC. MOTION FOR AUGMENTATION**

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**WESTERN POWER TRADING FORUM**

January 30, 2012

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In accordance with the provisions of Rule 11.1 (e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Western Power Trading Forum (“WPTF”)<sup>1</sup> submits these comments in support of the January 13, 2012, Motion of NRG Energy, Inc. for Augmentation of the Scoping Memo and Ruling (“NRG Motion”).

**I. COMMENTS ON THE NRG MOTION**

The NRG Motion notes that the Phase I Scoping Memo and Ruling issued on December 27 made no mention of the waiver trigger issue. As observed by NRG, “the Scoping Memo’s silence leaves NRG and other parties uncertain about whether these recommendations were overlooked, assumed to be included in other issues, or intentionally rejected for unstated, and thus unknown, reasons.”<sup>2</sup> NRG therefore moved for augmentation of the Scoping Memo and

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<sup>1</sup> WPTF is a California non-profit, mutual benefit corporation dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

<sup>2</sup> NRG Motion, at p. 1.

Ruling, requesting that the augmentation should include “an express consideration of the waiver trigger level and either (1) a determination that the level of the waiver trigger is an issue to be taken up in Phase 1 (as NRG and others recommend) or (2) a complete explanation of why the issue will again be deferred for at least another year.”<sup>3</sup>

WPTF strongly supports the NRG Motion and urges the Commission to augment the Scoping Memo as requested therein. The consideration of an adjustment to or elimination of the waiver trigger price has been suggested by both NRG and the Independent Energy Producers Association (“IEP”), and supported by WPTF in its November 21, 2011 reply comments. WPTF believes that a waiver trigger price must be re-evaluated at this time.

Despite requests by NRG, IEP, and WPTF to include a review of the current waiver trigger mechanism in this proceeding, the Scoping Memo is silent on this issue. WPTF believes that this omission will create a significant barrier to RA transactions, especially when and if the recently-filed settlement on the CAISO’s Capacity Procurement Mechanism is approved by FERC. If that approval occurs, there will be a significant disparity between the CPM price – the price that the CAISO will pay to procure capacity to make up for specific RA compliance deficiencies – and the waiver trigger price by which LSEs are absolved from procuring RA capacity, which could in turn lead to a situation that increases the amount of backstop procurement required by the CAISO.

WPTF has raised the waiver trigger issue in the past in its own comments. Specifically, WPTF advocated in its comments in the previous RA docket, R.08-01-025,<sup>4</sup> that the Commission eliminate any specified dollar trigger value as a criteria for seeking RA compliance waivers in

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<sup>3</sup> Id, at p. 2.

<sup>4</sup> See, January 9, 2009, Phase 2 Proposals of the Western Power Trading Forum, at pp. 10-12 (“WPTF R.08-01-025 Comments”).

order to avoid the situation where the waiver trigger becomes a *de facto* floor for RA pricing (from the perspective of load serving entities) and a *de facto* cap for RA pricing (from the perspective of suppliers). Thus, WPTF recommended that the Commission should focus on the following sub-issues:

- Waivers should be considered on a case-by-case basis, without a presumption about what the acceptable price levels are. This will allow the examination of the waiver requests to more fully evaluate the overall reasonableness of an LSE's efforts to achieve compliance and the market response to its procurement efforts relative to the particular product that the LSE sought. Providing for a case-by-case waiver analysis allows for the consideration of market conditions and removes the need to reevaluate the waiver trigger continuously with market conditions. In other words, since prices for capacity will rise and fall with market conditions, a static waiver price trigger is inappropriate and likely to undermine investment signals in the very locations where investment is needed.
- To the extent the Commission wishes to retain a specific trigger as a factor considered in the waiver request, the Phase 2 proceeding must reconsider whether the current \$40 trigger is reflective of actual market conditions. WPTF believes that having a fixed number when the market is so dynamic is simply disruptive to the process of transacting for RA capacity. Furthermore, a fixed price for a waiver trigger is highly problematic in a locational capacity market, and there are marked differences in the pricing applicable to the various defined locations, particularly for the defined locations that are capacity deficient.

- To the extent the Commission believes that a static, specified waiver trigger value is needed in order to mitigate market power, parties should be permitted to make alternate proposals as to what that value should be for consideration in Phase 2 of the proceeding.

WPTF further indicated its belief that waivers generally are bad for the market and disruptive to investment.

Fundamentally, resource deficient local areas do not and will not have the required price signals for investment - whether generation, transmission or demand side resources, so long as the price does not reflect the need for new resources. This statement is supported by the continued deficiency in some local areas that has persisted for years. Under the current bilateral market, the Commission's concern about the potential exercise of market power in local areas is justified. Recognizing that some form of price review is required in the current market until such time as a capacity market allows for market oversight, the Commission should allow for a waiver on a case-by-case basis, after the LSE has proven due diligence in meeting the requirement. The Commission can then consider market conditions and whether a waiver is warranted. A waiver trigger price simply undermines the market and investment.”<sup>5</sup>

In summary, WPTF concurs with and supports the recommendations by NRG that the current waiver trigger process should be included in the Scoping Memo for this proceeding.

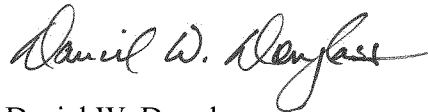
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<sup>5</sup> WPTF R.08-01-025 Comments, at p. 12.

## II. CONCLUSION

WPTF urges the Commission to grant the NRG Motion and augment the Scoping Memo as recommended therein.

Respectfully submitted,



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