

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

Brookfield Renewable Trading and Marketing LP)	Docket No.	ER21-2370
DTE Energy Trading, Inc.)		ER21-2373
EDF Trading North America, LLC)		ER21-2380
Shell Energy North America (US), L.P.)		ER21-2382
Guzman Energy, LLC)		ER21-2396
Morgan Stanley Capital Group Inc.)		ER21-2442
Black Hills Power, Inc.)		ER21-2443

**MOTION TO FILE COMMENTS OUT OF TIME
OF THE DEPARTMENT OF MARKET MONITORING
OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§385.212, the Department of Market Monitoring (“DMM”), acting in its capacity as the Independent Market Monitor for the California Independent System Operator Corporation (“CAISO”), submits these comments in the above-captioned proceedings.

In these proceedings, various entities have submitted cost justification filings for spot market sales in the Western Electric Coordinating Council (“WECC”) outside the California Independent System Operator (“CAISO”) markets that exceeded the “soft” cap of \$1,000/MWh (“WECC soft offer cap”) during June 2021. DMM filed motions to intervene in all of these proceedings (as well as cost filings by other sellers) on July 28, 2021. Immediately after intervening in these proceedings, DMM began the process of obtaining access to redacted materials for which sellers have requested privileged and confidential treatment. DMM has obtained and reviewed these confidential materials on an expedited

basis in order to provide comments in these proceedings which reflect important additional details of each seller's filing.

Due to the additional time needed to obtain and review these additional confidential materials, DMM was not able to submit comments within the normal period allowed for comments in these proceedings. Because the Commission has not yet acted on any of the sellers' filings, no party to these proceedings would be prejudiced and there would be no disruption as a result of DMM's late comments. Thus, good cause exists to grant this motion to submit comments out of time.

I. SUMMARY

The Commission's decisions in all of these cost justification proceedings concerning sales over the WECC soft offer cap will establish important future precedent and market expectations in bilateral markets throughout the WECC and the CAISO's organized day-ahead and real-time energy markets. DMM recognizes that regulatory certainty can be important to avoid discouraging market participants from transacting under very tight and volatile market conditions, which could increase illiquidity and volatility, and exacerbate any potential existing scarcity. When prices are high and supply is limited, more – not fewer – counterparties are needed.

At the same time, the Commission must protect confidence in bilateral markets and consumers against excessive market power and potential market manipulation during uncompetitive market conditions. The stated purposes of the West-wide soft offer cap were to avoid potential "disincentives to bid into the CAISO markets" and to discourage "megawatt

laundering or other gaming strategies.”¹ DMM believes that the reporting and informational requirements established by the Commission for bilateral sales in excess of the soft offer cap play a key role in protecting confidence and transparency in bilateral markets, and help to provide information on market performance that is needed to develop effective market rules on a going forward basis. For example, such information on past market performance and competitiveness can be very valuable in designing *ex ante* rules for market power mitigation, scarcity pricing and future cost justification.

In the 2021 Guidance Order, the Commission described a variety of specific frameworks and principles that may be used to justify WECC spot market sales in excess of the soft cap. While the 2021 Guidance Order provided valuable additional clarity on these cost justification requirements and principles, DMM believes these proceedings provide the opportunity for the Commission to provide further needed clarity and transparency on how these requirements and principles are applied in specific cases and market conditions. Such clarity and transparency will provide significant benefits for all market participants on a going forward basis by reducing regulatory uncertainty when prices are extremely high and volatile, and supply is very limited.

In these comments, DMM provides numerous observations, questions and comments on issues raised by the cost justification filings for sales above the \$1,000/MWh soft cap in June 2021. By addressing these issues in these proceedings, the Commission can provide further clarity and transparency on how the requirements and principles in the 2021 Guidance Order will be applied in specific cases and market conditions going forward.

¹ October 2002 Order, 101 FERC ¶ 61,061 at P 20

II. COMMENTS

It appears some entities making sales above the \$1,000/MWh soft cap – including some which set important price indexes used in cost justification -- have not submitted cost justification.

As noted in various filings, data indicate that there were more than one entity making sales above the soft cap on the Intercontinental Exchange (ICE) which is used in setting the price indices for the Palo Verde and Mead trading hubs. However, based on DMM's review, it appears that at least one entity making sales above the soft cap on ICE which were used to set these price indices may have not filed cost justification.

Further, based on DMM's review of all the cost justification filings in these proceedings (including details included in the unredacted confidential versions), it appears that some other entities may have made bilateral sales outside of ICE at prices over the soft cap for which cost justification has not been filed. In addition, DMM notes that based on review of Electric Quarterly Report (EQR) data for August 2020, it appears that many entities reporting sales above the \$1,000/MWh soft cap in August 2020 also never submitted cost justification for these sales.²

DMM suggests that access to the justification for all sales over the soft cap is needed in order to accurately assess the competitiveness and liquidity of Western energy markets under tight supply conditions. These additional cost justification filings could also be needed to identify any possible connection between sales and purchases by different entities (e.g., wash trades, cross market manipulation, or other potentially manipulative strategies).

² Since EQR data for June 2021 is not yet available, DMM cannot perform a similar comparison for sales over the soft cap in June 2021.

Many sellers have not reported the actual source of power ultimately used to meet sales above the \$1,000/MWh soft cap.

Based on DMM's review of the cost justification filings in these proceedings (including details included in the unredacted confidential versions), many sellers have not identified the actual source of power that was ultimately delivered to back these sales. Even in cases where sellers are seeking to justify costs based on index prices, DMM believes it is important to require reporting of the actual source of generation used to meet sales over \$1,000/MWh. Again, DMM suggests that the Commission should have this information in order to assess the competitiveness and liquidity of Western energy markets under tight supply conditions. These additional supply data may also be needed to identify any possible connection between sales and purchases by different entities (e.g., wash trades, cross market manipulation, or other potentially manipulative strategies).

The use of index prices may not mitigate market power when supplies are tight, but no scarcity exists.

All of the cost justification filings submitted by sellers are based primarily on index prices from ICE trading hubs, with no sellers justifying sales based on actual production costs. One entity reporting sales which were used in setting these ICE price indices relies on these same ICE indices as their primary framework for justifying their own sales on ICE that were used to set these indices.³

This lack of liquidity and the circular impact of these indices under tight supply conditions illustrates the need for the Commission to carefully monitor these indices, and to

³ TransAlta Energy Marketing (U.S.) Inc., Docket No. ER21-2461-000, *Notice and Justification for Spot Sales above Western Electricity Coordinating Council Soft Cap*, July 19, 2021, (redacted public version), p. 5.

further consider how these indices may be used to justify sales above the soft cap in different market conditions. If, when supplies are tight but no scarcity exists, these indices are elevated over \$1,000 by market power, then the soft cap will not mitigate market power on sales over \$1,000/MWh. This concern is further amplified by the fact that the CAISO now uses these same price indices to determine when import bids over \$1,000/MWh should be allowed to set prices for the entire CAISO system.

IV. CONCLUSION

DMM recognizes the complexity of these issues and the impact that the Commission's determination will have on energy markets throughout the west under tight market and system conditions. DMM also recognizes the importance of regulatory certainty in terms of not discouraging market participants from transacting in a volatile market, which could increase illiquidity and volatility, and exacerbate any potential existing scarcity. Therefore, DMM recommends that the Commission continue to develop and provide clear guidance and precedent on what constitutes valid cost justification through these proceedings.

DMM also believes that the reporting and informational requirements established by the Commission for bilateral sales in excess of the soft offer cap play a key role in protecting confidence and transparency in bilateral markets, and help to provide information on market performance that is needed to develop effective market rules on a going forward basis. Therefore, DMM recommends that the Commission ensure that all entities making sales over the soft cap provide valid cost justification, including the source of power ultimately used to back these sales.

DMM respectfully requests that the Commission afford due consideration to these comments as it evaluates the cost justification filings before it for non-CAISO WECC sales exceeding the \$1,000/MWh soft offer cap.

Respectfully submitted,

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Independent Market Monitor for the California
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Dated: August 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 9th day of August, 2020.

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