



*Electric Power Supply Association
1401 New York Avenue, NW
Suite 950
Washington, DC 20005*

*Western Power Trading Forum
1900 Point West Way
Suite 222
Sacramento, CA 95815-4706*

April 8, 2020

The Honorable Neil Chatterjee, Chairman
The Honorable Richard Glick, Commissioner
The Honorable Bernard McNamee, Commissioner
The Honorable James Danly, Commissioner
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: *Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources, Docket Nos. EL02-60-007, EL02-60-006*

Dear Chairman Chatterjee, and Commissioners Glick, McNamee, and Danly:

The Electric Power Supply Association (“EPSA”) and Western Power Trading Forum (“WPTF”) together file this letter with the Federal Energy Regulatory Commission (“FERC” or “the Commission”) to highlight the importance of agency action in this proceeding which has been pending since 2016.¹

This letter follows on and re-emphasizes communication from EPSA, WPTF, and numerous other affected Trade Associations sent to the Commission on July 20, 2016. In that letter (“Electric Trade Association Letter”), the coalition wrote to “express their concerns regarding an issue raised by the Initial Decision issued in the above-captioned docket on April 12, 2016 [which] fundamentally implicates the integrity of the *Mobile-Sierra* doctrine, an issue of critical

¹ EPSA and WPTF are submitting the instant letter to reaffirm the views contained in the 2016 Electric Trade Associations Letter and to support the letter from Shell Energy North America (U.S.), L.P. submitted in this docket on April 6, 2020, asking the Commission to act on this nearly two decades-long complaint proceeding.

importance to the Electric Trade Associations and the electric industry as a whole.”² Alas, the lack of action from FERC on the April 12, 2016 Initial Decision leaves this fundamental doctrine in a virtual state of limbo, sustaining regulatory uncertainty for electric utilities and businesses.

In the 2016 letter, the Electric Trade Associations explained:

The Electric Trade Associations have become concerned that the April 12 [2016] Initial Decision does not apply the *Mobile-Sierra* doctrine as articulated by the Supreme Court. The Commission’s orders in this proceeding are consistent with these Supreme Court decisions—these orders affirm the *Mobile-Sierra* doctrine as a general matter and reiterate the high and specific burden challengers must meet to support the abrogation of contracts protected by the *Mobile-Sierra* presumption. The Initial Decision, on the other hand, appears to find that the *Mobile-Sierra* presumption can be avoided based upon different and far less stringent grounds than those articulated by the Court or the Commission. In particular, it finds that any contract entered into during periods of market disruption are not protected by *Mobile-Sierra*. The Electric Trade Associations submit, and the Supreme Court has squarely held, that it is precisely during periods of market disruption and volatility that assurance about the certainty of contracts is most important. By contrast, the Initial Decision embraces what the Supreme Court, in considering other contracts entered during the same energy crisis as the contracts at issue in this proceeding, properly rejected as a “perverse rule” under which contracts are “less likely to be enforced when there is volatility in the market.” In addition, contrary to the Court’s and Commission’s directives, the Initial Decision finds that a contract can be overcome without any meaningful finding that it imposes an excessive burden on consumer rates.³

As FERC knows, the *Mobile-Sierra* doctrine is the bedrock for electric market participants’ confidence in long-term contracts. It has been almost four years since the Initial Decision was issued. Therefore, EPSA and WPTF respectfully request that the Commission promptly take action to clarify and reaffirm its interpretation supporting contract integrity under the *Mobile-Sierra* doctrine in resolving this proceeding.

Respectfully,

/s/ Nancy Bagot

Nancy E. Bagot
Senior Vice President
Electric Power Supply Association
1401 New York Ave, NW, Suite 950
Washington, DC 20005
nancyb@epsa.org

/s/ Scott Miller

Scott Miller
Executive Director
Western Power Trading Forum
1900 Point West Way, Suite 222
Sacramento, CA 95815-4707
smiller@wptf.org

² Letter of Electric Trade Associations to the Commission for assurance of the continued viability of *Mobile-Sierra* in resolving this case under EL02-60, et al (July 20, 2016).

³ Electric Trade Association Letter at p. 3.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington D.C. this 8th day of April, 2020.

/s/ Jeffrey Jordan

Jeffrey Jordan

Electric Power Supply Association