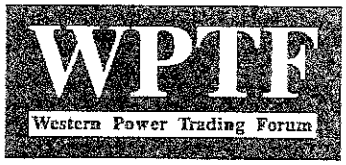

February 8, 2016

Ms. Kimberly D. Bose
Secretary of the Commission
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ***Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*****, Docket No. EL01-10-136**

Dear Secretary Bose:

By this letter, the Western Power Trading Forum (WPTF) and the Electric Power Supply Association (EPSA) (referred to jointly as Trade Associations) express their concerns regarding an issue raised by the Revised Partial Initial Decision issued in the above-captioned docket on January 8, 2016. The issue, the application of the *Mobile Sierra* doctrine[1] is of critical importance to Trade Associations and the potential for its upending was not anticipated as an element of the above-captioned proceeding.

WPTF is a California nonprofit, public benefit corporation. It is a broad-based membership organization dedicated to enhancing competition in Western electric markets while maintaining the current high level of system reliability. The membership of WPTF includes energy service providers, scheduling coordinators, generators, power marketers, financial institutions, energy consultants, and public utilities. WPTF's membership actively participates in electric power markets in the West and across the country. The comments contained in this letter represent the position of WPTF as an organization, but not necessarily the views of any particular member with respect to any issue.

EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA

[1] The *Mobile-Sierra* presumption requires that bilateral energy contracts be presumed just and reasonable under Section 206 of the Federal Power Act; it arose from two cases issued by the Supreme Court on the same day five decades ago. *See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

seeks to bring the benefits of competition to all power customers. The comments contained in this letter represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

On May 22, 2015, the Commission issued Opinion No. 537,[2] which affirmed in part and reversed in part the factual findings in the Initial Decision that had been issued following a trial-type hearing proceeding in Docket No. EL01-10-085. Opinion No. 537 remanded the proceeding to the Presiding Judge to issue a revised partial Initial Decision, consistent with the guidance provided in Opinion No. 537. The assigned ALJ issued a Revised Initial Decision on January 8, 2016, which found, among other things, that Complainants had demonstrated that the *Mobile-Sierra* presumption of justness and reasonableness should not apply to the contracts at issue in the proceeding.[3]

The Trade Associations have become concerned that the January 8 Revised Initial Decision does not apply the *Mobile-Sierra* presumption as set forth by the Supreme Court, including in the recent decisions *Morgan Stanley*[4] and *NRG Power Marketing*.[5] The Commission's orders in this proceeding are consistent with these recent Supreme Court decisions, and affirmed the *Mobile-Sierra* presumption as general matter and its application to the contracts at issue in this proceeding.[6] The Revised Initial Decision, on the other hand, appears to find that the *Mobile-Sierra* presumption can be avoided based upon different and less stringent grounds than those articulated by the Court or the Commission.

The Trade Associations express no opinion on the merits of any matter addressed in the Revised Initial Decision. However, Trade Associations are making this unusual filing due to the critical role the *Mobile-Sierra* presumption plays in power contracting and its concern that the Revised Initial Decision appears to be an abject rejection of its legitimate application. Contracts that are subject to the *Mobile-Sierra* presumption should be honored absent a showing in line with the standards for avoiding the presumption that the Court and the Commission have previously articulated. The Trade Associations urge the Commission to continue to adhere to the long-established *Mobile-Sierra* presumption and the requisite showing to avoid or overcome it, as the Commission did in Opinion No. 537.

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[2] *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 151 FERC ¶ 61,173 (2015) (Opinion No. 537), *reh'g denied*, 153 FERC ¶ 61,386 (2015) (Order on Rehearing of Opinion No. 537).

[3] *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 154 FERC ¶ 63,004 (2016) (Revised Initial Decision).

[4] *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008).

[5] *NRG Power Marketing., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

[6] Opinion No. 537 at PP 105, 119-120, 145, 148, 152, 165-166, 215-220; Order on Rehearing of Opinion No. 537 at PP 95-106, 118-125.

The Trade Associations recognize that this letter is an unusual filing in a proceeding as advanced as this one, but believe that the Commission's treatment of this issue, which has only arisen in the context of the Revised Initial Decision, could have a substantial negative effect on the Trade Associations and their members.

Respectfully,

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CC: Chairman of the Commission, Norman C. Bay
Commissioner Cheryl A. LaFleur
Commissioner Tony Clark
Commissioner Colette D. Honorable
Service list of Docket No. EL01-10

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