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Revised Comments of Bill Julian

Additional submitted attachment is included below.

REVISED COMMENTS OF BILL JULIAN*
to COMMISSIONER WORKSHOP on WESTERN ELECTRICITY SYSTEM INTEGRATION,
CNDUCTED ON DECEMBER 2, 2022 in Docket 22-IEPR-05,
Filed DECEMBER 23, 2022

I want to commend the CEC for convening this workshop and for offering state officials from around the West an opportunity to meet and confer in public on important issues relating to the provision of electric service to their residents and constituents. In California we are experiencing twin crises of rapidly escalating rates and increasing grid fragility. We are looking for assistance in addressing these crises as we move to aggressively to shift our economy in the direction of greater reliance on electricity as the basic source of heat, light and power. Collaboration among state officials in the West and the FERC is an important tool for helping us address our issues in a constructive manner.[1]

Unfortunately the meeting failed to address the elephants in the room: (1) the Federal Energy Regulatory Commission (FERC) and it role in promoting the dysfunction of organized markets that afflict us with rising rates and declining reliability in California; and (2) the role of the CAISO as FERC's amanuensis. One dimension of that dysfunction is reflected in recent EIA data indicating that average retail electric rates in California across all customer classes are almost double the rates in neighboring states in the West.[2] Recent events in the West – elevated natural gas prices, elevated electric rates and elevated spark spreads at least an order of magnitude greater than elsewhere in the US – suggest another dimension of dysfunction.

FERC jurisdiction – regulation and control -- is the decisive factor in all of the issues raised in the workshop. I want to focus on two aspects of FERC's policy failures that must

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* I am a member of the public. I am a retired public interest lawyer. I was Consultant to the Assembly Committee on Utilities and Commerce (1983-1995) and the Senate Committee on Energy, Utilities and Communications (2005-2006); legal advisor to Commissioners Wood and Lynch and Legislative Director of the California Public Utilities Commission (CPUC) during the California Energy Crisis (1999-2004). An impromptu version of these remarks was delivered verbally to the Workshop on December 2.

[1] Federal Power Act (hereafter FPA) section 209(b), 16 USC 824h(b). Subsection 209(c) directs FERC to make available "such information and reports as may be of assistance in State regulation of public utilities."

[2] EIA, Electric Power Monthly, Tables 5.6.A and 5.6.B, https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=table_5_06_a

be addressed before meaningful progress – from aspiration to operation – can be made for the benefit of California's ratepayers:

- Market power and strategic behavior by generation owners and sellers
- Transmission revenue requirements and ratemaking.

The CAISO is an entity created by and subject to California law that has assumed a crucial role in operating large portions of California's electric grid, and has increasing responsibility for the significant escalation in California electric rates. The CAISO although a state-chartered not-for profit corporation with public interest obligations to California, enables rather than limits the impacts FERC's deleterious policies on California's ratepayers and residents. The CEC has a role to play in focusing attention on FERC, the CAISO and their relationship, as it (the CEC) carries out its duties pursuant to Pub. Res. Code 25301 and 25302 in developing the IEPR in this docket

Market Power and Strategic Behavior

At present there is no consistent or aggressive enforcement at FERC or by state-level officials including the CAISO to mitigate the exercise of seller market power in the West. This is a very dangerous situation that has developed over the past six years as the FERC and the CAISO have rolled back protections put in place to quell the Energy Crisis.

In 2016 mining interests in Nevada complained to FERC about the exercise of market power by Berkshire Hathaway, owner of multiple retail utilities in the West including Nevada Power and Pacificorp. FERC found market power in Nevada but punted on most of the investigation including market power in the CAISO.[3] Later in 2016 the FERC eliminated the West-wide must-offer obligation (MOO), the major market-power mitigation device. In addition to eliminating the MOO the FERC eliminated a requirement to post available capacity, creating opacity that plagues us today. [4]

This enables strategic behavior by energy sellers that may significantly raise prices, as we saw during the 2020 Blackout event and again in the 2022 September Heat Storm. During the Blackout event in 2020 CAISO locational marginal prices (LMPs) reached astronomical levels. Sellers, mostly traders and financial players, were required to make

[3] 155 FERC P. 61249, (June 2016)
[4] 157 FERC P. 61051 (October 21, 2016)

cost justification filings at FERC.[5] Southern California Edison (SCE) noted that the LMPs were not remotely related to operating costs, and requested refunds. The CAISO market monitor (DMM) noted the potential for market manipulation if self-referential market justifications (based on indexes or other market-based transactions) were permitted, and asked for FERC guidance for future reference. FERC's response in June 2021 was to approve most of the self-referential devices and identity-cloaking practices (sleeve transactions).[6]

In the 2022 Heat Storm we saw sustained LMPs at extreme levels (reaching $3000/mwh in some intervals at some nodes.) At present there is no analysis of the costs or the causes of the extreme prices, but a cursory review of information on the CAISO OASIS web portal suggests round-trip trading (high export levels and simultaneous imports) and hockey-stick bidding (steep increases in LMPs over short intervals, payable to all resources including both supply and demand bids). Ratepayers will pay both the short-term costs and higher costs overall as procurement orders mandate longer-term contracts reflecting the opportunity costs created by strategic behavior.

At present (week of December 19) we are seeing extreme elevated prices for natural gas in the West as compared with the rest of the country, elevated prices for electricity in the West as compared with the rest of the country, and elevated spark spreads in the West as compared with the rest of the country, all apparently sustained over a period of several months.[7]

The strategic behavior may be a function of the CAISO organized market itself, which is an algorithm that can be the object of strategic behavior to elevate prices and maximize profits at the expense of te California public.

This is pertinent to the present workshop, the regional coordination issue generally, and the IEPR: specifically, the attribution of "benefits" that modelers like Energy Solutions purport to compute may fail to account for the <u>ratepayer</u> costs (elevated revenue

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[5] See, <u>Conoco Phillips</u>, FERC Docket ER21-40-000 and related dockets. The Edison refund request and DMM Comments can be located in those dockets.

[6] See, <u>Order Providing Guidance</u> issued June 17, 2021 in Docket ER21-40-000, et al., Agenda Item E-3-061721

[7] EIA, Today in Energy, Prices https://www.eia.gov/todayinenergy/prices.php

requirements) associated with strategic behavior. Benefits are assumed to be based on generator operating costs, but prices faced by consumers may have little or no relation to those costs. This is in fact what FERC rejected in its 2021 "guidance" responding to SCE and DMM in the 2020 Blackout context. Strategic behavior that involves complex transactions and withholding, including export of in-state energy as appears to have happened in the 2022 Heat Storm context, makes the basic task of the IEPR – to forecast and analyze electric loads, resources and prices in California – nearly impossible. These issues should be addressed in the IEPR.

Transmission Revenue Requirements

Everyone seems to be agreed on two points: we need to build additional transmission and FERC's transmission-related processes are in need of substantial reform. The FERC NOPRs[8] will address those reforms over the next few years, and then FERC will begin to work through the massive backlog of transmission projects approvals (recently estimated to be 8200 pending projects). There is also agreement that transmission revenue requirements are becoming increasingly burdensome for ratepayers.

Under the current regime CAISO transmission plans and the transmission inter-West arrangements discussed so ably in this meeting ultimately go to FERC for rate treatment, the predicate for financing and revenue requirements.[9]

The issue that the workshop panels failed to address is the nexus between FERC transmission ratemaking – which is extremely lucrative, beyond traditional just and reasonable rates -- and the various procedural and practical obstacles to transmission project development at FERC. FERC's generous rate treatment for transmission projects – specifically the order 679 incentives – are a major driver of both the backlog (because every transmission owner and developer wants access to the incentives) and the rate burden. Until Order 679 goes away, which FERC could accomplish in any of the NOPRs but which FERC has avoided up to now, the quagmire will remain and the multiple dysfunctions that afflict us will be unaddressed. A forthright call by all California agencies to eliminate Order 679 would be a significant development, as would a declaration of California policy and law to condition expedited consideration of transmission projects on

8 Docket RM21-17-000, 179 FERC P. 61,028 (April 21, 2022)
9 CAISO, 2021-22 Transmission Plan adopted March 17, 2022, at page 381

a developer's foregoing Order 679 incentives.[10] The CEC IEPR process can highlight the importance of reforming FERC transmission pricing as an aspect of the IEPR.

Regional integration that leads to price rises across the West to California levels is undesirable, although eagerly sought by "stakeholders" on the seller side. The CEC is specifically directed by statute to address rate levels and drivers of California electric rates in the IEPR.[11] Presumably elevated electric rates in California will be included in the outcome of this docket, including the roles of FERC and CAISO in causing elevated electric rates. This conference, while very productive on many levels, may have been a missed opportunity.

Thank you for your consideration of these views.

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[10] Transmission owner rate cases at FERC suffer from the complete absence of aggressive retail consumer advocacy. FERC's generosity in TO ratecases is separate from the provision of incentives over and above just and reasonable rates in Order 679. Limiting FERC's ratemaking role by moving facilities from FERC to state (local/retail) and/or public agency jurisdiction a la New Mexico RETA is another move that could work, but would require state legislation.

[11] The CEC is directed to include in the IEPR "[a]ssessment of trends in electricity and natural gas supply and demand, and the outlook for wholesale and retail prices for commodity electricity and natural gas under current market structures and expected market conditions." PRC 25303(a)(1)