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FERC Proposes to Eliminate WECC Soft Price Cap

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On July 15, 2025, the Federal Energy Regulatory Commission (FERC or Commission) issued an order[1] proposing to eliminate the soft price cap of $1,000 per megawatt-hour (MWh) for bilateral spot sales in the Western Electricity Coordinating Council (WECC) that was implemented following the California energy crisis. If adopted, the Commission's proposal would eliminate the requirement that sellers make a filing with FERC cost justifying spot market sales in excess of the soft price cap, which have become increasingly common in recent years as market conditions have continued to tighten throughout the West. Eliminating the WECC soft price cap would provide sellers that make sales during periods when prices exceed the cap greater certainty that their sales will not be second guessed after the fact.

The Commission's decision to eliminate the WECC soft price cap is a response to a 2024 opinion by the U.S. Court of Appeals for the D.C. Circuit finding that FERC had erred in ordering refunds for certain sales that were made in excess of the soft price cap without conducting a *Mobile-Sierra* public interest analysis. The D.C. Circuit's decision left open the possibility that FERC could require refunds if it could demonstrate that these sales seriously harmed the public interest. However, the Commission's July 15 Order preliminarily concludes that the benefits of requiring justification for sales exceeding the soft price cap are limited and that such filings are no longer necessary given changes in Western markets since the cap was first adopted.

Interested parties may submit comments and motions to intervene within 30 days from the date of issuance of the Commission's order (i.e., by August 14, 2025).

Background

Since 2002, bilateral spot market sales in the WECC have been subject to a soft price cap that was adopted in the wake of the California energy crisis to help mitigate the risk of market power. For the purpose of the soft price cap, spot market sales consist of sales that "are 24 hours or less in duration and that are entered into the day of or the day prior to delivery."[2] Sellers who transact at prices above the "soft cap" must submit a filing to FERC justifying their sales and, if they are unable to do so, must pay refunds for amounts collected in excess of the soft offer cap.[3] Initially set at $250/MWh, the soft offer cap was increased to $1,000/MWh in 2011.[4]

Until recently, there were limited examples of sellers making filings to report and justify sales made at prices that exceeded the soft offer cap. In 2020, however, dozens of sellers made filings seeking to justify their spot market sales after a summer heat wave drove bilateral prices in the West above the offer cap. Following the initial wave of justification filings that were submitted after the 2020 heat wave, the Commission issued a guidance order outlining how sellers could justify sales above the soft offer cap. The guidance order generally put the burden on sellers to justify the prices they charged based on their production costs, that the prices were consistent with their opportunity costs of foregoing other market opportunities, or that the price was consistent with prevailing index prices at a relevant market hub.[5]

Although sellers generally provided evidence demonstrating that their sales were consistent with their costs or prevailing market prices throughout the West, sellers consistently argued that their spot market sales represented "the kind of short-term bilateral power sale contracts that both the Supreme Court and [FERC] have found are subject to the *Mobile-Sierra* presumption."[6] Under the *Mobile-Sierra* doctrine, contract rates formed through arm's-length, bilateral negotiation are entitled to a presumption of reasonableness that can be overcome only upon a demonstration that the rate "seriously harms the public interest" or that the conditions underlying the presumption do not apply.[7]

FERC ultimately determined that certain sellers failed to justify their above-cap sales and ordered partial refunds for certain transactions.[8] Importantly, FERC rejected the sellers'

argument that the *Mobile-Sierra* doctrine "dictated approval of their contract prices" and found that "the justification-and-refund inquiry into [the] above-cap sales did not implicate the *Mobile-Sierra* presumption."[9] Rather, FERC found that the *Mobile-Sierra* presumption did not preclude it "from enforcing the requirement that sales in excess of the WECC soft price cap must be justified and [we]re subject to refund" and that it was "not modifying the contracts, as would trigger application of the *Mobile-Sierra* presumption, . . . but was instead enforcing requirements incorporated into the contracts via [FERC's] orders establishing the price cap and provisions in [the sellers'] market-based rate tariff[s]."[10]

On appeal, sellers subject to refunds argued that FERC "erred by failing to conduct any *Mobile-Sierra* analysis prior to ordering refunds," which altered their freely-negotiated contract rates "without first finding that those rates seriously harm[ed] the public interest."[11] Certain consumer-side interests also appealed, arguing that FERC had "committed errors in calculating the [s]ellers' refunds that [would] lead to higher electricity prices in the future."[12]

D.C. Circuit Decision

On July 9, 2024, the U.S. Court of the Appeals for the D.C. Circuit held that FERC erred in ordering refunds for certain bilateral spot market transactions in the WECC region that exceeded the $1,000/megawatt-hour soft price cap for such sales. Finding FERC failed to conduct a "*Mobile-Sierra* public-interest analysis" before "altering" those contracts by ordering refunds, the court vacated FERC's orders and remanded the case to FERC for further proceedings.[13]

The court agreed with the sellers that FERC "should have conducted the *Mobile-Sierra* analysis prior to ordering refunds," vacated FERC's justification and refund orders, and remanded the case to FERC for further proceedings.[14] Relying on the *Mobile-Sierra* principle that FERC "may modify a contracted-for rate if (but only if) the 'public interest' so requires," the court found that "[t]here is no dispute . . . that the rates for which FERC ordered refunds were rates for which the [s]ellers and their customers had mutually contracted in a competitive marketplace."[15] Yet, FERC failed to "perform any *Mobile-Sierra* public-interest analysis before altering those negotiated rates by ordering the refunds at issue."[16]

The court reasoned that, even if FERC's orders implementing the soft cap were incorporated into the sellers' market-based rate tariffs and the relevant contracts, FERC "did not displace

the *Mobile-Sierra* presumption in [those orders], and so that presumption continues to apply to the [s]ellers' contracts."[17] FERC's soft-cap orders, to the extent incorporated into the sellers' market-based rate tariffs that represent the "filed rate" for the relevant sales, "left intact" FERC's burden of overcoming the presumption that freely negotiated wholesale energy contracts meet the Federal Power Act requirement that their rates must be "just and reasonable."[18]

In the court's view, rather than "remov[ing] prospectively an entire class of bilateral contracts from the *Mobile-Sierra* framework," the soft cap "is best viewed as a means of flagging for [FERC] contracts that may warrant a public-interest analysis" and is "best read . . . as functioning in tandem with the *Mobile-Sierra* doctrine," not "displac[ing] the presumption that for nearly seventy years has been the 'default rule' in analyzing the justness and reasonableness of freely negotiated contract rates."[19] As such, under the *Mobile-Sierra* doctrine, FERC "can carry that burden" and order refunds for covered transactions "only by making a particularized finding that a given contract 'seriously harms the public interest,' . . . even if that contract's price exceeds the soft cap, or can avoid that inquiry by demonstrating that the *Mobile-Sierra* presumption should not apply at all . . . ."[20] Here, the court found that FERC did not make either determination and, therefore, its refund orders were unlawful.[21]

Proposed Elimination of the WECC Soft Price Cap

In the July 15 Order, the Commission preliminarily finds that the WECC soft price cap is no longer necessary to ensure just and reasonable rates. The Commission notes that the expansion of organized day-ahead and real-time markets across the West, including robust market monitoring and mitigation, calls into question the continued need for the soft price cap.[22] The Commission also observes that the enhanced authority granted by the Energy Policy Act of 2005 provides FERC with ample authority to pursue enforcement actions against companies that engage in market manipulation or other misconduct. Additionally, the Commission concludes that "the filing burden associated with the WECC soft price cap is no longer warranted, given the limited monitoring benefits" and that the existing cap "creates uncertainty for individual transactions while those filings are pending review at the Commission."[23]

Despite the Commission's proposal to eliminate the WECC soft price cap, the July 15 Order states that the Commission will issue forthcoming orders undertaking a *Mobile-Sierra* analysis

as required for any pending cost justification filings.[24] However, the July 15 Order extends the deadline for the submission of justification filings while the investigation is ongoing to a later date, which will be established in a subsequent order in the proceeding.[25]

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1 *Western Electricity Coordinating Council,* 192 FERC ¶ 61,053 (2025) (July 15 Order).

2 July 15 Order at P 1, n.1.

3 *Id.* at 3.

4 *W. Elec. Coordinating Council*, 133 FERC ¶ 61,026 at P 15 (2010).

5 *ConocoPhillips Co., et al.*, 175 FERC ¶ 61,226 (2021).

6 *Shell Energy N. Am. (US), L.P. v. FERC*, 107 F.4th 981 (D.C. Cir. 2024).

7 *Id.* at 988.

8 *Id.* at 992.

9 *Id.* at 985, 989.

10 *Id.* at 989.

11 *Id.* at 990.

12 *Id.* at 985.

13 *Id.*

14 *Id.*

15 *Id.* at 991.

16 *Id.*

17 *Id.* at 992.

18 *Id.* (internal quotation marks omitted).

19 *Id.*

20 *Id.*

21 *Id.*

22 July 15 Order at P 16.

23 *Id.* at P 18.

24 *Id.* at P 13 n. 33.

25 *Id.* at P 20.

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