

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

Western Electricity Coordinating Council

Docket No. EL10-56-000

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) respectfully submits these comments in response to the Commission’s July 15, 2025 Order Instituting Section 206 Proceeding issued in the above-captioned docket.¹ In the July 2025 Order, the Commission instituted an investigation “into whether the Commission should eliminate the WECC soft price cap”² and requested parties submit comment on or before August 14, 2025.³ The WECC soft price cap, or “WECC Soft Cap,” requires sellers engaging in bilateral spot transactions outside of the CAISO’s organized markets to provide cost-justification to the Commission to support market-based sales above \$1,000/MWh.⁴

In these comments, the CAISO recognizes and acknowledges the challenges the Commission faces in maintaining and administering the framework of the WECC Soft

¹ See *Western Electricity Coordinating Council*, 192 FERC ¶ 61,053 (2025) (“July 2025 Order”). These comments are submitted pursuant to Rule 212 of the Commission’s Rules on Practice and Procedure. See 18 C.F.R. § 384.212 (2025).

² *Id.* at P 1.

³ See *Notice of Institution of Section 206 Proceeding and Refund Effective Date re Western Electricity Coordinating Council*, Docket No. EL10-56 (July 15, 2025). The CAISO has formally intervened in this proceeding. See (doc-less) Motion to Intervene of California Independent System Operator Corporation, Docket No. EL10-56 (Aug. 4, 2025).

⁴ See, e.g., July 2025 Order at PP 2-8 (providing background on the WECC Soft Cap framework and the litigated history of the prior proceedings).

Cap in light of the holdings in *Shell Energy*.⁵ As the July 2025 Order notes, organized markets in the West are developing. As these developing markets are deployed and implemented over the coming years, the need for the WECC Soft Cap and its framework may diminish. At this juncture, the CAISO recommends the Commission provide for additional process, including but not limited to soliciting reply comments, to develop the record prior to reaching a determination whether to retain, modify or eliminate the WECC Soft Cap.

I. Background on WECC Soft Cap and this Proceeding

The Commission developed the WECC Soft Cap as a response to the 2000-2001 energy crisis across the Western Interconnection. The July 17, 2002, Order addressed two core components: first, California mitigation,⁶ and second, a “West-wide market power mitigation program” for the non-CAISO portions of the Western Interconnect.⁷ The WECC Soft Cap framework was a key component of the Commission’s “West-wide market power mitigation program.”⁸ The WECC Soft Cap has been in effect as a market power mitigation measure since that time.⁹ Although the WECC Soft Cap does not apply

⁵ *Shell Energy N.A. (US), L.P. v. FERC*, 107 F.4th 981 (D.C. Cir. 2024) (“*Shell Energy*”).

⁶ July 2025 Order at P 1

⁷ *Id.* The west-wide market power mitigation program involved the extension of the existing must-offer provision within the area of the Western Electricity Coordinating Council (WECC), a adoption of a set of Automatic Mitigation Procedures to identify and limit excessive bids and local market power, and introduction of a bid cap of \$250/MWh to be applied to sales in all WECC spot markets. *See, e.g., Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274, at P 6 (2004) (explaining the history of the west-wide mitigation power program). In 2002, this region was commonly referred to as the “Western Electricity Coordinating Council” or “WECC.” The region is now referred to as the “Western Interconnection.” Today, WECC is a legal entity that does not administer, oversee, or otherwise have any jurisdiction over the “WECC Soft Cap.” *See Letter from Louise McCarren, Chief Executive Officer, Western Electricity Coordinating Council*, Docket No. EL10-56 (May 24, 2010) (requesting that parties distinguish the present legal entity from the historical regional reference).

⁸ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 (July 17, 2002), *reh ’g*, 101 FERC ¶ 61,061, PP 17-20 (Oct. 11, 2002).

⁹ *Id.*

to transactions conducted through the markets the CAISO operates, prices in bilateral spot markets may impact the bilateral trades indices, which are used in the CAISO markets.¹⁰

Under this framework, sellers in the non-CAISO portions of the Western Interconnection provide the Commission with cost-support to justify sales above a defined price.¹¹ Following the litigated proceedings arising out of sellers' submission of cost justification for certain sales made in 2020, the D.C. Circuit issued an opinion in 2024 that identified a flaw in the administration in those proceedings.¹² The court explained that the Commission could cure the flaw in its administration of the WECC Soft Cap by either making "a particularized finding that a given contract seriously harms the public interest" or demonstrating "that the *Mobile-Sierra* presumption should not apply at all."¹³ The matters were remanded to the Commission.

Following remand, the Commission issued the July 25 Order instituting a Section 206 investigation.¹⁴ The July 2025 Order explains that the Commission's "preliminary review indicates that the WECC soft price cap framework may no longer be just and reasonable" and institutes an investigation "into whether the Commission should

¹⁰ For example, the CAISO's market power mitigation provisions utilize bilateral index prices to compute default energy bids. See CAISO Tariff, Section 39. Index prices are also used in the calculations of the Maximum Import Bid Price, which is used to help determine the bid cap for certain imports on high-priced days. See *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,076 (2021).

¹¹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,135, P 14 (2006) (extending the mitigation and explaining "Given this interdependency [with CAISO markets], we find that it is unjust and unreasonable to have inconsistent bid caps in the CAISO and the rest of the WECC); *W. Elec. Coordinating Council*, 133 FERC ¶ 61,026, P 15 (2010) ("[T]o maintain consistency between the CAISO bid cap and the WECC price cap for the reasons stated above, we also establish that with the increase in the CAISO energy bid cap, the soft price cap in the WECC outside of the CAISO will also increase to \$1000/MWh effective April 1, 2011.").

¹² *Shell Energy*, 107 F.4th 981 (D.C. Cir. 2024).

¹³ See *id.* at 991-92 (internal quotes omitted).

¹⁴ July 2025 Order at P 1.

eliminate the WECC soft price cap.”¹⁵ The Commission proposes to eliminate the WECC Soft Cap framework effective July 18, 2025.¹⁶

The Commission requested parties provide comments to the record “addressing whether the Commission should eliminate the WECC soft price cap.”¹⁷

II. Additional Process to Consider Retaining, Modifying, or Eliminating the WECC Soft Cap Framework

A. Recognizing the Challenges in Administering the WECC Soft Cap Framework

The CAISO recognizes the challenges sellers and the Commission face in continuing to administer the WECC Soft Cap framework in light of the court’s holding in *Shell Energy*. As the Commission states in its Order, “we question the benefit of requiring individual sellers to submit an informational filing for spot market transactions above the \$1,000/MWh threshold simply to facilitate the Commission’s review of those sales through the *Mobile-Sierra* framework.”¹⁸ The CAISO acknowledges the “costs on market participants and the Commission” created by this framework are questionable because the Commission is limited in its ability to deny recovery above \$1000/MWh given the findings in *Shell Energy*. However, lacking some form of a cap, costs in the bilateral markets can go completely unmitigated, possibly imposing unwarranted costs on ratepayers. If all spot transactions were conducted through organized markets, this additional process of review would not be necessary. As organized markets in the West

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at P 19.

¹⁸ *Id.* at P 18.

are still developing, it is prudent to allow sufficient process for parties to evaluate if the WECC Soft Cap framework may still offer benefits as recent market expansions are further deployed.¹⁹ The CAISO recommends the Commission establish further process to evaluate the risks and benefits of retaining, modifying, or eliminating the framework following the court’s holdings in *Shell Energy*.

Parties and the Commission have previously recognized the value in symmetry of offer caps in neighboring markets and the Commission should assess that value in this proceeding. The CAISO supports the initiation of further process, including but not limited to reply comments, to allow all parties and the Commission to fully evaluate alternatives to eliminating the WECC Soft Cap at this time.

B. As Organized Markets Mature, Need for the WECC Soft Cap Framework May Diminish

In light of the court’s holding in *Shell Energy*, the CAISO recognizes the Commission needs to assess the continuing relevance of the framework as well as how best to process reviews of bilateral sales above any cap. In its July 2025 Order, the Commission notes the “widespread adoption of centralized real-time energy imbalance markets,” referencing the CAISO’s Western Energy Imbalance Market (WEIM). The Commission also notes it has “approved two day-ahead market constructs that are scheduled to go live in the coming year,” referencing the CAISO’s Extended Day-Ahead Market (EDAM) construct.²⁰ The Commission observes that “the West has significantly evolved via an expansion of organized wholesale market designs and activity that call

¹⁹ *Id.* at P 12.

²⁰ *Id.* at P 16.

into question the continued need for the soft price cap.”²¹ Notwithstanding these developments, today, spot transactions continue to occur at bilateral trading hubs outside of organized electricity markets.

Although the CAISO recognizes the administrative burden the current WECC Soft Cap structure may place on the Commission, maintaining a WECC Soft Cap framework, even under a *Mobile-Sierra* regime, could yield benefits.²² Accordingly, the CAISO recommends the Commission evaluate alternatives, such as modifying the cap or its framework, prior to eliminating the WECC Soft Cap.²³ Additional process will allow the parties, especially sellers and buyers, to offer input on the relationship between the Commission-regulated organized markets, both operating and developing, and the bilateral markets. In the course of this investigation, the Commission should fully evaluate whether operating and emerging markets absolve the need for this type of framework, or whether the framework remains necessary to continue protecting against the exercise of market power in the bilateral markets in the Western Interconnection. Establishing additional procedures will help develop a sufficient record to consider the value in maintaining, modifying, or eliminating the WECC Soft Cap framework.

²¹ *Id.*

²² *Id.* at 16-19 (discussing the benefits and burdens).

²³ The Commission could also consider a generic determination as to the rate level that, *de facto*, exceeds the public interest. This would produce an outcome similar to Order No. 831, where transactions are subject to the “hard” bid cap of \$2,000/MWh. *See Shell Energy*, 107 F.4th at 991-92 (leaving open the option for the Commission to clarify that sales above the WECC Soft Cap are not subject to the *Mobile-Sierra* presumption).

C. Recognizing Importance of Symmetry as Organized Markets Continue Growth and Expansion in the West

Currently, the CAISO market prices are subject to the Commission's offer caps established in Order No. 831, with a soft offer cap in effect at \$1,000/MWh and, upon a showing of cost justification, the potential to offer up to a hard cap of \$2,000/MWh.²⁴ This Commission has considered altering the WECC Soft Cap to allow for sellers to transact above \$1,000/MWh,²⁵ and has emphasized its concern that asymmetrical price caps could result in unjust and unreasonable outcomes.²⁶

Notwithstanding the development of organized electricity market constructs, there remains a relationship between the bilateral and organized markets in the Western Interconnection. Historically, the level of the WECC Soft Cap closely tracked the offer cap in CAISO's markets. The Commission recognized that "synchronizing price caps prevents potential market distortions during periods of tight supply"²⁷ and valued symmetrical caps because, "in extreme circumstances, differences in price cap levels between interconnected markets can lead to market distortions."²⁸ The parties to these proceedings, and the Commission, have historically agreed that "consistency in the level of caps in the CAISO and the WECC outside of CAISO is important in avoiding market distortions."²⁹ The Commission has recognized the interdependency between markets

²⁴ The CAISO's published training materials highlight the details of implementation in an easily-accessible manner. See <https://www.caiso.com/Documents/Presentation-FERC-Order-831-Import-Bidding-Market-Parameters-Training-Apr-28-2021.pdf>.

²⁵ *W. Elec. Coordinating Council*, 133 FERC ¶ 61,026 (2010).

²⁶ *Id.*

²⁷ *Id.* at P 8 (citing comments by the Nevada state commission).

²⁸ *Id.* at P 12 (citing comments of Snohomish public utility district).

²⁹ *Id.* at P 14.

administered by the CAISO and bilateral transactions in the entire region, and it has found value in symmetry between offer caps in the CAISO and price caps in the rest of the WECC.³⁰

Drawing on its previous conclusions on the value of symmetry in offer caps in neighboring markets, the Commission should consider whether, consistent with the court's findings in *Shell*, modifying the WECC Soft Cap framework rather than eliminating it would provide greater benefits to the Western markets. To mitigate the administrative burden of the filing requirement for sales above the current \$1,000/MWh threshold, the Commission could modify that price threshold at which it will review transactions or articulate the circumstances under which contracts would not be subject to the *Mobile-Sierra* presumption. A longer comment period would enable the Commission to fully consider the risks and benefits of eliminating the WECC Soft Cap and its framework at this juncture.

The CAISO recommends the Commission consider alternatives prior to elimination, such as achieving symmetry in the caps. For example, drawing on its previous conclusions on the value of symmetry in offer caps in neighboring markets, the Commission could consider modifying the WECC Soft Cap consistent with the principles and directives applied to the organized markets through Order No. 831. This option would alleviate the burden (being triggered only in higher priced scenarios) while also establishing protection from the potential exercise of market power in extreme

³⁰ *Id.*

conditions. The Commission previously expressed interest in considering this.³¹ The CAISO offers this suggestion as a starting point for evaluating potential alternatives in lieu of eliminating the WECC Soft Cap. Allowing consideration of these alternatives in this investigation would be consistent with the scope of the proceeding under Federal Power Act Section 206.

D. Administering the *Mobile-Sierra* Framework Following Remand

The CAISO acknowledges the administrative burden in evaluating whether specific transactions above a price cap are inconsistent with the *Mobile-Sierra* structure, given the high bar of the just and reasonable presumption. There may still be value, however, in conducting the analysis, even bound by *Mobile-Sierra*.

Modifications of the WECC Soft Cap, such as raising the price level to achieve symmetry with the caps in organized markets, could reduce the administrative burden of the WECC Soft Cap framework with the *Mobile-Sierra* presumption. Establishing a standard set of qualitative materials to accompany informational reports (e.g., affidavits/attestations) may increase administrative efficiency as the qualitative materials offered close-in-time to the transaction can allow just and reasonable transactions to proceed to completion while flagging transactions where there are facts justifying “avoiding” or “overcoming” the *Mobile-Sierra* presumption.³² The *Mobile-Sierra*

³¹ *Id.* at P 17 (“To the extent we are presented with a proposal to adjust the CAISO energy bid cap in the future, or if the Commission initiates a proceeding to address CAISO’s energy bid cap, we will consider the need to adjust the WECC price cap based on the facts before us at the time”); *see also Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,076 (2021).

³² *See, e.g., Pub. Utils. Comm’n of California*, 189 FERC ¶ 61,013 (2002) (finding that the *Mobile-Sierra* presumption was “avoided”).

presumption is avoided “where there is unfair dealing at the contract formation stage—for instance, if [the Commission] finds traditional grounds for the abrogation of the contract such as fraud or duress.”³³ The presumption is overcome “where [a rate] might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.”³⁴ Sellers’ informational reports should be limited to materials necessary for the two essential elements of either (a) avoiding or (b) overcoming the *Mobile-Sierra* presumption.³⁵ Sellers’ rates would become final after a brief, but sufficient, period for review of the submitted materials.

These informational submissions may be rare and infrequent. The CAISO’s Department of Market Monitoring analysis demonstrates that, in most cases, the bilateral index prices and the prices produced by CAISO’s Day-Ahead, Real-Time and Energy Imbalance markets follow similar patterns.³⁶ These patterns demonstrate prices are often below \$250/MWh and rarely approach levels warranting the *Mobile-Sierra* review.³⁷ In certain circumstances, bilateral prices have exceeded the prices produced by the CAISO’s markets. In the first quarter of 2025, the day-ahead market recorded zero percent of intervals in the CAISO region with an average price exceeding \$250/MWh.³⁸ In the

³³ *Id.* at 547.

³⁴ *Id.* at 548-49 (noting that this list is non-exhaustive).

³⁵ See *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty., Wash.*, 554 U.S. 527 (2008) (clarifying the *Mobile-Sierra* presumption and holding that an arm’s-length bilateral contract between sophisticated parties is presumed to be just and reasonable, unless there is unfair dealing by either of the parties at the contract formation stage, in which case the presumption is avoided, or the contract seriously harms the public interest, in which case the presumption is overcome).

³⁶ See, e.g., Department of Market Monitoring Quarterly Market Issues and Performance Report, Section 3.4 (June 2025) (providing a comparison to bilateral prices), available at: <https://www.caiso.com/documents/2025-first-quarter-report-on-market-issues-and-performance-jun-23-2025.pdf>.

³⁷ *Id.*

³⁸ *Id.* at Figure 3.13.

same period for the Western Energy Imbalance Market, the frequency of high prices over \$250/MWh was .09%.³⁹

III. Conclusion

The CAISO respectfully requests the Commission establish additional procedures to allow the parties and the Commission to evaluate the risks and benefits of retaining, modifying, or eliminating the WECC Soft Cap in light of the challenges facing the Commission and the parties. One potential alternative to consider in this proceeding is altering the price level of the WECC Soft Cap to maintain symmetry with the CAISO markets. Establishing further opportunities for comments and reply will provide all parties and the Commission with additional opportunity to evaluate fully the risks and benefits of the WECC Soft Cap framework.

Respectfully submitted,

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Dated: August 14, 2025

³⁹ *Id.* at Figure 3.14.

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 14th day of August, 2025.

/s/ Martha Sedgley
Martha Sedgley