

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

**California Independent System)
Operator Corporation)**

Docket No. EL10-56-000

**MOTION TO INTERVENE AND COMMENTS
OF THE DEPARTMENT OF MARKET MONITORING
OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§385.212, 385.214, the Department of Market Monitoring (“DMM”), acting in its capacity as the Independent Market Monitor for the California Independent System Operator Corporation (“CAISO”), submits this motion to intervene and comment in the above-captioned proceeding.

I. SUMMARY

DMM respectfully encourages the Commission to reconsider its preliminary conclusion that the WECC soft price cap and related reporting requirements are no longer needed as a safeguard in the Western bilateral spot markets. Through this proceeding, we encourage the Commission to conduct a more thorough investigation of the just and reasonableness of the current soft price cap framework, as well as alternatives that may be suggested by various parties. Such options may range from extending the Commission’s Order 831 framework to Western bilateral spot markets and/or maintaining the current reporting and cost justification requirements for bilateral sales over a threshold that is likely to merit review by the Commission. As summarized in these comments, this investigation should consider the strong and direct links and

seams issues between bilateral and organized spot markets in the West, and the need for safeguards against extreme outcomes as organized day-ahead markets are just beginning to be designed and implemented in the Western region.

II. COMMENTS

The WECC soft price cap has proven to be an effective framework

The stated purposes of the initial 2002 west-wide soft price cap were to avoid potential “disincentives to bid into the CAISO markets” and to discourage “megawatt laundering or other gaming strategies.”¹ When increasing the soft price cap to \$1,000/MWh in 2011, the Commission found that it was unjust and unreasonable to have inconsistency between the CAISO offer cap and the WECC soft price cap, while noting the interdependency of the CAISO and WECC markets, and the potential for market distortions created by differences between the CAISO and WECC price caps.² With Order 831, the Commission subsequently sought to address these issues by establishing similar \$1,000/MWh soft offer caps in all RTO markets.

While much has changed in Western energy markets since the WECC soft price cap was established, the soft price cap has provided a valuable and workable deterrent and safety net against the potential for extreme market power, manipulation, or dysfunction in Western wholesale energy markets under extreme conditions. Bilateral spot market sales above the current \$1,000/MWh soft price cap have been very infrequent, with a very limited number of transactions occurring under peak summer conditions in 2020 to 2022. Since bilateral spot market sales above the current

¹ October 2002 Order, 101 FERC ¶ 61,061 at p 20

² October 2010 Order, 133 FERC ¶ 61,026 at p 14

\$1,000/MWh soft price cap were first reported in 2020, the frequency and volume of bilateral transactions subject to the soft price cap has declined and been extremely limited. Bilateral and organized markets in the West have continued to function well under tight load conditions. This suggests that the soft price cap may have some deterrent effect and effectively disciplines prices under tight system conditions, without limiting the supply available in the Western wholesale market.

Through the process of reviewing transactions that have been subject to the WECC soft price cap, the Commission has established a more defined and workable framework for cost justification and review. Review of cost justification filings made under the current framework have highlighted the important role of bilateral cost indices in Western bilateral and organized markets, and the extreme lack of liquidity of these bilateral indices under tight system and market conditions in the Western region.³

Given the close and inextricable link between organized and bilateral markets in the West, DMM encourages the Commission to thoroughly consider options for maintaining this framework in the Western wholesale energy markets as part of this proceeding.

The WECC soft price cap or some similar framework is important for fostering the success and growth of organized markets in the West

The WECC soft price cap or some similar framework will provide both a deterrent and safety net against the potential impacts of market power, manipulation, or dysfunction under extreme conditions. This type of safeguard is especially important at

³ *Comments of the Department of Market Monitoring of the California Independent System Operator Corporation*, Docket No. ER21-2453, August 9, 2021: <https://www.aiso.com/documents/comments-er21-2453-et-al-wecc-soft-offer-cap-aug-9-2021.pdf>

this juncture, as organized day-ahead markets are just beginning to be designed and implemented in the Western region. While the Commission has approved the initial design of the CAISO's Extended Day-Ahead Market (EDAM) and SPP's Markets+, neither of these markets have yet been implemented. And while California has a well-established resource adequacy program with a must-offer requirement, other Western states have deferred implementation of a resource adequacy program until at least 2027.

Both EDAM and Markets+ are designed to develop incrementally and expand to include other balancing areas after initial implementation. During the nascent stage of these markets, there will be significant interactions and seams issues between these two organized markets and bilateral markets in the West. During this period, the type of safeguard and transparency provided by the WECC soft price cap (or some similar framework) is needed now more than ever to foster confidence in the integrity, success, and growth of these markets.

The Commission should consider establishing provisions for bilateral spot market transactions in the West that are consistent with the framework established for RTO markets under Order 831

The current WECC soft price cap for bilateral markets in the West closely mirrors the framework for all organized markets established by the Commission pursuant to Order 831. This approach helps mitigate the potential for unjust and unreasonable prices under extreme conditions due to market power or market dysfunctions, while ensuring that resources will have the incentive to participate in organized electricity markets when their costs exceed \$1,000/MWh, because they have the opportunity to recover these costs.

Because the opportunity costs of offering in one market can be affected by costs in another market, the impacts of market power or dysfunction in one market can spread to other markets and become circular – with prices in all markets spiraling above just and reasonable levels. Moreover, if one market has an offer cap that materially differs from a neighboring market, then suppliers can be deterred from offering capacity in a market even when prices are well above costs of production.

Order 831 sought to address these issues by establishing similar offer caps in all RTO markets. The WECC soft price cap applies this same framework to bilateral markets in the West. Given the close and inextricable link between organized and bilateral markets in the West, DMM encourages the Commission to thoroughly consider options for maintaining this same framework or other alternatives for the Western wholesale markets in this proceeding.

DMM encourages the Commission to establish some form of safety net against the potential for extreme market power or dysfunction in Western energy markets that does not require the Mobile-Sierra standard

As noted in the Commission's order, the Appeals court emphasized that the Commission can overcome that burden only by "making a particularized finding that a given contract seriously harms the public interest . . . or by demonstrating that the Mobile-Sierra presumption should not apply at all."⁴ Mobile-Sierra is based on the principle that since bilateral transactions are made between willing counterparties, all bilateral contracts should be presumed to be just and reasonable and in the public interest. While this principle may apply to bilateral transactions in forward energy markets, bilateral transactions on day-ahead and real-time timeframes in the West are

⁴ July 15 Order, ¶8

essentially spot market transactions, in which buyers often have very limited options under extremely tight market conditions.

In addition, bilateral spot market transactions in the West have a very direct and important impact on prices used to settle other bilateral transactions, as well as prices in the CAISO's day-ahead and real-time markets. As shown by cost filings for transactions that have been subject to review under the WECC soft price cap, bilateral spot market indexes can be set by a very limited number of transactions, but are used to settle a much larger volume of bilateral sales that are pegged to these indices. Similarly, bilateral price indices at Western trading hubs are directly used to set bid caps for imports and hydro resources in the CAISO market and Western Energy Imbalance Market.

In light of these direct linkages in Western wholesale markets, DMM encourages the Commission to thoroughly investigate and consider approaches for exempting a limited number of extremely high bilateral spot market sales in the Western wholesale market from the Mobile-Sierra presumption.

The Commission should maintain the existing cost reporting requirements and refund effective date for bilateral sales over \$1,000/MWh

Although DMM agrees that "the Commission is better equipped at this time to monitor and deter wholesale market misconduct,"⁵ we disagree that "the filing burden associated with the WECC soft price cap is no longer warranted, given the limited monitoring benefits that it provides."⁶

⁵ July 15 Order, ¶17, p 9

⁶ July 15 Order, ¶18, p9

Under the current WECC soft price cap framework, cost justification filings for above-cap sales are due 30 days after the end of the month in which the sale occurred. In the absence of this requirement, the only mechanism for Commission staff to identify bilateral sales over \$1,000/MWh is through Energy Quarterly Reports (EQR), which are submitted one month after the end of each quarter. Thus, data on sales in the third quarter (covering summer months July to September) is not submitted until the end of October. Moreover, not all sellers are required to report sales through EQR, and EQR data does not include any information on the cost justification for any sales over \$1,000/MWh.

Thus, EQR data would clearly be insufficient to enable Commission staff to identify and review bilateral sales above the \$1,000/MWh threshold in an expeditious and efficient manner, as would be warranted in the event of extreme market power, manipulation, or market dysfunction. After reviewing EQR data (up to 3 or 4 months after sales are made), Commission staff would then need to specifically request information on the cost basis of any sales.

As previously noted, bilateral sales over \$1,000/MWh have been very limited in both volume and frequency. Thus, requiring sellers to submit cost justification for these limited sales 30 days after the end of the month in which the sale occurred represents a relatively small burden for sellers, but is crucial for enabling Commission staff and other interested parties to review sales in a timely and efficient manner. For these reasons, we urge the Commission to maintain the existing cost reporting requirements and effective date for any refunds on bilateral sales over \$1,000/MWh.

III. MOTION TO INTERVENE

DMM respectfully requests that the Commission afford due consideration to these comments and motion to intervene, and afford DMM full rights as a party to this proceeding. Pursuant to the Commission's Order 719, the CAISO tariff states "DMM shall review existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the CAISO, the CAISO Governing Board, FERC staff, the California Public Utilities Commission, Market Participants, and other interested entities."⁷ As this proceeding involves proposed rules that would affect the efficiency of CAISO markets, it implicates matters within DMM's purview.

⁷ CAISO Tariff Appendix P, Section 5.1.

IV. CONCLUSION

DMM respectfully requests that the Commission afford due consideration to these comments as it evaluates the proposed rule changes before it.

Respectfully submitted,

By: /s/ Eric Hildebrandt

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Independent Market Monitor for the
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Dated: August 14, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced 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/ Aprille Girardot

Aprille Girardot