

194 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Mercuria Energy America, LLC

Docket No. ER21-46-002

ORDER ON REMAND

(Issued March 19, 2026)

1. In an order issued on April 22, 2022, the Commission ordered Mercuria Energy America, LLC (Mercuria) to refund amounts the Commission found to be unjustified for energy spot market sales that exceeded the Western Electricity Coordinating Council (WECC)¹ \$1,000/MW soft price cap.² On July 9, 2024, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion holding that the Commission must conduct a *Mobile-Sierra*³ public interest analysis prior to ordering refunds for sales that exceed the soft price cap. Because the Commission did not undertake that analysis in a series of orders that required refunds for above-cap sales, the court vacated and remanded those orders back to the Commission for further proceedings consistent with the July 2024 Opinion.⁴ As discussed below, we have undertaken the required *Mobile-Sierra* analysis for Mercuria's reported sales and find no basis for

¹ The reference to WECC is to the non-California Independent System Operator Corporation (CAISO) portion of the wholesale spot electricity market in the United States portion of the Western Interconnection, and not to the regional reliability entity. Spot markets 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 *Mercuria Energy Am., LLC*, 179 FERC ¶ 61,033, *order on reh'g*, 180 FERC ¶ 61,184 (2022) (Justification Rehearing Order).

³ The *Mobile-Sierra* presumption takes its name from two cases decided by the Supreme Court of the United States (Supreme Court) on the same day: *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

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

ordering refunds. Accordingly, we reverse the Commission's previous decision to order refunds and find that Mercuria is entitled to recoupment of the refund amounts previously paid. Therefore, pursuant to our authority under section 309 of the Federal Power Act (FPA),⁵ we (1) direct refund recipients to provide recoupment to Mercuria for the amounts paid by Mercuria pursuant to the Justification Order, with interest, within 30 days of the date of this order, and (2) direct Mercuria to file a refund report within 30 days of receiving the recoupment.⁶

I. Background

A. WECC Soft Price Cap

2. The Commission adopted the WECC soft price cap in response to the 2000-2001 Western Energy Crisis.⁷ Specifically, in July 2002, in response to CAISO's Market Redesign and Technology Upgrade proposal, the Commission established a \$250/MWh offer cap for the CAISO markets and a \$250/MWh price cap for all spot market sales in WECC.⁸ The Commission subsequently clarified that the \$250/MWh WECC price cap is a "soft" cap and that offers and prices above the cap would be subject to justification and refund.⁹ The offer cap in CAISO and the WECC soft price cap were ultimately increased to \$1,000/MWh, effective April 1, 2011.¹⁰

⁵ 16 U.S.C. § 825h; *see also TNA Merchant Projects, Inc. v. FERC*, 857 F.3d 354, 360 (D.C. Cir. 2017) (holding that section 309 of the FPA authorizes the Commission to issue an order of recoupment to remedy the Commission's own legal error in directing refunds) (*TNA Merchant Projects*).

⁶ The Commission will be undertaking a *Mobile-Sierra* analysis for all of the above-cap sales for which the Commission ordered refunds in each of the Justification Orders that has been remanded to the Commission, either as a result of the July 2024 Opinion or voluntarily, and will issue separate orders in each of those cases.

⁷ *See Final Report on Price Manipulation in Western Markets*, Docket No. PA02-2-000 (issued Mar. 26, 2003).

⁸ *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060, at P 46 (July 2002 Order), *order on reh'g & compliance*, 101 FERC ¶ 61,061, at P 17 (2002) (October 2002 Order).

⁹ *E.g.*, October 2002 Order, 101 FERC ¶ 61,061 at P 17; *see also W. Elec. Coordinating Council*, 133 FERC ¶ 61,026 at PP 14, 16 (October 2010 Order).

¹⁰ October 2010 Order, 133 FERC ¶ 61,026 at P 15.

3. In August and September 2020, and again in June 2021 and September 2022, the Western United States experienced extreme heat, with temperatures significantly above normal. These heat events significantly affected the demand for and supply of electricity throughout the Western Interconnection. Each extreme heat event culminated in spot market energy transactions that exceeded the \$1,000/MWh WECC soft price cap.

4. In June 2021, the Commission provided guidance for cost justification filings pending before the Commission and any prospective filings that include a justification for sales above the \$1,000/MWh WECC soft price cap.¹¹ The Commission explained that justifications for sales above the \$1,000/MWh WECC soft price cap may be based on, but are not limited to, demonstrations from at least one of three frameworks: (1) a production cost-based framework; (2) an opportunity cost-based framework; and (3) an index-based framework. The Commission required sellers to include detailed information to support each transaction above the WECC soft price cap, and stated that this support could include documentation such as affidavits, purchase confirmations, and invoices. In addition, the Commission stated that it did not intend to preclude sellers from seeking to justify their transactions under approaches different from the three identified, but that if a seller used a different approach, the seller must clearly demonstrate how the alternative approach justifies its transaction.¹²

B. Mercuria Cost Justification Filings and Justification Orders

5. On October 7, 2020, Mercuria filed its justification for spot market sales that exceeded the \$1,000/MWh WECC soft price cap during the summer months of 2020. After the Commission issued the Guidance Order, Mercuria submitted a supplemental filing on July 19, 2021, in which it identified 11 bilateral spot market sales that exceeded the soft price cap and asserted that above-cap prices were justified under the Commission's index-based framework.¹³ Mercuria also argued that the reported sales are protected by the *Mobile-Sierra* presumption of just and reasonable bilateral contract rates.¹⁴

¹¹ *ConocoPhillips Co.*, 175 FERC ¶ 61,226 (2021) (Guidance Order).

¹² *Id.* P 13.

¹³ Mercuria July 2021 Filing at 3-5; *see also* Justification Order, 179 FERC ¶ 61,033 at P 14.

¹⁴ Mercuria October 2020 Filing at 8-15; Mercuria July 2021 Filing at 2; *see also* Justification Order, 179 FERC ¶ 61,033 at PP 9-13.

6. Southern California Edison Company (SoCal Edison) submitted a protest, arguing that the *Mobile-Sierra* presumption does not excuse sellers from WECC soft price cap and cost justification obligations.¹⁵

7. In the Justification Order, the Commission agreed with Mercuria that the *Mobile-Sierra* presumption applies to the sales at issue, but also found that “the presumption does not prevent the Commission from enforcing the requirement that sales in excess of the WECC soft price cap must be justified and are subject to refund.”¹⁶ Thus, the Commission explained that the applicability of the *Mobile-Sierra* presumption “is not dispositive as to the question of whether Mercuria’s sales that exceeded the WECC soft price cap were justified, or whether the Commission can order refunds if it finds that the prices for those sales are not justified.”¹⁷ Instead, the Commission found that the WECC soft price cap is a “restriction or limit on Mercuria’s market-based rate authority established via Commission orders, as contemplated by Mercuria’s market-based rate tariff.”¹⁸ Therefore, the Commission reasoned that in reviewing the justification filings, the Commission “[wa]s not modifying the contracts, as would trigger application of the *Mobile-Sierra* presumption[,]” but was instead “enforcing requirements incorporated into the contracts via the Commission orders establishing the WECC soft price cap and provisions in Mercuria’s market-based rate tariff.”¹⁹

8. Because the Commission found that Mercuria’s argument regarding the *Mobile-Sierra* presumption was not dispositive as to the question of whether Mercuria’s sales that exceeded the WECC soft price cap were justified, the Commission evaluated Mercuria’s demonstration under the index-based justification. The Commission found that Mercuria had demonstrated the relevance of the Intercontinental Exchange (ICE) Palo Verde price index as representative of its market opportunities at the time of the

¹⁵ SoCal Edison October 2020 Protest at 7-8. We note that several parties filed protests to Mercuria’s cost justification filings that challenged aspects of the Commission’s index-based cost justification framework, raised similar issues again on rehearing, and appealed the Commission’s findings on those issues. Justification Order, 179 FERC ¶ 61,033 at PP 34-36; Justification Rehearing Order, 180 FERC ¶ 61,184 at PP 7, 18-22, 26-27, 30-31; July 2024 Opinion, 107 F.4th at 985, 992-94. We will not further address those challenges in this order because our determination here relies solely on the *Mobile-Sierra* analysis and does not implicate the index-based framework.

¹⁶ Justification Order, 179 FERC ¶ 61,033 at P 42.

¹⁷ *Id.*

¹⁸ *Id.* P 43.

¹⁹ *Id.* P 42.

sales. However, the Commission noted that Mercuria's justification for sales priced above the index price was limited to its contention that its sales were the product of prevailing market fundamentals in the Southwest.²⁰ Therefore, the Commission found that Mercuria had not justified amounts charged above the relevant index price for certain of its reported sales. Accordingly, the Commission directed Mercuria to refund amounts charged above the average index price for the sales at issue.²¹

9. Mercuria sought rehearing of the Justification Order, arguing, as relevant here, that ordering refunds violated the *Mobile-Sierra* doctrine. The Commission sustained its *Mobile-Sierra* determination.²² A group of sellers then appealed to the D.C. Circuit, arguing, among other things, that the Commission erred by failing to undertake a *Mobile-Sierra* analysis prior to ordering refunds.

C. July 2024 Opinion

10. In the July 2024 Opinion, the D.C. Circuit agreed with sellers that the Commission was required to conduct a *Mobile-Sierra* public interest analysis prior to ordering refunds. Therefore, the court vacated the challenged orders and remanded those orders back to the Commission for further proceedings.²³

11. The court rejected the Commission's assertion that ordering refunds was permissible because the WECC soft price cap is part of the sellers' filed rates pursuant to each seller's market-based rate tariff. The court held that this line of argument fails because "nothing in the [October 2002 Order] established that the *Mobile-Sierra* doctrine would not apply to the Commission's review of any above-cap rates. As such, the [October 2002 Order] left intact the Commission's burden of overcoming the presumption that 'a freely negotiated wholesale-energy contract meets the just and reasonable requirement imposed by law.'"²⁴ The court noted 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*

²⁰ *Id.* P 50.

²¹ *Id.*

²² Justification Rehearing Order, 180 FERC ¶ 61,184 at PP 10-17.

²³ July 2024 Opinion, 107 F.4th at 985.

²⁴ *Id.* at 991 (quoting *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527, 530 (2008) (*Morgan Stanley*)).

presumption should not apply at all,”²⁵ and held that the Commission made neither determination here.

II. Discussion

12. Consistent with the holding in the July 2024 Opinion that the Commission must undertake a *Mobile-Sierra* analysis before it can order refunds for bilateral spot market energy sales that exceed the WECC soft price cap, we have reviewed Mercuria’s 2020 and 2021 cost justification filings and find that no refunds are required. We also find that Mercuria is entitled to recoupment of the refunded amounts, with interest calculated pursuant to the methodology contained in 18 C.F.R. § 35.19a (2025), as discussed below.

13. The *Mobile-Sierra* presumption is an application of the FPA sections 205 and 206 just and reasonable standard to bilateral contract rates.²⁶ The *Mobile-Sierra* presumption can be avoided where the considerations underlying it are not present, including “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,”²⁷ or “if the ‘dysfunctional’ market conditions under which the contract was formed were caused by illegal action of one of the parties”²⁸ In cases where the *Mobile-Sierra* presumption is found to attach to contract rates (i.e., *Mobile-Sierra* is not avoided), it can be overcome if “[t]he contract rate . . . seriously harm[s] the public interest.”²⁹

14. Applying these principles to Mercuria’s reported sales, we find no basis for directing Mercuria to pay refunds. The refunds at issue here are related to nine sales at the Palo Verde trading hub that included premiums above the Palo Verde index price.³⁰ Mercuria argued that these premiums were justified as the product of prevailing market

²⁵ *Id.* at 991-92 (internal quotes omitted).

²⁶ *Morgan Stanley*, 554 U.S. at 535.

²⁷ *Id.* at 547.

²⁸ *Id.*

²⁹ *Id.* at 548. The Commission has previously evaluated whether the *Mobile-Sierra* presumption was avoided or overcome in relation to WECC bilateral spot market sales during the Western Energy Crisis. *Puget Sound Energy, Inc.*, Opinion No. 537, 151 FERC ¶ 61,173, *reh’g denied*, Opinion No. 537-A, 153 FERC ¶ 61,386 (2015).

³⁰ The Commission did not require refunds for sales at or below the relevant index price. Justification Order, 179 FERC ¶ 61,033 at P 51.

fundamentals in the Southwest during the relevant time period.³¹ In the Justification Order, the Commission directed Mercuria to pay refunds for those sales based on its finding that Mercuria had not provided adequate justification for amounts charged above the index price.³² In other words, the Commission's finding of refund liability was based solely on Mercuria's failure to satisfy the requirements of the Commission's index-based justification framework. As such, the Commission's prior refund directive does not constitute a finding that the rates in the reported contracts are so high as to harm the public interest. Moreover, although SoCal Edison offered generalized assertions that, as a matter of principle, *Mobile-Sierra* should not excuse sellers from justifying sales that exceeded the WECC soft price cap, no party argued that *Mobile-Sierra* should be avoided or overcome for any of Mercuria's specific sales. Therefore, based on the existing record, there is no support for a finding that any of the contracts at issue were the result of unfair dealing at the contract formation stage. As such, we find that *Mobile-Sierra* is not avoided. Likewise, we find that *Mobile-Sierra* is not overcome because nothing in the record supports a finding that the contracts at issue imposed a burden that seriously harms the public interest.

15. Based on our *Mobile-Sierra* public interest analysis of the sales reported in Mercuria's 2020 and 2021 cost justification filings, we find that the Commission erred by directing Mercuria to pay refunds for certain sales that exceeded the WECC soft price cap. In instances where a purchaser improperly receives a refund, FPA section 309 permits the Commission to order recoupment, even from a non-jurisdictional entity.³³ Accordingly, pursuant to our authority under FPA section 309, we direct the recipients of refunds from Mercuria for these sales to provide recoupment to Mercuria for such amounts within 30 days of the date of this order. We further direct refund Mercuria to file a refund report within 30 calendar days of receipt of the recoupment.

The Commission orders:

(A) The Commission's refund directive in the Justification Order is hereby reversed, as discussed in the body of this order.

(B) Refund recipients are hereby directed to provide recoupment to Mercuria within 30 days of the date of this order, with interest calculated pursuant to the methodology contained in 18 C.F.R. § 35.19a (2025), as discussed in the body of this order.

³¹ Mercuria October 2020 Filing at 3-8; Mercuria July 2021 Filing at 2, 5.

³² Justification Order, 179 FERC ¶ 61,033 at P 50.

³³ *TNA Merchant Projects*, 857 F.3d at 359.

(C) Mercuria is hereby directed to file a refund report within 30 days of receipt of the recoupment, as discussed in the body of this order.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.