

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

Powerex Corp.,)	
)	
Complainant,)	
)	
v.)	Docket No. EL14-59-000
)	
California Independent System)	
Operator Corporation,)	
)	
Respondent)	

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR’S
ANSWER TO COMPLAINT**

The California Independent System Operator Corporation (“CAISO”) hereby submits its answer to the complaint (“Complaint”) filed in this proceeding by Powerex Corp. (“Powerex”).¹

I. Introduction

Powerex’s Complaint concerns imbalance energy charges that Powerex incurred when it did not deliver energy in real-time consistent with its day-ahead energy schedule due to an outage of the Pacific DC Intertie. Powerex asks the Commission to direct the CAISO to hold it harmless under section 14.1 of the CAISO tariff on the theory that this outage—and Powerex’s resulting failure to deliver energy—were caused by an “uncontrollable force,” as the term is defined under the CAISO tariff provision on force majeure. Powerex also

¹ The CAISO submits this filing pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213 (2010), and the Commission’s June 2, 2014 Notice in this proceeding.

requests that the Commission direct the CAISO to complete a stakeholder process that the CAISO has previously committed to undertake regarding the tariff treatment of system emergencies and force majeure. The Commission should deny the complaint. Contrary to Powerex's arguments, section 14.1 does not excuse a seller from its financial obligation to pay for imbalance energy when a transmission line derate prevents the seller from delivering energy that it has scheduled day-ahead. Further, Powerex's request regarding the stakeholder process is moot, because the CAISO has already revived that process.

Powerex's reliance on section 14.1 is misplaced. Section 14.1 provides that neither the CAISO nor a market participant will be considered in default of a tariff obligation if prevented from fulfilling the obligation due to an uncontrollable force. The CAISO tariff provides that the day-ahead market results are financially binding. A failure to deliver energy scheduled in the day-ahead market is not a tariff violation. In other words, it does not constitute nonperformance of a tariff "obligation" as that term is used in section 14.1. To the extent a resource delivers less than the amount scheduled in the day-ahead market, the scheduling coordinator must pay for an amount of energy equal to the shortfall at the uninstructed real-time imbalance energy price.

The interpretation of section 14.1 advocated by Powerex, under which a scheduling coordinator would be forgiven its imbalance energy payment obligation if prevented from delivering day-ahead energy due to a line derate, would render the CAISO market structure unworkable. Line derates are not

uncommon, and if such derates required forgiveness of imbalance energy payment obligations, the CAISO would be constantly resettling its markets. Powerex's interpretation would also shift the risk of higher real-time energy costs to load, which would be no more capable of controlling the event that caused the outage than would sellers.

Instead, the CAISO tariff creates a financial obligation associated with day-ahead schedules. The outage of the Pacific DC Intertie did not prevent Powerex from fulfilling that payment obligation, and section 14.1 is inapplicable. Powerex's request for relief from its financial obligation should thus be denied.

In addition, Powerex's request that the Commission direct CAISO to undertake a stakeholder process should be dismissed as moot. The CAISO recently reinstated its stakeholder process encompassing force majeure, prior to Powerex filing its Complaint.

II. Background

The CAISO does not disagree with Powerex's general statement of the events that gave rise to this dispute. Powerex provides an extensive background, but only a few of the facts are relevant to the issues presented. Briefly, Powerex received a financially binding day-ahead schedule for hours ending 17 and 18 on August 18 at a scheduling point at the Nevada-Oregon Border that is commonly called NOB. This scheduling point is, as Powerex notes, a notional location in the middle of the Pacific DC Intertie. A wildfire (the Spring Peak fire) caused the Los Angeles Department of Water and Power—the Path Operator for the Pacific DC Intertie – to take the Pacific DC Intertie out of service for those two hours on August 18, which in turn prevented Powerex

from delivering the energy in real-time.² As a result, the CAISO assessed uninstructed imbalance energy charges to Powerex for the missed deliveries at NOB in those two hours pursuant to the pricing rules set forth in section 11.5.2 of the tariff.³

Powerex disputed CAISO's assessment of these charges, asserting that the circumstances constituted an uncontrollable force under the terms of the CAISO tariff and that Powerex should therefore be held harmless for uninstructed imbalance energy charges under section 14.1 of the CAISO tariff. The CAISO denied the dispute on the basis that section 14.1 was not applicable.⁴

III. Answer

Powerex offers two legal theories in support of its Complaint, one based on a contention that section 14.1 of the CAISO's tariff excuses its obligation to pay for the uninstructed imbalance energy and a second based on the assertion that Powerex has been the victim of discriminatory conduct. Neither theory has merit.

² See Complaint, Exhibits A, D, K-L. Because the CAISO is not the path operator, the CAISO has no direct evidence that this was the cause of the outage, but assumes so for the purpose of this response.

³ Complaint at 7-8. (Although the pages of the Complaint are unnumbered, the ISO uses page number references based on what the page numbers would be if numbering had been used.)

⁴ *Id.* at 8-9.

A. Powerex’s Inability to Deliver Its Day-Ahead Energy Does Not Come within the Scope of Section 14.1 of the CAISO Tariff.

Powerex contends that it should not be responsible for imbalance energy charges arising from its day-ahead schedules because it was unable to deliver in real-time at NOB due to an uncontrollable force, specifically the Spring Peak fire, which apparently caused an outage of the Pacific DC Intertie operated by the Los Angeles Department of Water and Power. According to Powerex, because the fire was an event beyond its control, Powerex should be relieved of the obligation to pay imbalance energy charges pursuant to section 14.1.⁵

Powerex’s reliance on section 14.1 is misplaced. Section 14.1 provides:

Neither the CAISO nor a Market Participant will be considered in default of an obligation under this CAISO Tariff if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force.

The phrase “prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force” means that a party seeking relief under this provision must be able to demonstrate that the event that constitutes the “Uncontrollable Force” actually “prevented” the party from being able to perform a specific “obligation under the CAISO tariff.” Powerex cannot meet this requirement.

1. The Failure to Deliver Day-Ahead Energy Is Not a Failure to Perform an Obligation Under the CAISO Tariff.

Powerex argues that section 14.1 excuses it from paying for uninstructed imbalance energy to replace energy it could not deliver due to an uncontrollable force. This argument fails because the tariff obligation that Powerex seeks to

⁵ Complaint at 30.

avoid is a payment obligation, not the delivery of energy. The outage of the Pacific DC Intertie did not prevent Powerex from meeting its payment obligation.

In various sections, the CAISO tariff establishes actual performance obligations, such as the obligation of a resource subject to a reliability must-run contract or the obligation of a resource to comply with an exceptional dispatch or operating order.⁶ Much of the CAISO tariff, however, is devoted not to establishing binding physical performance obligations, but rather to establishing incentives to make economic decisions and assume related risks based on the standard financial settlement rules in the tariff. The imbalance energy charges at issue here fall within the latter category and thus are not physical performance obligations within the meaning of section 14.1. As the Commission noted in rejecting suggestions that the CAISO should include an uninstructed deviation penalty applicable to the day-ahead market, “the real-time energy market coupled with the financially binding day-ahead market provides suppliers with sufficient economic incentives to perform in accordance with their day-ahead schedule and in accordance with real-time dispatch instructions from the CAISO.”⁷

Thus, section 11.2 of the tariff specifies that day-ahead schedules and awards are financially binding. Although Powerex must submit bids in good

⁶ See generally CAISO tariff section 41 and 34.9.

⁷ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61180 at P 24 (2008).

faith,⁸ there is no “obligation under this CAISO Tariff” that a scheduling coordinator physically deliver the energy reflected in its day-ahead schedule. This means that, with regard to its day-ahead schedule, Powerex’s tariff obligation is to pay for uninstructed imbalance energy to the extent it does not deliver energy scheduled in the day-ahead market. This payment is the “obligation” that Powerex is now seeking to avoid. The Spring Peak fire did not in any way prevent Powerex from complying with this financial commitment, which means that section 14.1 is not applicable.

Imbalance energy charges arising from a deviation from a day-ahead schedule are simply a consequence of market participation rather than a result of a failure to meet a physical performance obligation. Administrative Law Judge Peter Young made an analogous distinction in a different context. The CAISO proposed that when it paid minimum load cost compensation to must-offer resources that were committed for system-wide needs, it would allocate the costs based on uninstructed deviations. Powerex challenged this allocation on the basis that the deviations could be the result of line outages. Judge Young explained that, like the toll on a highway, system minimum load cost compensation allocated to uninstructed deviations is not a penalty; but rather a

⁸ See, e.g., CAISO tariff section 39.3 In addition, the CAISO monitors market behavior for implicit virtual bidding, which occurs when the scheduling coordinator determines it is more profitable to buy back its day-ahead position in the real-time market and not generate or deliver physical energy. The CAISO would consider implementing imbalance penalties if this were to become problematic.

use charge that recovers the proportionate cost the underlying deviation imposes on the transmission system.⁹

That Powerex's "obligation under the CAISO tariff" in connection with the day-ahead market is not an obligation to deliver, but rather an obligation to make a payment in the event of non-delivery¹⁰ is apparent when one considers the remedies available to the CAISO. The Scheduling Coordinator Agreement requires the scheduling coordinator to comply with the terms of the CAISO tariff. No one would suggest that a scheduling coordinator is in breach of the agreement when it fails to deliver day-ahead energy. It would be in breach, however, *i.e.*, in default of a tariff obligation, when it failed to make a payment that is due.

The continuity of the financial obligation to pay is an important part of the operation of energy markets, and section 14.1 should not be interpreted to abrogate that commitment where, as here, nothing has interfered with Powerex's ability to make the payment. Allowing market participants to avoid their financial obligation whenever a transmission outage may interfere with delivery of scheduled energy would disrupt the efficient operation of the market. The CAISO regularly encounters transmission line derates on the interties. Indeed, during the period between January 2013 and June 12, 2014, the CAISO identified 349 hours when a scheduling point on the interties was available at the close of the day-ahead market but was derated to zero prior to

⁹ *Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 63,107 at P 110 (2005).

¹⁰ In case of over-delivery, the resource will be paid the real-time imbalance energy prices.

the real-time operating hour.¹¹ Most of these would be considered “unavoidable” from the seller’s perspective. A seller, however, has never been released from its financial commitment to pay for imbalance energy because a simple transmission line derate prevented it from delivering energy in real time consistent with its Day-Ahead Market schedule or HASP Intertie Schedule.¹² Permitting sellers to challenge imbalance energy charges every time there is an “unavoidable” derate or outage would cause frequent disputes, thereby complicating the settlement process and embroiling the CAISO in a complicated factual inquiry involving facts and circumstances that are typically outside the CAISO’s knowledge and not easily obtained.

Powerex’s interpretation also would open the CAISO market up to potential gaming because there would be no incentive for market participants to invoke the uncontrollable forces provision in cases where the derate resulted in a curtailment that produced a favorable real-time settlement, and the CAISO would have no means to monitor each potential event beyond a market participant’s control, let alone any mechanism to invoke section 14.1 every time such an event occurs.

Under Powerex’s proposed interpretation of the CAISO tariff, the risk of high imbalance energy costs would inappropriately be shifted to load. Yet these

¹¹ See Exhibit A, Declaration of Mark A. Rothleder, at ¶¶ 4-5. Partial derates occur with even greater frequency. *Id.* at ¶ 6.

¹² As discussed below, the September 8, 2011, outage, on which Powerex relies as an example, is not comparable.

events would be no more avoidable by load than by the seller.¹³ Load is not in a position to weigh the financial risk of derates when scheduling day-ahead. Load should only be exposed to the real-time imbalance energy prices in the event it under-purchases in the day-ahead. Load that has not under-scheduled should not be penalized when a seller fails to deliver the energy reflected in its financially binding day-ahead schedule.

In light of these serious practical problems, FERC has not approved force majeure provisions for other independent system operators or regional transmission organizations that expressly exclude non-payment of financial commitments from the obligations that may be excused.¹⁴ The CAISO does not consider an explicit exclusion necessary because it can imagine few, if any, circumstances in which an uncontrollable force could actually prevent a party from being able to fulfill its payment obligation.

2. Imbalance Energy Charges Due to Line Derates and Outages Are Not Beyond the Control of a Market Participant.

Another similar way of analyzing Powerex's complaint is to consider whether the operative event is an uncontrollable force as the term is defined in the section 14.1 of the CAISO tariff:

Any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any

¹³ One of the main reasons that the CAISO filed its tariff waiver request to seek "hold harmless" relief for the September 8-9, 2011 San Diego power outage was that both load and resources tripped. Thus there was no energy that actually needed to be replaced.

¹⁴ See § I.5.1 of ISO-NE Market Rule 1; § 12.1 of the NYISO Market Administration and Control Area Services Tariff.

curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause *beyond the reasonable control of the CAISO or Market Participant* which could not be avoided through the exercise of Good Utility Practice.¹⁵

(Emphasis added.) Although a wildfire is beyond the control of a market participant, and thus qualifies as an uncontrollable force, the incurrence of imbalance energy charges due to a resulting transmission line outage is not. Absent a resource adequacy contract, no market participant is obligated under the ISO tariff to bid into the day-ahead market in the first instance. Whether to do so, and at what price, is a decision that a market participant must make after weighing the risks. Market participants have a wealth of information available to them regarding weather, system conditions, and other relevant information they can use to manage that risk. Market participants also know that under the CAISO tariff, day-ahead schedules are financially binding and they will incur imbalance energy charges if they do not fully deliver their scheduled energy. When they bid into the market, they can also include a risk premium that takes such matters into consideration.

In the context of fixed price contracts, the courts have established that “[a] force majeure clause is not intended to buffer a party against the normal risks of a contract. The normal risk of a fixed-price contract is that the market

¹⁵ CAISO tariff, Appendix A (Master Definition Supplement) (emphasis added).

price will change.”¹⁶ In a competitive energy market, the risk of contingencies that may interfere with delivery is an analogous market risk.

The Commission has addressed the risk that sellers face due to changing system circumstances on other occasions and has concluded that sellers should consider this risk in determining bids. For example, when the NYISO implemented uniform pricing rules, it eliminated import guarantees that it had previously paid to importers to address changes in locational marginal prices between commitment and delivery due to changed system conditions. In rejecting a protest, the Commission stated that the protestor “has not shown why importers should continue to receive all of the upside risk [of changed conditions] while . . . market participants bear the downside risk via the uplift payments. We find it reasonable to incorporate both import and curtailment risk in the importer's offer rather than assigning these costs to . . . load.”¹⁷

Similarly, in approving Southwest Power Pool’s Imbalance Energy Market, the Commission explained that “[d]uring a reserve activation event when the imbalance market is operational . . . [a] market seller will . . . pay for the emergency energy used to replace its imbalance energy when its resource experiences an outage. . . . Sellers can quantify this risk through incorporation of a risk premium in their imbalance market offers.”¹⁸ Although in that case the Commission focused on the seller’s responsibility for the reliability of its

¹⁶ *Ind. Pub. Serv. Co. v. Carbon County Coal Co.*, 799 F.2d 265, 275 (7th Cir.1986).

¹⁷ *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,115 at P 39 (2014).

¹⁸ *Sw. Power Pool*, 116 FERC ¶ 61,053 at PP 33-34 (2006).

generating unit, the underlying principle is the same: sellers can incorporate risks into their bidding behavior.

A force-majeure clause is “a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled.”¹⁹

A derate or an outage at an intertie is not such an event, regardless of its cause.

3. The Commission’s 2008 Decision on the CAISO’s Market Design, on Which Powerex Relies, Compels the Conclusion that Section 14.1 Is Inapplicable Here.

Finally, the interpretation Powerex advances is contradicted by the Commission precedent upon which Powerex itself relies. In its separate argument regarding discrimination (discussed below), Powerex cites the CAISO’s 2008 amendment adding section 11.31²⁰ to its pending new market design, which established a ten percent volumetric monthly exemption from the hour-ahead scheduling process (“HASP”) decline charges for instances where a scheduling coordinator declines to accept a binding HASP intertie schedule.²¹ A number of parties had opposed the automatic application of the HASP decline

¹⁹ Black’s Law Dictionary, 718 (9th ed.2009).

²⁰ Section 11.31 was recently amended to incorporate changes as part of the ISO’s Order 764 compliance.

²¹ Complaint at 12-13, citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,097 at P 27 (2008) and the CAISO’s filing in Docket No. ER08-628-000. Suppliers have an opportunity to decline HASP awards. At the time of the amendment, suppliers that declined the HASP awards had no financial consequences, as only accepted HASP intertie awards (HASP intertie-schedules) were financially binding. The purpose of the decline charge was to impose a financial consequence on market participants to create an incentive to accept HASP intertie awards.

charge and recommended that it not apply when the reason related to a cause that the seller could not control, such as *force majeure* events, including generator outages or transmission curtailments.²² The CAISO asked the Commission to adopt the volumetric threshold instead because “it would be impossible to evaluate the circumstances of numerous individual declines.”²³

The Commission approved the threshold noting that the “CAISO’s proposed 10 percent threshold will appropriately accommodate bid declines that are beyond the scheduling coordinator’s control, such as curtailments by reliability authorities, derates of transmission lines, or generation outages.”²⁴ If section 14.1 had already protected sellers from incurring costs due to such transmission derates, then there would have been no need for the amendment in the first place because those costs would already have been excused. The amendment—and the Commission’s stated rationale for approving it—makes sense only if section 14.1 is *not* applicable to a failure to deliver energy due to transmission derates.

B. Powerex’s Contentions of Discriminatory Behavior Are Unfounded.

Powerex contends that the CAISO’s 2011 request for tariff waiver as the result of the blackout in southern California on September 8-9, 2011, and its tariff amendment in 2008 that established a safe harbor for declining HASP intertie awards, are consistent with Powerex’s conclusion that charges for

²² 123 FERC ¶ 61,097 at P 20.

²³ 123 FERC ¶ 61,097 at P 20.

²⁴ *Id.* at P 27.

imbalance energy are unjust when applied to market participants who were unable to deliver power due to events outside their control.²⁵ Powerex thus argues that the CAISO's failure to apply section 14.1 to Powerex's inability to deliver energy or, alternatively, to seek to hold Powerex harmless, is unduly discriminatory. There is no legal or factual basis for these arguments.

1. The September 8, 2011 Events Do Not Provide Precedent for Exempting Powerex from Imbalance Energy Charges.

Powerex asserts that the CAISO's refusal to exempt Powerex from imbalance energy charges is inconsistent with its request that the Commission authorize it to hold market participants harmless following the widespread southwest power outage in September, 2011. Powerex asserts that, having afforded relief to one set of market participants, the CAISO may not rely on its subsequent failure to complete a stakeholder process to clarify the tariff provisions as ground for applying such charges in a discriminatory manner by selectively exempting sellers from charges when it deems it appropriate.²⁶

Powerex conflates a number of issues. As an initial matter, the CAISO did not "exempt" any market participants from charges based on the 2011 events; the *Commission* did.²⁷ The CAISO asked the Commission to determine *whether* section 14.1 provided such relief and, if it determined that section 14.1

²⁵ Complaint at 23, 25.

²⁶ *Id.* at 23-24.

²⁷ *Order Granting Petition for Waiver of Tariff Provisions*, 139 FERC ¶ 61,207 at P 64 (2012) ("We need not find whether the system outage constitutes an Uncontrollable Force because, as discussed below, we find there is good cause to grant CAISO waiver of section 11.5.2 of its tariff.")

was not applicable, to waive the applicable uninstructed imbalance energy charges under section 11.5.2, which is exactly what the Commission did.²⁸ With regard to the first point, while the CAISO argued that section 14.1 could be applied in the specific context of the September 11 event, it also recognized that the provision was not entirely clear in that regard.²⁹ In any event, the Commission declined to interpret the tariff, so whether section 14.1 was applicable remains undetermined and the Commission's order provides no supporting precedent for Powerex's argument.³⁰

Furthermore, the events of September 8, 2011, and the outage of the Pacific DC intertie are not comparable. The September 8, 2011 event involved a massive failure of the entire southwest grid. It did not just interfere with the delivery of energy; rather, 2.78 million end-use customers lost service, representing approximately 7,900 MW of load.³¹ Not only was there no path to deliver the scheduled energy, there was no load to which to deliver the energy. Thus, there was no need to procure replacement real-time energy for most, if not all, of the energy that had been scheduled in the day-ahead but not delivered. The hold-harmless principle in the context of the September 8 event also applied both to supply and to load. Moreover, the disruption caused a systemic failure of the market to produce valid real-time prices, thus necessitating extraordinary intervention by the CAISO to establish in real time a

²⁸ *Id.* at P 53.

²⁹ *Id.* at P 55.

³⁰ *Id.* at P 64.

³¹ *Id.* at P 2.

system-wide administrative price. Unlike the discrete outage of a single intertie due to a fire, the events of September 8, 2011 were extraordinary and were not the type of circumstances that sellers should reasonably anticipate in evaluating economic risks. Further, because these events necessitated the establishment of an administrative real-time price, the concerns identified above about allowing section 14.1 to interfere with standard market settlement rules were not applicable in that particular context.

Undue discrimination under section 206 of the Federal Power Act requires the dissimilar treatment of similarly situated entities.³² A seller, such as Powerex, that is unable to deliver day-ahead energy in real time due to a not uncommon outage of an intertie due to fire is not similarly situated to sellers that were affected by the September 8, 2011 event. The CAISO's suggestion that section 14.1 could be applied to the September 8 event cannot compel the conclusion that it should apply to a not uncommon intertie outage because the two circumstances are quite different, and arguments that the CAISO made in the context of September 8 clearly cannot be determinative given that FERC did not give those arguments any operative effect even under extraordinary circumstances. To the extent that the CAISO's arguments regarding the September 8 events appear different, the difference can be attributed to an effort to address very different and difficult circumstances, including treatment of both loads and resources as fairly as possible under the truly extraordinary circumstances of the September 8 event that already required a tariff waiver.

³² See, e.g., *Ohio Power Co. v. FERC*, 744 F.2d 162, 165 n.3 (D.C.Cir.1984).

Second, there is no basis to conclude that the CAISO acted in an unduly discriminatory manner in seeking a tariff waiver with regard to the September 8, 2011 events but not with regard to Powerex's failure to deliver energy. As noted, the September 8 event resulted in the tripping of both loads and resources and involved a systemic failure that necessitated a suspension of normal market operations and the imposition of an administrative price in real time as the events were unfolding. In that extraordinary context, an after-the-fact waiver filing was necessary and appropriate as a means to ensure just and reasonable treatment of all parties. No such extraordinary circumstances existed in the case of the Pacific DC Intertie outage and thus it would have been inappropriate for the CAISO to make a waiver filing. Moreover, because intertie derates commonly occur it would be inappropriate and infeasible to trigger a waiver filing each time such an occurrence results in a financial loss to a given party. Indeed, over the years, there have been hundreds, if not thousands, of other transmission derates and outages on the interties that have resulted in sellers incurring imbalance charges due to the failure to deliver energy scheduled in the day-ahead. To the CAISO's knowledge, it has never forgiven these imbalance charges or requested that the Commission waive such charges. Consequently, there is no basis for Powerex's argument that the CAISO's failure to seek a waiver for Powerex's failure to deliver energy is unduly discriminatory.

Finally, Powerex's arguments in this regard, even if valid, would not justify its requested relief. The Commission has no power under section 206 of

the Federal Power Act to provide retroactive relief prior to the date of the filing of the complaint.³³ Although the Commission may provide retroactive relief under section 309 of the Federal Power Act, it can only do so in the case of a violation of the tariff or of a statute.³⁴ Thus, the only manner in which Powerex can obtain relief from the imbalance energy charges (other than by seeking a waiver) is by demonstrating that it is entitled to relief under section 14.1, which, as discussed above, it cannot.

2. The CAISO 2008 Tariff Filing Provides No Evidence of Undue Discrimination.

Powerex also cites the CAISO's 2008 filing providing a safe harbor from certain charges for declining HASP intertie awards as evidence that the CAISO's failure to hold Powerex harmless was unduly discriminatory.³⁵ This argument is self-contradictory. As discussed above, the fact that the CAISO tariff expressly provides a safe harbor from certain payments for failures to accept pre-dispatch awards of HASP intertie bids but not for imbalance energy charges arising from day-ahead schedules is evidence that the day-ahead awards are not entitled to be held harmless. A finding that the CAISO acted discriminatorily by following its tariff would be novel indeed.

Moreover, the CAISO's application of the safe harbor that Powerex identifies is completely unrelated to the financial obligation to pay for

³³ 18 U.S.C. § 824e (2012).

³⁴ See *People of the State of Cal. v. Powerex*, 135 FERC ¶ 61,178 at PP 73-76 (2011).

³⁵ Complaint at 24-25, citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,097 at P 27 (2008).

uninstructed deviations from financially binding day-ahead schedules. The specific charges that are the subject of the safe harbor in the context of HASP intertie bids concern charges for declining to accept financially binding HASP awards. If a scheduling coordinator accepts a HASP award it becomes financially binding and deviations are also settled at the real-time imbalance energy price. Prior to the implementation of the HASP decline charge, in the case of the HASP decline, no financially binding consequence ensued. The ISO amended the tariff to impose a charge due to the volume of transactions being declined and then added a safe harbor in recognition that some declines may be due to an unexpected outage or other legitimate business reason.³⁶

Because scheduling coordinators that accept and then deviate from their HASP intertie schedules actually incur real-time imbalance energy charges,³⁷ the treatment between the HASP and day-ahead market is identical to the charges that Powerex is seeking to reverse. In other words, there is no potential discrimination because the treatment for imbalance energy is actually the same in both contexts.

³⁶ See February 29, 2008 CAISO transmittal letter in docket no. ER08-628 at 1-2.

³⁷ HASP intertie schedules are financially binding. See *e.g.* Section 34.15.1(g) (“The hourly pre-dispatch . . . and the resulting HASP Intertie Schedules are financially binding and are settled pursuant to Section 11.4.”) Section 11.4 specifies that HASP Intertie Schedules are settled at the HASP Intertie LMP. Deviations from HASP intertie schedules are also settled at the uninstructed imbalance energy price. See version of ISO tariff in effect prior to May 1, 2014 implementation of the 15-minute market at: http://www.aiso.com/Documents/ConformedTariff-Apr1_2014.pdf.

C. The CAISO Has Already Reinstated Its Stakeholder Process Regarding System Emergencies and Force Majeure Events.

Powerex correctly notes that in its petition for a declaratory order regarding the September 8, 2011 events the CAISO committed to undertake a stakeholder process to revise the tariff to avoid confusion in the event of a similar emergency or market disruption in the future.³⁸ Thereafter, the CAISO commenced the Administrative Pricing Rules initiative, publishing an issue paper on July 25, 2012. Stakeholders filed comments shortly thereafter.³⁹ The CAISO subsequently deferred that stakeholder process to address other more pressing matters in 2013 and thus has not yet completed it.

Powerex contends that the CAISO's failure to complete the process results in unjust, unreasonable, and unduly discriminatory application of the CAISO's tariff provisions.⁴⁰ This contention has no merit because, as shown above, the status quo has not produced an unjust, unreasonable or discriminatory impact and is instead consistent with both the most reasonable interpretation of the current tariff language and the CAISO's prior actions.

In any event, Powerex's request is moot because the CAISO has of its own accord already re-commenced the stakeholder initiative. At the May 22,

³⁸ 139 FERC ¶ 61,207 at P 52.

³⁹ The location of this initiative on the CAISO's web page is available at the following link: <http://www.caiso.com/informed/Pages/StakeholderProcesses/AdministrativePricingRules.aspx>. Powerex submitted comments at the following link: <http://www.caiso.com/Documents/Powerex-Comments-AdministrativePricingRules-IssuePaper.pdf>. Notably, Powerex did not discuss the uncontrollable force issue in its comments.

⁴⁰ Complaint at 26.

2014 Market Performance Planning Forum, the CAISO announced that it was restarting this stakeholder initiative in June 2014 with a new name: The Pricing Enhancement initiative.⁴¹ The CAISO's Master Stakeholder Engagement Plan posted on June 2, 2014 confirms the June start date.⁴² On June 30, 2014, the CAISO plans to publish an issue paper and straw proposal that targets the November 2014 Board of Governors meeting for approval of any proposed policy changes.⁴³

The CAISO never intended to abandon the Administrative Pricing initiative and it has remained on the CAISO's stakeholder initiative web page since its original commencement. Accordingly, there is no need for the Commission to order any particular action with respect to those proceedings.

The Commission also should refrain from dictating the potential outcome of the stakeholder process, as Powerex requests.⁴⁴ All stakeholders, including Powerex, will have the opportunity to contribute to the development of policy changes in that process.

⁴¹ http://www.caiso.com/Documents/Agenda-Presentation_MarketPerformancePlanningForumMay22_2014.pdf. See slide 48. The initiative has been renamed. When launched, it was known as the "Administrative Pricing" initiative. The CAISO will be including additional proposed pricing changes and, thus, has renamed it the "Pricing Enhancement" initiative.

⁴² The Master Stakeholder Engagement Plan is available at the following link: http://www.caiso.com/Documents/MasterStakeholderEngagementPlan_610.pdf.

⁴³ The issue paper will be available at the link for this initiative provided in footnote 39.

⁴⁴ See Complaint at 26-27, 31-32.

IV. Service and Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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V. Conclusion

For the foregoing reasons, the Commission should deny the Complaint submitted in this proceeding.

Respectfully submitted,

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Dated: June 30, 2014

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Powerex Corp.,)	
)	
Complainant,)	
)	
v.)	Docket No. EL14-59-000
)	
California Independent System)	
Operator Corporation,)	
)	
Respondent)	

DECLARATION OF MARK ROTHLEDER

I, Mark Rothleder, do hereby declare and state:

1. My name is Mark Rothleder, and I am an employee of the California Independent System Operator Corporation (“CAISO”). My business address is 250 Outcropping Way, Folsom, CA 95630.
2. I currently serve as the CAISO’s Vice President, Market Quality & Renewable Integration. In that capacity, I supervise, among others, a team of engineers and analysts who focus on market development and analysis and who perform analytical work in connection with this function, which includes review of data regarding the operational status of the CAISO’s markets and systems. I am a registered Professional Electrical Engineer in the State of California

and hold a B.S. degree in Electrical Engineering and a Master's degree in Information Systems.

3. The purpose of my declaration is to provide information regarding the frequency with which derates occur on transmission facilities that are used as interties to schedule power into the CAISO's balancing authority area from an adjacent balancing authority area. More specifically, my declaration provides data regarding instances where the transfer capability of a transmission facility that is used for an intertie scheduling point is derated to zero during the period between the close of the CAISO's day-ahead market and the time when scheduled energy is to be dispatched in real-time. When a transmission facility that serves the intertie scheduling point is derated to zero in the real-time dispatch process, this means that the facility is entirely out of service and no energy can flow over the facility in the direction in which the limit is derated to zero MW..
4. To assess the frequency of this occurrence, I directed my staff to pull actual system data for the period of January 2013 to June 12, 2014 identifying the transfer capability available at each intertie scheduling point at the time of the close of the day-ahead market and in real-time. The data were sorted to identify every operating hour in which the transfer capability for the scheduling point was a positive value at the close of the day-ahead market for that operating hour but was later derated to zero by the time the operating hour actually occurred.

5. Based on a review of this data, I have determined that, during this period, there were 349 hours in which an intertie scheduling point was derated to zero between the close of the day-ahead market and real-time. This includes 74 hours when the “North of Border” or “NOB” scheduling point at issue in Powerex’s complaint was derated.

6. This analysis understates the frequency with which intertie derates occur because it does not include partial derates in which the transfer capability is reduced. As with derates to zero, partial derates can result in curtailments of day-ahead schedules in real time depending upon operating conditions. My analysis was limited, moreover, to derates that occur at intertie scheduling points because the Powerex complaint specifically involves such a scheduling point. The frequency of derates would, of course, be much higher if scheduling points internal to the CAISO’s balancing authority area were included.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief and that this declaration was executed on June 30, 2013 in Folsom, California.

/s/ Mark Rothleder

Mark Rothleder

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 30th day of June, 2014.

/s/ Michael E. Ward

Michael E., Ward
Alston & Bird LLP