

## Powerex Comments on CAISO's EIM Draft Final Tariff

Submitted by	Company	Date Submitted
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Powerex appreciates the changes that have been made by the California Independent System Operator (“CAISO”) in the January 16, 2014 Draft Final Tariff for the Energy Imbalance Market (“EIM”) to address various stakeholder concerns, including several of those expressed in the process to date by Powerex. Despite this progress, however, a number of significant issues remain unaddressed. Powerex urges the CAISO to make further edits to address these remaining concerns with the Draft Final Tariff prior to seeking the approval of the Federal Energy Regulatory Commission (“Commission”).

### 29.7(j)(d) Establishment of an Administrative Price

CAISO has added new proposed text that would provide it with the optionality to establish an Administrative Price in the Real-time Market in response to a disruption. The provision contains no detail as to how that Administrative Price will be determined, however, and this detail should be added. In other contexts when a disruption occurs, the locational marginal price (“LMP”) is set at the last valid LMP and the schedules are fixed at the last dispatch level. New awards that occur in these circumstances are often exceptional dispatches (that are made manually) that respect bids. It is unclear what process the CAISO intends to use in the EIM to establish an Administrative Price. This specificity is required. As CAISO is well aware, problems have arisen in the past with regard to lack of clarity in the process leading to the establishment of administrative prices. CAISO conceded that greater clarity would be beneficial. In light of this background, CAISO should not introduce similar problems into the EIM by proposing vague mechanisms sure to precipitate controversy if ever utilized. The Tariff should be revised clearly to explain how Administrative Prices will be established for EIM.

### 29.10(e) EIM Energy Imbalance with an External BAA

In addition to being just and reasonable, rates, terms and conditions of transmission service must be “non-discriminatory” in order to comply with the Federal Power Act. Against that backdrop, it is difficult to understand how different charges for transmission service in the FMM and the EIM can be justified. The same transmission lines are being used, and the same cost of providing the service is incurred, yet CAISO proposes

that one use will be compensated and the other use will not be compensated, leading to a classic discriminatory outcome. Moreover, the outcome is economically irrational, inefficient and detrimental to reliability as it would encourage shifting transactions to the temporal market in which costs to transact are lower, even if that market is closer to real time and leads to greater forward uncertainty as to the adequacy of power supply.

#### 29.17 and 29.20 Provisions Relating to Confidentiality of Information

CAISO has included text indicating that the provisions of Section 20 of its Tariff apply to participation of EIM Market Participants in the Real-time market. Section 20 generally imposes an obligation on CAISO not to release market participant information but instead to maintain its confidentiality vis-à-vis third parties. Section 20, is a provision of the CAISO tariff that was developed to be applied to the CAISO markets, and did not contemplate application to market participants that are EIM participants but not CAISO market participants. As such, it is troublesome to limit the protections in Section 29 to those set forth in Section 20.

It is important to recognize that CAISO staff will have obligations relating both to administering CAISO's markets and to administering the EIM. These interests could from time to time be in conflict with each other. In the context of the EIM, much of the information at CAISO's disposal will have to do with external transactions outside of the CAISO markets and is considered sensitive and confidential by its owners. Safeguards should be in place to ensure that CAISO staff is unable to utilize this information for any purpose OTHER than the EIM as such usage may result in harmful impacts to external entities. Information that is shared for reliability purposes and/or EIM purposes is provided to CAISO staff only for that limited purpose and restrictions that preclude that information from being used to meet other objectives of the CAISO in a unilateral manner are appropriate. Independence is a hallmark of FERC's jurisprudence regarding ISOs, and safeguards must be put in place to ensure that the EIM is not a real or perceived vehicle for inappropriate information to be expropriated for CAISO's use in other, California-centric, initiatives.

If information shared by EIM Entities is to be utilized by CAISO for non-EIM purposes, it should seek the agreement of external Transmission Providers and Balancing Authority Areas to do so. Such entities, prior to granting permission, must determine if such information sharing is consistent with confidentiality restrictions in place with their customers, and obtain such customers' consent as required, before granting CAISO this permission. In addition, any agreement relating to such information sharing should be filed with the Federal Energy Regulatory Commission.

## 29.22 Purchasing-Selling Entity

In order to ensure mutuality, CAISO assumed responsibility to become the centralized counterparty taking title to energy sold in CAISO's markets. By now indicating that CAISO is not a purchasing entity in this provision of the tariff, CAISO is raising a conflict: CAISO either takes title to the energy or it does not take title to the energy. It is unlikely upon judicial review that a reviewing court will permit CAISO to have it both ways. Powerex urges the CAISO to reconsider this provision in light of the commitment it made to serve as the centralized counterparty for transactions, and, as such, take title to energy and to consider the potential legal implications of this conflict.

## 29.26(b) Non-CAISO Facilities

This provision should be stricken. The CAISO Tariff is not the place to direct the charges that Transmission Providers outside the CAISO footprint will assess. Each Commission-jurisdictional Transmission Provider maintains its own Open Access Transmission Tariff and retains Federal Power Act jurisdiction to propose its own rates, terms and conditions of service. Just as other Transmission Providers cannot in their tariffs dictate charges to be imposed (or not to be imposed) by CAISO, CAISO cannot dictate the charges to be imposed by others. Moreover, each Transmission Provider has its own rate-making processes and requirements that must be met with regard to determining rates that will be charged.

## 29.32 Greenhouse Gas Regulation and EIM Bid Adders.

While CAISO has removed, in this iteration of the draft Tariff, the requirement to register with the California Air Resources Board ("CARB") and the California Environmental Protection Agency's Compliance Instrument Tracking System Service ("CITSS"), CAISO has added, as Section 29.32(a)(2), text to permit an adder for CARB greenhouse gas costs to be included in a bid. Section 29.32 as a whole raises quite a number of concerns.

In essence, under CAISO's proposal out-of-state generators and importers will be exposed to CARB regulation based on a California dispatch that is "deemed" to be an import, without regard for their intention or legal ability to participate in the Cap and Trade program. While CAISO does not require out-of-state generators to preregister under CITSS program, the legal consequences of a deemed import of a non-registrant generator or importer are not defined. The CAISO tariff simply sketches out a non-transparent and not fully-explained mechanism regarding "deemed" EIM imports, with after-the-fact notice to the generator or importer. There is no explanation provided as to how this mechanism will interact with CARB reporting requirements or Resource Shuffling regulations, or with FERC EQR reports. The CAISO must provide additional detail in the tariff as to how this "deemed" mechanism will operate, in order to provide opportunity for meaningful input and comment by affected market participants. The Tariff itself does not impose carbon liability on EIM market participants, although this section indicates that such costs of compliance will be assessed. The mechanism

by which this will occur is not specified, however. Nor are any details present in Section 29.32(e) on how CAISO will determine the portion of energy deemed to have been imported into California.

As an important rate, term and condition of wholesale electric service, this compliance cost assessment information should be contained in the Tariff. It is unclear if CAISO's intent is to include a description of these charges, along with various other key provisions pertaining to EIM service, in its proposed Business Practice Manual for the Energy Imbalance Market. However, the Commission has made it clear under its "rule of reason" that practices that significantly affect jurisdictional rates or terms and conditions of service should only be included in a Commission-accepted tariff rather than in business practices or manuals. Just a few of the volumes of decisions that have enforced this holding include *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,237 at PP 35-36 (2012) ("alternative methodology for calculating greenhouse gas allowance costs must be included in the tariff rather than in the Business Practice Manual") and *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,147 at P 58 (2009) (finding that consistent with the Commission's policy, as implemented through the rule of reason, a provision "that significantly affects rates, terms and conditions of service ... must be filed for Commission approval and made a part of the ... tariff.").

Powerex has concerns with the repeated references throughout the Tariff to material that will be contained in the Business Practice Manual for the EIM. Given the missing details in the Tariff in a variety of pertinent areas, it appears likely that there will be provisions in the Business Practice Manual for the EIM that significantly affect the rates, terms and conditions of service and must be a part of the tariff pursuant to this well-established precedent.

Further, Stakeholder discussion has taken place as to various important terms and conditions of EIM service that Powerex has not located in the draft Tariff. CAISO may be planning to include this information in its Business Practice Manual as well. However, Powerex urges CAISO to include the detail in its Tariff given the Commission's precedents in this regard. These types of provisions include, but are not limited to: (1) the manner for calculating the flexible ramping constraint requirement (Section 29.34(m)(3)); (2) how CAISO will review the EIM Resource Plan to verify that it meets the flexible ramping constraint capacity requirement (Section 29.34(m)(4)(A)); and (3) whether resources that are subject to interruption, or whose output is not controllable, are properly included within the validation for EIM base schedules being balanced with the demand forecast (Section 39.34(e)(3)).

In the stakeholder process, numerous market participants expressed an interest in participating in the EIM, but indicated reservations about being subjected to obligations per the CARB program. Indeed, certain entities that could be substantial participants in an EIM are unable statutorily to participate in a program that imposes state jurisdiction or state taxes, such as the CARB assessments impose. They suggested that the EIM allow a participant to designate that their interest was limited to dispatches to serve demand outside of California. CAISO has thus far failed to accommodate these

concerns, and has not articulated a valid reason for not doing so, to the likely detriment of participation in the EIM.<sup>1</sup>

CAISO should not be representing its own constituency in the context of its role as Market Operator for the EIM. Rather, CAISO should look to whether such participation is of benefit to the EIM and not dictate that participation must extend to sales to CAISO or not at all. Other EIM entities would benefit from robust participation in their balancing authority areas. Moreover, in the context of a *voluntary* market, participants in that market should have rights to indicate to whom they are willing to make sales (when such decisions affect their obligations) and not be shoe-horned into transacting in a market that will subject them to CARB's jurisdiction *involuntarily*.

Notably, CAISO finally has conceded through Tariff definitional changes that the EIM is not a "CAISO market." The change to permit opting out of importing into California should flow from CAISO's realization that participation by entities outside of CAISO in the EIM will provide benefits to other EIM Entities. An independent Market Operator would not deny benefits to third parties simply because the benefits do not inure to itself.

The effect of EIM Bid Adders on LMP discussed in Section 29.32(c) would benefit from further clarification. The text makes it sound as if the CARB bid adder will be included in LMPs for EIM Entity Balancing Authority Areas outside of California.

Finally, Subsections 29.32(d) and (e) may be inconsistent with each other. In the former, CAISO indicates that an SC will know when it receives its Dispatch Instruction if its bid is deemed to be imported into CAISO, while, in the latter, CAISO indicates that the Energy deemed to have been imported to the CAISO will be provided "as part of the Real-Time Market results publication." These seemingly inconsistent statements require reconciliation.

#### 29.34(e)(4)(C) and (D) EIM Operations

These sections both contain an error and must be reworded. For example, instead of "Reserves capacity of providing meeting the WECC requirements for regulating reserves, in MW up (applicable to resources only)", which is non-sensical, the text may be altered to state "Reserve capacity meeting the WECC requirements for regulating reserves, in incremental MW (applicable to resources only)." A similar change is required for (D) to make sense.

#### 29.39 Local Market Power Mitigation

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<sup>1</sup> One possible mechanism – the use of a very high EIM bid adder – is no longer practical as the latest draft tariff language struck Section 29.32(a)(4), which would have excluded the adder from being subject to local market power mitigation.

Powerex understands that concerns relating to this aspect of the proposed EIM have been raised from various sources, including from within the Market Surveillance Committee itself. Considering that the EIM market is totally voluntary in nature, it is untoward to apply local market power mitigation to force sellers to provide energy at a default price, given that the entity arguably would not have made the sale at the mitigated price in that instance and had every right not to bid in the voluntary market in the first place. Thus, in the context of a voluntary market like the EIM, market monitoring is appropriate *but market power mitigation is inappropriate*. If the Market Operator is displeased with the price that was bid by a prospective resource supplier, the Market Operator should opt not to dispatch the resource instead of forcing the resource to sell at a price that the resource determined was insufficient to prompt its voluntary sale.

Consider the example of an energy-limited resource such as hydro-electric generation. If a seller of hydro-electric generation determines that it is willing to make a sale to the EIM at \$50/MWh, but the EIM design contains LMPM measures, such a market construct could permit the Market Operator to unilaterally dispatch the resource, but mitigate the price to \$30/MWh.<sup>2</sup> Yet, in this example, the seller was clearly unwilling to sell its resource output to the EIM footprint (or the CAISO footprint) at that price level. It is critically important to recognize that only the seller has the ability to determine the price level at which it is willing to have its resource dispatched. Designing an EIM that fails to respect the seller's offer prices and quantities can be expected to result in uneconomic dispatches of the underlying resource. For example, the seller may have chosen to have sold its energy-limited resource output in another timeframe, or to an entirely separate market, were it to have known that the price paid in the EIM would be less than the value it required for its supply. Similarly, applying LMPM may also result in a seller having to refill its energy-limited resource at costs that exceed the mitigated price level. Application of such a mitigation construct that can expropriate supply at price levels determined by the market operator in this way should be expected to chill participation in the EIM.

#### 11.5.4.1.1 Real-Time Congestion Offset/Virtual Bid Adjustment

Powerex requires clarification with regards to this provision, including the mechanics of how it will work, the genesis for the language and the reasons CAISO believes this is necessary. To the best of Powerex's recollection, this provision was not contained in previous drafts nor subject to stakeholder discussion or Board approval. If, indeed, this provision was not vetted by the Board or stakeholders, Powerex objects to its inclusion

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<sup>2</sup> Section 29.39(d) would extend the existing rules for calculating Default Energy Bids to participants in the EIM. The current Default Energy Bids are based on (a) a negotiated rate; (b) the lowest 25% of non-mitigated LMPs in the past 90 days; or (c) verified fuel cost plus a variable O&M (which for hydro is \$2.50/MWh). None of these methods appear appropriate for use-limited resources outside of the CAISO footprint with a wide choice of alternative markets.

now and believes that a stakeholder process should be initiated prior to any new provision such as this being included.

In addition to the detailed comments provided above, Powerex has noted some minor typographical errors in the Tariff below:

<b>Section</b>	<b>Redlined Tariff Page #</b>	<b>Comment</b>
29.1(d)(5)(ii)	6	Add "to" after "respect".
29.4(c)(4)(C)	11	Lines 3-4: "transmission service provider" should be "Transmission Service Provider" (Global Edit)
29.7(i)(2)	17	Change "Location" to "Locational"
29.7(j)	17	"Disruption" was changed to "Interruption" inconsistently.
29.11(b)(2)(A)	22	Insert "to" between "according" and "Section"
29.11(d)(2)(A)	24	Insert "Entity" between "EIM" and "Scheduling"
29.22(b)	32	In line 2, insert "of" between "purposes" and "E-Tagging"
29.22(c)	32	In subsection header, replace "for" with "to"
29.34(m)(4)(C*)	40	Change (C) to (D) Use of term "RTD Dispatch" should be "RTD".
29.34(n)(1)(b)(iii)	42	Change "reserve" to "reserves"
29.34(n)(1)(b)(iv)	42	Because not all EIM participants necessarily will be in the same time zone, CAISO should consider clarifying the time zone applicable to all references to time of day.
Appendix A Section 3	58	Interchange Schedule definition: "between and EIM Entity" should be "between an EIM Entity"