

**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.)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) moves for leave to answer and answers the Motion for Leave to Answer and Answer (“Powerex Answer to Answer”) filed in this proceeding by Powerex Corp. (“Powerex”) on July 15, 2014.¹

Powerex does not respond to any of CAISO’s substantive arguments regarding the meaning of section 14.1 of the ISO tariff, the uncontrollable forces provision, which is the central issue that the Commission must resolve. Rather than meeting those arguments, Powerex simply characterizes as misleading or incorrect various statements in the CAISO’s answer to Powerex’s complaint. With one inconsequential exception, Powerex’s assertions in this regard are without merit on their face and do not require any further response. The CAISO did make

¹ The CAISO files this answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the CAISO tariff.

an error in describing how deviations from hour-ahead scheduling process (“HASP”) Inter-tie Schedules are settled and corrects that statement below. The correction, however, does not change the fact that the existence of the safe harbor, which exempts application of the penalty for declined HASP awards and under delivery of HASP schedules but only within a limited safe harbor, actually buttresses the CAISO’s interpretation of section 14.1 rather than the interpretation offered by Powerex.

Powerex also renews its request that the Commission direct the CAISO to complete its Pricing Enhancements stakeholder initiative, but now goes a step further by asking the Commission to require the CAISO to complete that stakeholder process by December 31, 2014. Although Powerex’s first request is moot because the CAISO has already committed to complete the stakeholder initiative, the CAISO has no objection to a Commission directive that it complete the process. The CAISO asks, however, that the Commission not set a deadline for the stakeholder process because doing so at this juncture would be premature and counterproductive.

I. Background

This proceeding concerns a complaint filed by Powerex regarding 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 on August 18, 2013. In the complaint, Powerex asked 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 that term is defined under the CAISO tariff provision on force majeure. Powerex also requested that the Commission direct the CAISO to complete a stakeholder process that the CAISO had previously committed to undertake regarding the tariff treatment of system emergencies and force majeure.

On June 30, 2014, the CAISO filed an answer stating that the Commission should deny Powerex’s complaint. The CAISO explained that, contrary to Powerex’s arguments, tariff 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. The CAISO also explained that Powerex’s request regarding the stakeholder process is moot, because the CAISO has already reinstated that process and plans to complete it.²

The Powerex Answer to Answer was then filed on July 15. In that filing, Powerex argues that the CAISO’s June 30 answer contains misleading statements about the reinstated stakeholder process and other matters discussed in the June 30 answer. Also, Powerex repeats its request that the Commission direct the CAISO to complete the stakeholder process, and now requests that the Commission direct the CAISO to complete the stakeholder process by December 31, 2014.

² The stakeholder process, which was formerly known as the Administrative Pricing Rules initiative, is now called the Pricing Enhancements initiative. Materials regarding that stakeholder initiative are available on the CAISO website.

II. Motion for Leave to Answer

The CAISO recognizes that Rule 213 of the Commission's Rules of Practice and Procedure preclude an answer to an answer unless authorized by the Commission.³ The Commission has, however, accepted answers that are otherwise prohibited if such answers clarify the issues in dispute⁴ or assist the Commission in its decision-making process.⁵ This answer will assist the Commission by correcting an error in the CAISO's initial answer and providing the CAISO's response to Powerex's request that the Commission set a deadline for the stakeholder process.

III. Answer

A. Powerex Mischaracterizes the CAISO's June 30 Answer, and in this Answer the CAISO Corrects the Sole Error in the June 30 Answer.

The overall theme of the Powerex Answer to Answer is that the CAISO's June 30 answer contains misleading statements.⁶ Powerex is incorrect. A careful reading of the CAISO's answer and Powerex's assertions reveals that, with one exception, Powerex has failed to identify anything inaccurate or misleading. With the one exception, the CAISO stands by its statements.

On further review, in response to Powerex's pleading, the CAISO has determined that it erred in stating that "[d]eviations from HASP intertie schedules

³ 18 C.F.R. § 385.213(a)(2).

⁴ See, e.g., *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284, at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73 FERC ¶ 61,334, at 61,929 (1995).

⁵ See, e.g., *El Paso Elec. Co.*, 72 FERC ¶ 61,292, at 62,256 (1995).

⁶ Powerex Answer to Answer at 2-14.

are also settled at the uninstructed imbalance energy price.”⁷ The version of the CAISO tariff that applied during the 2013 time period addressed in Powerex’s complaint provides that such deviations are settled at the HASP locational marginal price, which is different from the real-time uninstructed imbalance energy price.⁸

The CAISO regrets any confusion it may have caused through its mistaken description of the HASP settlement rule, but this error is of no consequence for addressing the proper meaning of section 14.1. As the CAISO explained in its answer, Powerex cannot credibly claim that the CAISO has engaged in unlawful discrimination by applying its HASP settlement rules in the manner expressly established in its tariff and not applying that rule in the context of the day ahead schedules at issue here, which all parties agree are not subject to the same “safe harbor” provision.

Powerex, moreover, altogether fails to address the central import of the safe harbor provision for HASP delivery charges. As CAISO demonstrated in its answer,⁸ the existence of this safe harbor supports the conclusion that section 14.1 does not apply to delivery failures caused by inter-tie derates because, if that were the case, then the safe harbor would have been entirely unnecessary and

⁷ June 30 answer at 20 n.37. Powerex notes this error in its Answer to Answer at 11-13.

⁸ The CAISO also agrees with Powerex that the HASP decline penalty in effect at the time applied to both declined HASP inter-tie awards as well as deviations from binding HASP Inter-tie Schedules and that the purpose of the penalty was to impose a cost on Scheduling Coordinators that decline or under-deliver. Although the tariff provides for a 10% monthly volumetric exemption, the penalty applies regardless of the reason for the decline or the under-delivery.

superfluous in the first place.⁹ Thus, regardless of the precise settlement rule for HASP delivery failures, the point remains that the existence of the HASP safe harbor supports the CAISO's interpretation of section 14.1 rather than the interpretation proffered by Powerex.

B. The Commission Should Reject Powerex's Request that the CAISO Be Directed to Complete the Pricing Enhancements Stakeholder Process by December 31, 2014.

Powerex again requests that the Commission direct the CAISO to complete the Pricing Enhancements stakeholder process that the CAISO previously committed to undertake. In addition, Powerex now requests that the Commission direct the CAISO to complete the stakeholder process by December 31, 2014.¹⁰

The CAISO continues to believe that Powerex's request for a directive to complete the Pricing Enhancements stakeholder process is moot because the CAISO is already committed to completing the stakeholder process and expressed that commitment independent of, and prior to, Powerex's complaint. Nevertheless, the CAISO would have no objection to the Commission's directing the CAISO to do so. That would merely be a directive that the CAISO complete what it has already committed to finish.

The CAISO does, however, request that the Commission refrain from a directive that the CAISO complete the stakeholder process by December 31, as Powerex requests. As Powerex correctly notes, the CAISO has only offered this

⁹ See CAISO Answer at 13-14.

¹⁰ Powerex Answer to Answer at 2-7, 15.

date as an estimated completion date.¹¹ That date is only part of a proposed schedule contained in the Pricing Enhancements Issue Paper and Straw Proposal the CAISO issued on July 1, 2014.¹²

Today, more than five months before December 31, it would not be reasonable for the CAISO to try to state definitively whether the stakeholder process can be completed by December 31. It is impossible to tell how the policy discussion among the CAISO and stakeholders will develop and what issues must be addressed. Thus, a December 31 deadline could force the premature termination of stakeholder consideration and the adoption of less-than-fully-vetted solutions.

Imposing an artificial deadline also would be unwise in light of the many competing proceedings that the CAISO must balance in connection with its stakeholder review process. Although the CAISO agrees that the administrative pricing issues are important, the CAISO has many important stakeholder initiatives ongoing at any given time. Absent extraordinary circumstances, the CAISO should retain the flexibility to base its decisions about how quickly to proceed on and conclude any given stakeholder proceeding on the circumstances specific to that proceeding and an overall prioritization of the many stakeholder initiatives that are pending at any given time. Although Powerex now seems to want this proceeding to assume the highest priority, this appears to be a new development

¹¹ Powerex Answer to Answer at 7 n.20.

¹² Pricing Enhancements Issue Paper and Straw Proposal at 4. This paper is available on the CAISO website at <http://www.caiso.com/informed/Pages/StakeholderProcesses/PricingEnhancements.aspx>.

inasmuch as Powerex has never expressed to the CAISO any sense of urgency regarding completion of this proceeding prior to the filing of its complaint.

Powerex's view on the relative priority of this proceeding, moreover, does not necessarily reflect the view of other stakeholders, who may not wish to have the needs of other initiatives subordinated to this one. Rather than weighing in on the urgency of this proceeding relative to others, the Commission should allow the CAISO to diligently work through these issues and present any revisions once they have been appropriately vetted.

IV. Conclusion

For the foregoing reasons, the Commission should deny Powerex's complaint and issue directives consistent with the discussion in this answer.

Respectfully submitted,

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Dated: July 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, 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 Washington, DC this 25th day of July, 2014.

/s/ Bradley R. Miliauskas

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