

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

California Independent System Operator
Corp.

Docket No. ER21-1790-000

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF POWEREX CORP.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 213, Powerex Corp. ("Powerex") submits the following answer¹ to the answer of the California Independent System Operator Corporation ("CAISO")² in the above-captioned proceeding concerning the CAISO's filing proposing changes to the priorities assigned to load, exports, and wheeling transactions in the CAISO markets.³

As described further herein, the CAISO Answer fails to provide any basis for concluding that the CAISO's proposal is just, reasonable, and not unduly

¹ Powerex acknowledges that the Commission's rules do not typically allow answers to answer. See 18 C.F.R. § 385.213(a)(2). However, the Commission has accepted such answers in the past when they have assisted the Commission in understanding the issues presented, provided additional information for the Commission's decision-making process, and helped ensure a complete and accurate record. See, e.g., *Equitrans, L.P.*, 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023 at P 16 (2010). Powerex requests leave to file this answer to CAISO's answer filed in this proceeding because it will meet these criteria.

² Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Comments, Docket No. ER21-1790-000 (filed June 2, 2021) ("CAISO Answer").

³ *Cal. Indep. Sys. Operator Corp.*, Tariff Amendment to Implement Market Enhancements for Summer 2021 – Load, Export, and Wheeling Priorities, Docket No. ER21-1790-000 (filed April 28, 2021).

discriminatory or preferential.

The Commission should not be misled by the CAISO Answer's attempt to portray this proceeding as a referendum on the concept of native load priority.⁴ The issue raised by the CAISO's filing is not whether transmission providers should have access to capacity on their systems to meet their native load obligations; Commission precedent clearly contemplates such access. But the Commission has also made clear that the Federal Power Act is not intended to permit load-serving entities ("LSE") "to take transmission service without limitations of any kind in order to serve their native load" or to excuse LSEs from complying "with reasonable requirements that are necessary to prevent undue discrimination and maintain a reliable transmission system."⁵ The issue in this proceeding is therefore whether the specific mechanism that CAISO has proposed in this case is consistent with the open access requirements and principles that the Commission set forth in Order Nos. 888 and 890. When CAISO's proposal is evaluated in light of these standards, it becomes clear that CAISO's proposal must be rejected.

The Commission also should not be misled by the CAISO Answer's claims that the proposal is necessary to "minimize the need to shed load *across the west*

⁴ CAISO Answer at 25-26 ("The protesters opposing the CAISO's wheeling priority proposal argue that CAISO customers should not receive any native load protections starting this summer, claiming such protections in a form compatible with the CAISO market design are contrary to open access.").

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 1493, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

during the critical summer 2021 period.”⁶ CAISO’s proposal is focused on reducing the risk of load shedding *exclusively in the CAISO balancing authority area* (“BAA”), and does so by allowing the CAISO to interrupt deliveries to serve external load when it determines that doing so is necessary to create additional transmission capacity to support deliveries to California. The result of CAISO’s proposal will be to dramatically *increase* the reliability risk of other BAAs—including the risk they will have no choice but to shed load themselves—due to the discriminatory curtailment of wheel-through schedules across the CAISO grid during critical hours.

I. ANSWER

A. The CAISO Answer Mischaracterizes Existing Native Load Priority

The CAISO Answer conspicuously fails to recognize a key feature of the existing CAISO market rules: that CAISO native load *already* has a priority equal to wheel-through transactions. More specifically, self-scheduled imports needed to serve demand in the CAISO BAA are already given equal priority to self-schedule wheel-through transactions in the CAISO’s market processes. Simply put, all California LSEs can already avail themselves of this priority by self-scheduling imports to meet self-scheduled demand in the day-ahead market; such imports *will not* have lower priority than wheel-through self-schedules, and the day-ahead awards to such imports *will not* be subject to involuntary curtailment in real-

⁶ CAISO Answer at 4 (Emphasis added).

time (except in the event of unexpected transmission de-rates or outages). Thus, under the existing framework, imports to serve native load already have high priority access to the CAISO grid. There simply is no basis for concluding that CAISO's filing is necessary in order to provide imports serving native load an opportunity to be scheduled on a similar basis to other transactions.

The reality is that CAISO's proposal is not about ensuring that day-ahead imports serving native load receive priority access to the grid *equivalent* to day-ahead wheel-through transactions. Rather, CAISO's proposal seeks to create a broad "super priority" for virtually all imports serving California load in each of its sequential markets. In addition, imports that do not participate in or are not successful in the integrated forward market ("IFM") would now be able to wait until real-time and then "step ahead" of wheel-through transactions that successfully competed in the IFM and received a day-ahead award. This could include imports that were not self-scheduled, that were not economic, or that did not clear the IFM due to California LSEs under-scheduling demand. In effect, CAISO's proposal would give CAISO the unprecedented authority to unwind the results of the IFM by curtailing wheel-through schedules awarded in the day-ahead market to create additional transmission capability that could then be used to support additional real-time imports into the CAISO BAA.

The CAISO Answer mischaracterizes day-ahead awards as "purportedly firm" in response to protesters' concerns that CAISO's proposal would allow it to rescind schedules awarded in the day-ahead market.⁷ But it is not protesters that

⁷ *Id.* at 65 (internal quotation marks omitted).

are attempting to redefine the nature of the rights awarded through the CAISO markets; it is the CAISO. Since its inception, CAISO has repeatedly recognized that IFM schedules constitute “new firm uses” of the CAISO grid.⁸ The CAISO’s proposal seeks to jettison the competitive market framework that has long been used to allocate access to the grid in favor of a framework that, during critical hours, would allow the CAISO to set aside the results of the market and reallocate transmission to support imports into the CAISO BAA—imports that, by definition, failed to successfully compete for transmission service through the IFM.

The CAISO Answer’s characterization of IFM awards as something less than firm is also contrary to the financially binding nature of IFM awards, which the CAISO does not propose to change. Under the CAISO’s proposal, the CAISO would reserve the right to involuntarily curtail or interrupt a day-ahead award, but the market participant that is curtailed would not be relieved of its day-ahead financial obligations; in fact, it will face additional real-time financial settlement charges for its “failure” to perform according to its day-ahead market award.

B. The CAISO Answer Fails to Fully Acknowledge—Much Less Justify—The Proposed Granting Of Preferential Transmission Access To All Imports Serving CAISO Load

The CAISO has repeatedly described its proposed amendments as “necessary to avoid wheeling through self-schedules ‘crowding out’ both *resource adequacy (“RA”) imports* using the interties and *RA capacity* from northern California generation that must flow north-to-south on Path 26 to serve load

⁸ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,180 at P 7 (2008); *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,260 at P 13 (2009).

elsewhere in California.”⁹ But the proposed amendments go much farther than CAISO’s statement suggests by granting preferential transmission access to *non-RA imports* serving CAISO load. The result would be to provide all imports with higher priority transmission access than standard wheel-through schedules, including in circumstances where the non-RA imports are offered less economically into the CAISO markets. The CAISO Answer recognizes that its proposal will have precisely this effect, noting that “the proposed tariff changes would result in economic imports bid anywhere below \$300/MWh having a higher scheduling priority than non-Priority Wheeling Through self-schedules.”¹⁰ The CAISO Answer offers two rationales in support of the sweeping preference it seeks for non-RA imports; neither of which have merit.

First, the CAISO Answer claims that “non-RA imports serve native load, which is entitled to protection under Order Nos 888 and 890.”¹¹ Under this reasoning, even spot market purchases from sellers across the west delivered either to CAISO LSEs or directly to the CAISO itself should receive preferential transmission access and have higher priority than otherwise identical spot market purchases wheeled through the CAISO grid to loads in the Southwest. But the CAISO Answer identifies no Commission precedent that gives native load such broad, universal priority to transmission access. In fact, the Commission has specifically rejected attempts by transmission providers to claim native load priority

⁹ CAISO Answer at 7 (emphasis added).

¹⁰ *Id.* at 44-45.

¹¹ *Id.* at 44.

in order to set aside transmission capacity to support delivery of energy procured in the spot market from as-available resources.¹²

Second, the CAISO Answer attempts to justify the proposed priority for non-RA imports by equating it to a capacity benefit margin (“CBM”). But CAISO’s reasoning misconstrues the nature and purpose of CBM. In particular, the CAISO Answer fails to acknowledge that the transmission capacity set aside as CBM is not intended to allow the transmission provider to make spot market purchases to serve native load. Instead, a transmission provider may only use CBM to facilitate imports when the BAA at issue is experiencing a declared Energy Emergency Alert 2 or higher *in response to a contingency event or other system disruptions*.¹³ The chronic supply procurement shortfalls in the CAISO BAA do not constitute a “contingency,” and CAISO’s proposal to prioritize the delivery of non-RA imports in order to make up for this procurement shortfall is in no way comparable to other transmission providers’ use of CBM.

C. CAISO’s Attempt To Distinguish FERC Precedent Respecting The Designation Of Network Resources Misses The Mark

CAISO’s Answer argues that the reliance of protesters on cases in which the Commission has rejected attempts by transmission providers to reserve inertie capacity absent a showing that it was necessary to support deliveries from

¹² See, e.g., *Aquila Corp. v. Entergy Services, Inc.*, 90 FERC ¶ 61,260 (2000) (finding transmission provider had violated open access requirements by reserving transmission “to purchase power whenever it was economical for it to do so”).

¹³ North American Electric Reliability Corp., Reliability Standards for the Bulk Electric Systems of North America, MOD-004-1, R10 (Updated May 13, 2021) (“The Load-Serving Entity or Balancing Authority shall request to import energy over firm Transfer Capability set aside as CBM only when experiencing a declared NERC Energy Emergency Alert (EEA) 2 or higher.”).

identified network resources is misplaced. According to CAISO, since the CAISO Tariff does not follow the *pro forma* open access transmission tariff (“OATT”), the Commission’s determinations in cases involving the designation of network resources are irrelevant. CAISO further adds that any attempt to analogize import RA contracts to designated network resources is inappropriate because the requirements for designating network resources are “distinct from resource adequacy requirements.”¹⁴

The CAISO Answer misses the point. To be clear, Powerex is *not* arguing that the CAISO is required to designate network resources in accordance with the *pro forma* OATT. But the fact that the Commission has required transmission providers to demonstrate that intertie capacity purportedly reserved to serve native load was necessary to support deliveries from discrete identified off-system network resources highlights that the ability to set aside capacity to serve native load is not unlimited. Instead, these cases highlight the Commission’s consistent commitment to ensuring that transmission providers do not set aside more transmission than is actually necessary to enable committed resources to serve native load. This includes rejecting arguments by transmission providers that they should be permitted to set aside capacity based solely on generalized claims about the need to serve native load or to facilitate spot purchases of energy from external markets.

While CAISO may not have adopted the *pro forma* OATT, the same considerations and principles that led the Commission to reject the broad claims

¹⁴ CAISO Answer at 30-31

of native load priority in cases involving the designation of network load merit the rejection of CAISO's proposal here. In this case, CAISO seeks a broad right to deny access to the CAISO grid based on generalized claims that doing so is necessary to meet reliability needs—and without making any attempt to demonstrate that its proposal is narrowly tailored to facilitate deliveries (i) from identified resources that have been committed to meet the needs of CAISO load, and (ii) supported by firm transmission service to the CAISO boundary. Instead, CAISO's proposal appears designed specifically to allow CAISO to free up external supply and external transmission capacity to facilitate additional spot market purchases from external markets to be imported into the CAISO BAA.

The CAISO Answer attempts to convince the Commission that its proposal is appropriately limited by focusing on the priority assigned to deliveries associated with import RA commercial supply contracts. Setting aside the fact that CAISO's preferential access proposal is not limited to import RA contracts, CAISO's arguments fail to acknowledge that existing import RA rules do not require the seller to identify any physical generation resources at all or to demonstrate that deliveries associated with the contract will be supported by firm transmission. In fact, it is well known that many import RA contracts are little more than a commercial supply contract with a marketer promising to deliver energy that it hopes to purchase day to day in the region's bilateral spot markets, with no knowledge as to the underlying generation. The mere existence of an import RA commercial supply contract, without more, is not sufficient to justify the broad right to preferentially allocate transmission capability that CAISO is claiming here.

D. CAISO's Answer Fails To Justify Curtailing Wheel-Through Transmission Service Prior To Receipt Of An Import Schedule

The CAISO Answer explains that its proposal “effectively grants a reservation priority to serve native load.”¹⁵ Even setting aside the flaws in CAISO’s reasoning for granting a higher “reservation priority to serve native load,” the CAISO’s proposed manner for implementing that “reservation priority” is also highly problematic.

Under the *pro forma* OATT—and in practice throughout transmission systems across the west—a schedule using a lower-priority reservation is not interrupted or displaced *until and unless* the transmission provider receives and implements a schedule, supported by an implemented e-Tag, that uses the higher-priority reservation. But under the CAISO proposal, the mere receipt of an *offer* of a real-time import needed to serve CAISO load is sufficient to prompt the CAISO to reduce or curtail wheel-through transactions that received a day-ahead market award.

Powerex is not aware of any transmission service provider in the west that takes such an aggressive approach to curtailing transmission service. A transmission customer with a low-priority service reservation can submit a delivery schedule, knowing it will not be displaced unless a customer with a higher-priority reservation *actually schedules deliveries on that reservation* by submitting an e-Tag with an identified generation source and a complete transmission delivery path to the sink, and that e-Tag reaches “implemented” status. An e-Tag that

¹⁵ *Id.* at 37.

reaches “implemented” status means that the source BA, the sink BA, and every transmission service provider on the delivery path has confirmed that the delivery schedule is valid from their perspective. Transmission providers in the west do not curtail service merely due to presence of a higher priority *reservation*, but only when they receive a valid and complete schedule using higher-priority service that requires displacing schedules utilizing lower-priority service. These precautions are critically important, as they ensure that a higher-priority reservation does not displace a lower-priority reservation only to subsequently discover that the higher-priority customer either (1) fails to actually schedule a delivery, rendering the curtailment unnecessary; or (2) has relied on acquiring supply and/or transmission service that had been committed to the transaction being displaced.¹⁶

The CAISO proposal, in contrast, would curtail wheel-through transactions that successfully competed for transmission service in the CAISO markets without requiring any of these key elements to be demonstrated. Such curtailments would effectively be made in order to support real-time imports “from generation to be named later” using “to-be-procured” external transmission service to the CAISO border.

The CAISO’s proposed preemptive curtailment of wheel-through schedules is also contrary to Commission precedent requiring that curtailment of transmission service on an overloaded path must be done on the basis of *scheduled quantities*, and not on the basis of reservations. The Commission explained that “we believe that pro-rating curtailments based on reservations would have the potential to

¹⁶ See discussion of “stranding” *infra* Section I.E.

impair reliability since the amount of capacity actually curtailed using this approach would not address actual power flows and, therefore, may be less than required to relieve the overloaded facility.”¹⁷ For the same reasons, the CAISO’s proposal to curtail wheel-through service based on awarding a “reservation” to imports serving native load can be expected to result in transmission capability that is not actually utilized (*i.e.*, because CAISO transmission capability is re-allocated from wheel-through schedules to support import *offers* that do not ultimately result in an implemented e-Tag and delivered energy).

E. The CAISO Answer Misunderstands The Concerns Regarding “Stranding” Of Contracted Supply And Forward Procured Transmission Service

Powerex, as well as other protesters, explained how forward supply and external firm transmission service arrangements that have been secured on a forward basis to meet the needs of Southwest LSEs will be rendered undeliverable or “stranded” if transmission service on the CAISO grid is preferentially awarded to imports serving CAISO load. The CAISO Answer frames these concerns as based on “the erroneous assumption that because entities in BAAs external to the CAISO have secured firm transmission to and/or from the border with the CAISO system, they are entitled to a higher scheduling priority on the CAISO’s system relative to transactions having non-firm service on external systems.”¹⁸ This is inaccurate, as Powerex does not claim that priority of service on the CAISO grid

¹⁷ Order No. 890 at P 1629.

¹⁸ CAISO Answer at 41.

should be determined by transmission service priority on external transmission systems .

The key concern about “stranding” is not that the CAISO will curtail wheel-through schedules in order to grant transmission service “to [import] transactions having non-firm service on external systems.”¹⁹ Rather, as discussed above, the concern is that the CAISO proposal will preemptively curtail wheel-through schedules *even when no viable alternative import has been identified at all*. It is only *after* the wheel-through schedule has been curtailed—and hence after the associated external supply and external transmission service that were secured by the wheel-through customer have consequently been “released”—that the import offer submitted to the CAISO *might* be fulfilled. This is particularly likely given that much of the available Northwest surplus supply and external transmission service to the CAISO boundary has already been contracted for by LSEs outside the CAISO.

The CAISO characterizes its proposal as necessary to manage congestion on its system, but the proposal would go far beyond this purpose. Congestion *on the CAISO system* can only be considered to exist when the quantity of delivery schedules with (1) committed external generation and (2) reserved external transmission service to the CAISO boundary exceeds the CAISO’s transfer capability on the relevant transmission path. But the CAISO proposes to curtail wheel-through schedules without first establishing that the alternative import schedules have independently arranged for *additional* supply and *additional*

¹⁹ *Id.*

external transmission service to the CAISO boundary. The CAISO may therefore *perceive* there is congestion on its system when, in fact, some of the import customers seeking CAISO transmission service to serve CAISO load have not yet secured generation and/or have not yet secured external transmission service. In this case, there is no congestion on the CAISO system at all, since total deliveries to the CAISO boundary are constrained by limitations on external supply and/or by limitations on external transmission service to the CAISO boundary. The CAISO's proposal to curtail wheel-through schedules is therefore unnecessary to relieve congestion on the CAISO system (which is not present) but will instead preemptively "free up" the external generation and external transmission service that had been secured to support the wheel-through schedules serving load in Southwest BAAs, making it available to support real-time imports serving load in the CAISO BAA instead.

If the Commission were to accept the CAISO proposal and its associated outcomes, the implication for proper functioning of competitive forward wholesale markets and for the OATT framework that is used throughout the rest of the west would be profound. *In the near term*, LSEs external to the CAISO BAA that made the deliberate and prudent choice to enter into forward contracts with suppliers for the output of identified surplus resources scheduled on firm transmission service to the CAISO boundary will find those forward contracts unraveled in the critical hours that matter most—with the supply and external firm transmission service they procured on a forward basis used instead to serve the loads of LSEs in the CAISO BAA that chose *not* to secure such supply or external firm transmission

service. *And going forward*, the Commission's acceptance of the CAISO's "interim" proposal would inject substantial uncertainty in western wholesale electricity and transmission markets, which will experience the impact of CAISO deciding the allocation of not only transmission service on the CAISO grid, but also on external transmission systems by ensuring imports serving CAISO load are the schedules that flow in the critical hours that matter most. LSEs outside the CAISO BAA will recognize they can no longer rely on being able to compete for transmission service through the CAISO grid to ensure delivery of their contracted supply. Consequently, the value of investing in external firm transmission service to the CAISO boundary will be recognized as potentially irrelevant in determining what transactions are able to flow.

II. CONCLUSION

Powerex recognizes that the CAISO faces significant supply challenges this summer, and going forward. But these supply challenges do not provide a basis for abandoning open access principles in favor of a framework that would result in pervasive discrimination against wheel-through customers and shore up the reliability of the CAISO BAA by imperiling the reliability of neighboring BAAs. Instead, the Commission should issue an order that rejects CAISO's proposal,

without prejudice to CAISO filing a future near-term proposal that satisfies the Commission's requirements for open access.

Respectfully submitted,

/s/ Deanna E. King

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On Behalf of Powerex Corp.

June 18, 2021

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 18th day of June 2021.

/s/ Stephen J. Hug

Stephen J. Hug