

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

California Independent System                    )  
Operator Corporation                            ) Docket No. ER14-1386-001  
  )

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

The California Independent System Operator Corporation (“CAISO”) respectfully moves for leave to answer and answers the September 2, pleading of Powerex Corp. in this Docket (“Powerex Answer”).<sup>1</sup>

**I. MOTION FOR LEAVE TO ANSWER**

The Commission will accept an answer to an answer when it responds to newly raised arguments or provides information that assists the Commission in its decision-making process, including providing information that is helpful to the Commission’s understanding or disposition of issues. This answer responds to a new argument that Powerex raised for the first time in its September 2 Answer about the significance of section 11.29(b) of the CAISO’s tariff. This answer provides the Commission with clarifying information on this newly-raised issue that will fully inform its decision-making process. The CAISO thus respectfully requests that the Commission accept this answer.

---

<sup>1</sup> The CAISO submits 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 (2014).

## II. ANSWER TO POWEREX

In its September 2 Answer, Powerex extends its thread of argument that the CAISO should be required to take additional action beyond complying with the Commission's June 19 Order. In its June 19 Order conditionally approving the CAISO's Energy Imbalance Market, the Commission directed the CAISO to amend its tariff to state that it takes title to energy associated with EIM Transfers. The CAISO's compliance filing does precisely that.<sup>2</sup> In its comments on the compliance filing, Powerex contended that the Commission should nevertheless reject the CAISO's compliance filing because it does not specifically state where title to the energy passes to the CAISO. In its August 18, 2014 answer, the CAISO explained that section 11.29 of the CAISO's tariff provides that all transactions financially settled by the CAISO are deemed to occur within the State of California.<sup>3</sup> Powerex nonetheless continues to pursue this argument. Powerex's further argument is flawed because it goes beyond the scope of what the Commission required for the CAISO's compliance filing, and for at least two other reasons as well.

First, the essence of Powerex's argument is that the CAISO's tariff as filed on compliance with the June 19 Order would create an "unworkable" level of uncertainty about the location where title to energy changes hands.<sup>4</sup> Generally, these arguments fail to recognize the difference between the legal construct of taking title to electricity, on the one hand, and the actual physical flow of electrons on the other. The legal construct

---

<sup>2</sup> *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 at PP 169-71 (2014) ("June 19 Order").

<sup>3</sup> CAISO August 18, 2014 Answer at 3-4.

<sup>4</sup> Powerex Answer at 5.

does not attempt to trace the flow of electrons.<sup>5</sup> And it is the legal construct that controls in the implementation of the CAISO tariff. As a result, Powerex does not identify any actual negative consequence that could result from any alleged uncertainty.

Powerex's original protest of the CAISO's tariff amendment for the Energy Imbalance Market, which led to the relevant directive in the June 19 Order and ultimately to the CAISO's compliance filing, focused on title to energy specifically because of its connection with California state regulation of greenhouse gases.<sup>6</sup> The negative consequence that Powerex sought to avoid through that protest was the state law requirement that it procure emissions allowances for energy it imports into California. Although the Powerex Answer suggests that Powerex now has broader concerns about a range of potential unintended consequences for energy transactions,<sup>7</sup> it cites only to passages in earlier pleadings about California state regulation of greenhouse gases. Otherwise, Powerex identifies no actual commercial risk that could materialize from the tariff language filed. In other words, its September 2 Answer is simply new rhetoric for an argument that the Commission has rejected already.<sup>8</sup>

---

<sup>5</sup> In addition, the arguments in the September 2 Answer also confuse the question of where the CAISO would take title to energy in connection with serving as a central counterparty to all market transactions with the distinct issue of where energy is ultimately delivered. See *id.* at 6 (asserting that the CAISO's "position directly conflicts with the Commission's directive that CAISO develop a mechanism to provide EIM Participating Resources with the ability to categorically opt out of dispatches that would result in **delivery** in California." (Emphasis added).

<sup>6</sup> Powerex Comments at 91 (arguing that the CAISO should "tak[e] title to energy and the obligations attendant thereto, such as serving as the PSE and being the entity named as the sink on an e-Tag").

<sup>7</sup> Powerex Answer at 7.

<sup>8</sup> See June 19 Order PP 238-240 and California Independent System Operator Corp., 140 FERC 61,169 (2012) (accepting CAISO's filing in compliance with Order No. 741).

Second, even if Powerex had identified an actual negative consequence that could flow from the CAISO's tariff language, the solution it proposes is misguided. If the CAISO tariff provisions stating that it takes title to energy in fact cause problems with energy transactions, the obvious solution would be to grant the CAISO's request for rehearing that is pending in this docket. That would return the CAISO tariff as it relates to taking title to energy and the CAISO's counterparty status to the structure that the Commission approved in Order No. 741, and which has not been problematic. In contrast, Powerex's proposed solution – that the CAISO tariff should provide more detail about where title to energy passes – could conflict with related clauses about title to energy in the bilateral contracts that Powerex cites in its September 2 Answer.<sup>9</sup>

### **III. CONCLUSION**

For the reasons discussed above, the Commission should accept the CAISO's compliance filing as submitted.

---

<sup>9</sup> See Powerex Answer n. 23 and accompanying text.

Respectfully submitted,

Kenneth G. Jaffe  
Michael E. Ward  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004  
Tel: (202) 239-3300  
Fax: (202) 654-4875

**By: /s/Daniel J. Shonkwiler**  
Roger E. Collanton  
General Counsel  
Burton Gross  
Assistant General Counsel  
Daniel J. Shonkwiler  
Lead Counsel  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
Tel: (916) 608-7287  
Fax: (916) 608-7222  
Counsel for the  
California Independent System  
Operator Corporation

Dated: September 15, 2014

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 15<sup>th</sup> day of September, 2014.

/s/ Daniel Klein

Daniel Klein