

149 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Powerex Corp.

Docket No. EL14-59-000

v.

California Independent System
Operator Corporation

ORDER ON COMPLAINT

(Issued October 22, 2014)

1. On May 30, 2014, as supplemented on June 3, 2014, Powerex Corp. (Powerex) filed a complaint against the California Independent System Operator Corporation (CAISO) pursuant to sections 206 and 309 of the Federal Power Act (FPA),¹ Rule 206 of the Commission's regulations,² and section 35 of CAISO's tariff.³ Powerex alleges that, as a result of CAISO's failure to determine that an Uncontrollable Force was responsible for a reduction in power flows on the Pacific DC Intertie due to the August 18, 2013 Spring Peak Fire, it was assessed excessive, unjust, unreasonable, and discriminatory imbalance energy charges. Powerex seeks both recovery of the \$937,927.33 in imbalance energy charges that were imposed on it by CAISO and a Commission order

¹ 16 U.S.C. §§ 824e, 825h (2012).

² 18 C.F.R. § 385.206 (2014).

³ While the June 3, 2014 supplement makes no substantive changes to the complaint, the corrected version includes page numbers and a proposed form of protective agreement, based on the Model Protective Order, in light of Powerex's request for privileged treatment of Exhibit H.

directing CAISO to resume the stakeholder process it has committed to undertake regarding the settlement implications of *force majeure* events. In this order, we deny the complaint.

I. Background

2. On August 18 and August 19, 2013, CAISO's power markets experienced transmission outages related to the Spring Peak Fire, which affected an area of over 14,000 acres approximately 24 miles southwest of Hawthorne, Nevada and 12 miles northeast of Mono Lake, California.⁴ The Pacific DC Intertie (Path 65) was impacted and, as a result, Powerex's prescheduled day-ahead sales to CAISO at the Nevada-Oregon Border (NOB) were required to be cut for the hours ending 17 and 18 on August 18, 2013.⁵ Powerex reports that it was subsequently assessed \$937,927.33 in imbalance energy charges by CAISO, averaging more than \$800 per MWh, for the energy that was not delivered during these hours.⁶ Powerex disputed these charges under CAISO's settlement dispute process on September 23, 2013, on the basis that the circumstances resulting in its failure to deliver the energy should have been considered an Uncontrollable Force.⁷ On January 13, 2014, CAISO denied the dispute, stating that the derate was distinguishable from previous circumstances cited by Powerex.⁸

⁴ See Complaint at 2-3; *id.*, Exhibit C, Spring Peak Fire Incident Information (also available at <http://inciweb.nwccg.gov/incident/3668/>; *id.*, Exhibit D, DMM Q3 Report on Market Issues and Performance at 7, 51-52 (also available at http://www.caiso.com/Documents/2013ThirdQuarterReport-MarketIssues_Performance-Nov2013.pdf). CAISO states that it does not disagree with Powerex's general description of the events giving rise to the complaint, and assumes for the purpose of its answer that Powerex has correctly attributed the outage on the Pacific DC Intertie to the Spring Peak Fire. Answer at 3 and n.2.

⁵ Complaint at 3.

⁶ *Id.* at 3, 8-9; *id.*, Exhibit A, Declaration of Jeffrey Harms (Harms Declaration) at P 10. Powerex states that it was charged an additional \$185,467.81 in imbalance energy charges with respect to schedules using the Pacific DC Intertie to deliver to other CAISO scheduling points. *Id.* at 8n. 16; *id.*, Harms Declaration at n.8.

⁷ *Id.* at 3, 9.

⁸ *Id.* at 3, 9; *id.*, Exhibit E, CAISO Dispute Documentation at 2.

3. Section 14.1 of CAISO's tariff provides that market participants will not be deemed to be in default of any tariff obligation "if they are prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force," defined in Appendix A to include fire.⁹ The settlement provisions in section 11 of CAISO's tariff do not, however, reference section 14 or expressly exempt market participants from imbalance energy charges caused by an Uncontrollable Force.

II. Powerex's Complaint

4. Powerex asserts that CAISO's imposition of \$937,927.33 of imbalance energy charges in connection with the August 18, 2013 Pacific DC Intertie derate is unjust and unreasonable, unduly discriminatory, and inconsistent with filings made by CAISO in 2008 and 2011.¹⁰ Powerex further asserts that CAISO's failure to complete the stakeholder process it committed to undertake in 2011 aggravates the uncertainty surrounding the treatment of imbalance energy charges related to *force majeure* events.¹¹ Powerex warns that failure to provide its requested relief could result in suppliers withdrawing from the CAISO market during periods when the risk of Uncontrollable Forces occurring is elevated.¹²

5. First, Powerex alleges that assessing imbalance energy charges with respect to energy scheduled in the day-ahead market that was not delivered due to the August 2013 Pacific DC Intertie derate is unduly discriminatory because CAISO treats deviations from scheduled amounts in the Hour Ahead Scheduling Process in a disparate and preferential manner.¹³ Powerex states that, pursuant to a tariff amendment filed by CAISO in 2008, energy sold in the real-time Hour Ahead Scheduling Process that is not actually delivered is subject to an alternative settlement process, which includes a "safe harbor"—a 10 percent volumetric monthly exemption from charges for failure to perform on an Hour Ahead Scheduling Process award for any reason. According to Powerex, CAISO justified the tariff amendment by reasoning that some delivery failures are caused by reasons beyond a scheduling coordinator's control, such as derates, and that charging scheduling coordinators for such delivery failures could result in decreased market

⁹ CAISO Tariff, section 14.1 and Appendix A.

¹⁰ Complaint at 22-25.

¹¹ *Id.* at 26-27.

¹² *Id.* at 28.

¹³ *Id.* at 11-13.

participation or the inclusion of risk premiums in participants' offers.¹⁴ Powerex stresses that market participants that sell imported energy in the Hour Ahead Scheduling Process are never liable for the real-time cost of replacing undelivered energy, even if the "safe harbor" is exceeded, and only incur charges under a formula based on the Hour Ahead Scheduling Process price.¹⁵

6. The imbalance energy charges are also unduly discriminatory, Powerex argues, in light of CAISO's 2011 filing seeking waiver of its tariff to grant relief to generators inside of its balancing authority area under similar circumstances.¹⁶ Powerex explains that, prior to 2011, CAISO's practice was to settle any failures to deliver under day-ahead schedules at the 5-minute real-time dispatch price, whether or not the failure was caused by an Uncontrollable Force.¹⁷ However, after a transmission line tripped on September 8, 2011 and caused several dozen generators within the CAISO grid to trip off line, CAISO obtained permission from the Commission to waive its tariff provisions to hold market participants harmless from the failure to perform under their day-ahead schedules.¹⁸ Powerex states that CAISO's 2011 Waiver Petition sought approval under the price correction provision in section 35 of its tariff to hold market participants harmless for their failure to perform because they could not have avoided the outcome, the line trip causing the outage could be deemed to be an Uncontrollable Force, and the imposition of substantially higher real-time prices to settle differences from scheduled performance would be inequitable under the circumstances.¹⁹ In the alternative, CAISO's 2011 Waiver Petition requested waiver of the imbalance energy charges

¹⁴ *Id.* at 12 (citing *Cal. Indep. Sys. Operator Corp.*, Docket No. ER08-628-000, Amendment to Tariff (Both Current and MRTU) to Implement a Charge for Undelivered Import or Export Bids at 1 (Feb. 29, 2008); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,097, at P 27 (2008)).

¹⁵ *Id.* at 13 (citing CAISO Tariff, section 11.31).

¹⁶ *Id.* at 13-17, 22-25.

¹⁷ *Id.* at 10-11.

¹⁸ *Cal. Indep. Sys. Operator Corp.*, Petition for Waiver of Tariff Provisions Docket No. ER12-205-000, (filed Oct. 26, 2011) (2011 Waiver Petition).

¹⁹ Complaint at 14-17 (citing 2011 Waiver Petition at 12, 18-20).

because the affected market participants were prevented from delivering scheduled energy due to reasons beyond their control.²⁰

7. The complaint maintains that requiring Powerex, an out-of-state supplier, to assume the substantial costs of obtaining replacement power due to curtailments beyond its control is inconsistent with the positions advanced in CAISO's 2008 and 2011 filings, unduly preferential to in-state generator market participants, and unfairly shifts costs from California loads to external suppliers.²¹ Powerex therefore requests that the Commission order prices to be corrected pursuant to section 309 of the FPA to hold Powerex harmless from the cost of replacement energy for the hours ending 17 and 18 on August 18, 2013.²²

8. In addition to directing the removal of the imbalance energy charges, Powerex requests that the Commission require CAISO to complete the stakeholder process it committed to undertake in connection with the 2011 outage.²³ Specifically, Powerex explains that in the order on the 2011 Waiver Petition, the Commission accepted CAISO's commitment to convene a stakeholder process to consider appropriate tariff revisions to address system emergencies and the settlement implications of *force majeure* events.²⁴ While CAISO convened a stakeholder process in July 2012 and solicited comments on an administrative pricing rules issue paper, Powerex reports that there has been no activity in this proceeding since August 2012.²⁵ Powerex asserts that, as a result, CAISO has left unresolved the availability of case-specific review of whether imbalance energy charges should apply to day-ahead intertie schedules.²⁶ Powerex avers that timely completion of the delayed stakeholder process is critical in light of CAISO's departure from the treatment of imbalance energy charges supported in its 2008 and 2011 filings,

²⁰ *Id.* at 17 (citing 2011 Waiver Petition at 20-21).

²¹ *Id.* at 23-25.

²² *Id.* at 25, 30-32.

²³ *Id.* at 26-27.

²⁴ *Id.* at 17-18 (citing *Cal. Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,207, at P 77 (2012)).

²⁵ *Id.* at 18-20.

²⁶ *Id.* at 20.

and requests that the Commission direct CAISO to act in accordance with its prior interpretation.²⁷

9. Powerex asserts that an evidentiary hearing is not required for the Commission to reach a determination in this proceeding, and requests that the Commission grant its requested relief.²⁸ In particular, Powerex requests that the Commission either: (1) (a) exercise its FPA section 309 authority to direct CAISO to take necessary actions to hold Powerex harmless from the \$937,927.33 in charges attributable to CAISO's inability to accept Powerex deliveries at NOB during the hours ending 17 and 18 on August 18, 2013 pursuant to section 14.1 of its tariff; and (b) to the extent the Commission finds that Powerex did not comply with the notification and mitigation requirements in section 14.2 of CAISO's tariff, either waive these requirements or deem them to be fulfilled, consistent with the 2011 Waiver Petition; or (2) direct CAISO to waive the imbalance energy charges.²⁹ Finally, Powerex requests that the Commission exercise its authority under section 206 of the FPA to direct CAISO to complete the stakeholder process begun in connection with the 2011 Waiver Petition.³⁰ Powerex predicts that, absent its requested relief, market participants will be likely to limit their participation in the CAISO market during periods when the risk of Uncontrollable Forces is high, and instead may choose to transact bilaterally under the Western Systems Power Pool Agreement, which waives liquidated damages when a failure to perform is caused by Uncontrollable Forces.³¹

III. Notice of Filing and Responsive Pleadings

10. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 32,936 (2014) with answers, interventions, and comments due on or before June 30, 2014. Timely motions to intervene were filed by Exelon Corporation and

²⁷ *Id.* at 26-27.

²⁸ *Id.* at 30.

²⁹ *Id.* at 30-32.

³⁰ *Id.* at 32-33.

³¹ *Id.* at 28-29. While Powerex acknowledges that the Western Systems Power Pool Agreement is not binding on CAISO, it notes that granting its requested relief would promote consistency between CAISO and bilateral markets in the Western Interconnection, thereby eliminating the financial incentive to avoid CAISO markets. *Id.* at 29.

Pacific Gas and Electric Company. Timely motions to intervene and comments were filed by Iberdrola Renewables, LLC (Iberdrola Renewables), the Northern California Power Agency (NCPA),³² the California Department of Water Resources State Water Project (State Water Project), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). Calpine Corporation, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC and Dynegy Marketing and Trade, LLC (collectively, Dynegy), and NRG Power Marketing LLC and GenOn Energy Management, LLC (collectively, NRG Companies) filed separate motions to intervene and joint comments. Southern California Edison Company (SoCal Edison) filed a timely motion to intervene and protest.

11. On June 30, 2014, CAISO filed an answer to the complaint. Powerex filed a motion for leave to answer and answer to CAISO's answer on July 15, 2014, and CAISO filed a motion for leave to answer and answer to Powerex's answer on July 25, 2014.

A. Comments and Protest

12. State Water Project and NCPA each take no position with respect to Powerex's request for relief, but support the request that the Commission require CAISO to complete its stakeholder initiative on administrative pricing rules.³³ Should the Commission rule on Powerex's complaint at this time, State Water Project and NCPA request that it do so without prejudice to a stakeholder process.³⁴ Calpine Corporation, Dynegy, and the NRG Companies (collectively, Generator Parties) likewise take no position on Powerex's interpretation of CAISO's tariff, but emphasize the need for clarity with respect to when and how CAISO may invoke *force majeure* under its tariff for wildfires and similar events causing outages and derates on transmission lines.³⁵ Generator Parties note that events like the Spring Peak Fire are not rare in California, and that the resulting interruptions can affect power flows at any point on the CAISO-operated transmission system and expose all types of market participants to increased costs.³⁶ Generator Parties assert that CAISO should apply consistent criteria to ensure

³² Although NCPA's pleading is styled as a motion to intervene, NCPA includes a statement on its position that could be characterized as comments.

³³ State Water Project Comments at 1; NCPA Motion to Intervene at 3-4.

³⁴ State Water Project Comments at 2; NCPA Motion to Intervene at 4-5.

³⁵ Generator Parties Comments at 2.

³⁶ *Id.* at 2-3.

the fair and transparent application of *force majeure* provisions, and that the stakeholder process should carefully consider the types of events that trigger *force majeure* treatment and the types of charges for which market participants should be held harmless.³⁷

13. Six Cities generally support the principles advanced in the complaint that imbalance energy charges should not apply to energy that a seller fails to deliver due to a transmission outage or system disturbance outside of the seller's control, and that transactions affected by uncontrollable forces should be treated consistently.³⁸ However, Six Cities take no position at this time as to the application of these principles to the facts addressed in Powerex's complaint.

14. Iberdrola Renewables supports Powerex's complaint and echoes the request for further clarity regarding the treatment of Uncontrollable Forces under CAISO's tariff.³⁹ Iberdrola Renewables states that, like Powerex, it was assessed imbalance energy charges for failure to deliver prescheduled day-ahead sales to CAISO at NOB as a result of the Spring Peak Fire, and requests that the Commission direct CAISO to extend any relief granted to Powerex to Iberdrola Renewables and all other market participants that were similarly harmed.⁴⁰

15. SoCal Edison requests rejection of the complaint, asserting that Powerex was aware of the risk of imbalance energy charges, and could have received large payments in this situation had it been able to deliver on another path.⁴¹ SoCal Edison asserts that, despite the large imbalance fees Powerex was charged, the CAISO market functioned as designed—i.e., when one transmission path was interrupted, real-time prices increased as an incentive for suppliers to offer additional resources via different paths to meet the demand.⁴² By contrast, SoCal Edison argues that granting Powerex's requested relief would set dangerous precedent for reducing payments to these alternative suppliers on a *post hoc* basis, leading to uncertainty in market prices for this much-needed energy and thereby harming market operations. SoCal Edison further asserts that the August 18,

³⁷ *Id.* at 3.

³⁸ Six Cities Comments at 3.

³⁹ Iberdrola Renewables Comments at 3.

⁴⁰ *Id.* at 3-4.

⁴¹ SoCal Edison Protest at 3.

⁴² *Id.* at 3-4.

2013 Pacific DC Intertie outage does not merit the same relief as the September 8, 2011 San Diego blackout, where suppliers could not even deliver alternative power because the grid outage prevented deliveries.⁴³

B. CAISO's Answer

16. In its answer, CAISO asserts that the Uncontrollable Force provision in section 14.1 of the tariff does not apply to the financial obligation to pay imbalance charges with respect to undelivered energy, and that CAISO's imposition of imbalance energy charges in this situation was not unduly discriminatory.

17. As an initial matter, CAISO argues that section 14.1 of its tariff is inapplicable because the Uncontrollable Force provision excuses a market participant from being in default of a tariff obligation. Here, CAISO explains, Powerex's failure to deliver energy scheduled in the day-ahead market due to the outage is not a violation of a tariff obligation. Rather, it is the financial obligation—the payment of imbalance energy charges—from which Powerex seeks relief. CAISO states that the Spring Peak Fire did not prevent Powerex from meeting this financial payment obligation.⁴⁴ CAISO avers that “[i]mbalance 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,” and that the risk of incurring these charges due to a transmission line outage is the type of risk that market participants can take into account when determining their bids.⁴⁵ CAISO states that the Commission has previously found that sellers should consider the risk of changing system circumstances in developing their bids.⁴⁶

18. CAISO cautions that permitting market participants to avoid charges due to “unavoidable” transmission line derates on the interties could lead to significant market

⁴³ *Id.*

⁴⁴ CAISO Answer at 7.

⁴⁵ *Id.* at 7-8, 10-12.

⁴⁶ *Id.* at 12-13 (citing *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,155, at P 39 (2014) (approving the elimination of import guarantees that previously were paid to importers to address changes in prices caused by changes in system conditions between commitment and delivery); *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,053, at PP 33-34 (2006) (explaining that sellers have the ability to include a risk premium in imbalance market offers)).

disruption.⁴⁷ To illustrate this point, CAISO states that its staff identified 349 hours during the period between January 2013 and June 2014 when a scheduling point on the interties that was available at the close of the day-ahead market was derated to zero prior to the real-time operating hour. According to CAISO, permitting sellers to challenge imbalance energy charges whenever such derates or outages could not be avoided would lead to frequent, and administratively burdensome, factual disputes and would also open the market up to potential gaming, as market participants would not have any incentive to invoke the Uncontrollable Force provision in cases where the seller actually benefitted from a curtailment caused by a derate.⁴⁸

19. Furthermore, CAISO asserts that excusing Powerex and similarly situated sellers from imbalance energy charges would improperly shift these costs to load, who likewise cannot avoid the events leading to these costs and moreover cannot factor the financial risk of derates into its day-ahead scheduling.⁴⁹ CAISO notes that the Commission has not approved tariff provisions for other independent system operators or regional transmission organizations that exclude non-payment of financial commitments from the obligations that may be excused due to *force majeure*.⁵⁰

20. CAISO also addresses Powerex's arguments that the imposition of imbalance energy charges with respect to energy Powerex failed to deliver due to the Spring Peak Fire is unduly discriminatory in light of CAISO's 2008 tariff amendment addressing Hour Ahead Scheduling Process decline charges and the 2011 Waiver Petition. CAISO asserts that its treatment of Powerex in this situation is both consistent with its tariff and distinguishable from the circumstances underlying the 2008 and 2011 filings.⁵¹ First, CAISO contends that the 2008 amendment establishing the 10 percent volumetric monthly exemption from the Hour Ahead Scheduling Process decline charges refutes Powerex's interpretation of section 14.1 of the tariff, as the amendment would not have been necessary if sellers were already protected from incurring costs due to transmission

⁴⁷ *Id.* at 2-3, 8-10, and Exhibit A, Declaration of Mark Rothleder at PP 4-6.

⁴⁸ *Id.* at 9.

⁴⁹ *Id.* at 3, 9-10.

⁵⁰ *Id.* at 10 (citing ISO New England Inc. Market Rule 1 at section I.5.1 and New York Independent System Operator, Inc. Administration and Control Area Services Tariff at section 12.1).

⁵¹ *Id.* at 13-20.

derates under the Uncontrollable Force provision.⁵² CAISO also asserts that participants in the real-time market are actually subject to imbalance energy charges under the same terms as day-ahead market participants, and that the safe harbor implemented by the 2008 amendment only affects charges for declining to accept Hour Ahead Scheduling Process awards (which previously had no financially binding consequences).⁵³

21. Additionally, CAISO maintains that the Commission's order on the 2011 Waiver Petition did not reach the question of whether section 14.1 could be applied to outages like the one experienced on September 8, 2011 and thus cannot be used as support for Powerex's preferred interpretation, and that, in any event, Powerex is not similarly situated to the sellers affected by that event.⁵⁴ In contrast to the August 2013 derate, CAISO submits that the September 2011 incident "involved a massive failure of the entire southwest grid," resulting in loss of service to approximately 7,900 MW of load, and causing a "systemic failure of the market to produce valid real-time prices" that required CAISO to intervene and establish an administrative real-time price.⁵⁵ CAISO concludes that it would not have been appropriate to request a similar waiver of its tariff with respect to the August 2013 derate, as the same extraordinary circumstances were not present and, in fact, there have been "hundreds, if not thousands" of similar transmission derates over the years.⁵⁶ CAISO also notes that the Commission's ability to provide retroactive relief prior to the filing of the complaint is limited to violations of a tariff or statute pursuant to section 309 of the FPA, which it contends is not applicable here.⁵⁷

22. Finally, CAISO asserts that Powerex's request that the Commission direct CAISO to complete its stakeholder process regarding the effect of market disruptions is moot, as CAISO announced at the May 22, 2014 Market Performance Planning Forum that it was resuming this initiative.⁵⁸ CAISO states that it plans to publish an issue paper and straw

⁵² *Id.* at 13-14.

⁵³ *Id.* at 19-20.

⁵⁴ *Id.* at 15-19.

⁵⁵ *Id.* at 16.

⁵⁶ *Id.* at 18.

⁵⁷ *Id.* at 18-19.

⁵⁸ *Id.* at 21-22.

proposal for this Pricing Enhancement initiative on June 30, 2014,⁵⁹ and asks that the Commission refrain from dictating the outcome of this proceeding.

C. Answers to Answers

23. In its answer, Powerex disagrees with CAISO's contention that its request to complete the administrative pricing stakeholder proceeding is moot in light of CAISO's resumption of this proceeding on its own initiative.⁶⁰ Powerex asserts that a Commission order directing CAISO to complete the stakeholder initiative is still needed because CAISO already abandoned this stakeholder process once, and because Powerex was directly harmed by this abandonment, given that its complaint arises from CAISO's application of the same tariff provisions that were to be clarified in that process.⁶¹ Powerex argues that the proposal CAISO posted on July 1 merely sets forth broad issues, and does not expressly obligate CAISO to resolve the ambiguities that form the basis of the complaint. Powerex further argues that CAISO's attempts to interpret and distinguish its tariff highlight the need for the stakeholder process to resolve the ambiguity in the Uncontrollable Force provision.⁶² Powerex thus requests that the Commission direct CAISO to conduct a full and transparent stakeholder process to fully clarify the Uncontrollable Force, administrative pricing, and emergency tariff authority provisions and complete this stakeholder process by December 31, 2014, and file any necessary tariff amendments with the Commission within 60 days after completion of the stakeholder process.⁶³

24. Additionally, Powerex asserts that certain of the facts presented in CAISO's answer are either misleading or incorrect. Powerex objects to terminology in CAISO's answer that suggested that it "failed" to deliver the scheduled energy, maintaining rather than it was *unable* to deliver the energy due to circumstances beyond its control.⁶⁴

⁵⁹ The issue paper was published on July 1, 2014. *See* Pricing Enhancements Issue Paper and Straw Proposal (July 1, 2014), *available at* http://www.caiso.com/Documents/IssuePaper_StrawProposal-PricingEnhancementsJul7_2014.pdf.

⁶⁰ Powerex Answer at 2-7.

⁶¹ *Id.* at 5-6.

⁶² *Id.* at 6-7.

⁶³ *Id.* at 15.

⁶⁴ *Id.* at 8-9.

Powerex also alleges that CAISO's answer contradicts the position it took in its 2011 Waiver Petition regarding the San Diego outage.⁶⁵ According to Powerex, CAISO also tries to draw a distinction between Hour Ahead Scheduling Process schedules that are declined and Hour Ahead Scheduling Process schedules that are accepted but not delivered, but maintains that this distinction is not supported by CAISO's tariff.⁶⁶ Finally, Powerex argues that CAISO mischaracterizes its cost allocation arguments, and asserts that load is in fact assessed charges even for unavoidable circumstances such as real-time congestion.⁶⁷

25. In response, CAISO asserts that, with one exception, Powerex's answer fails to identify any misleading or inaccurate statements in CAISO's answer to the complaint. CAISO concedes that it erred in stating that deviations from the Hour Ahead Scheduling Process intertie schedules are settled at the uninstructed imbalance energy price, and clarifies that these deviations are actually settled at the Hour Ahead Scheduling Process locational marginal price.⁶⁸ CAISO asserts that this error does not affect its interpretation of section 14.1, and reiterates that the existence of the safe harbor by itself supports its conclusion that section 14.1 does not apply to delivery failures caused by intertie derates.⁶⁹ CAISO states that, although it is already committed to completing the ongoing administrative pricing stakeholder process, it would not object to a directive from the Commission requiring it to do so.⁷⁰ However, CAISO states that December 31, 2014 is only an estimated completion date for the proceeding, and argues that a Commission order requiring CAISO to complete the stakeholder initiative by that time could result in the proceeding being terminated prematurely and not producing fully-vetted solutions.⁷¹

⁶⁵ *Id.* at 10-11.

⁶⁶ *Id.* at 11-13.

⁶⁷ *Id.* at 13-14.

⁶⁸ CAISO Answer to Answer at 4-5.

⁶⁹ *Id.* at 5-6.

⁷⁰ *Id.* at 6.

⁷¹ *Id.* at 7-8.

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Powerex and CAISO because they have provided information that assisted us in our decision-making process.

B. Commission Determination

28. We deny the complaint. Powerex has not demonstrated that CAISO's assessment of imbalance energy charges for the day-ahead scheduled energy that Powerex did not deliver for the hours ending 17 and 18 on August 18, 2013 was unjust, unreasonable, or unduly discriminatory or preferential pursuant to section 206 of the FPA, nor that the imposition of these charges violated CAISO's tariff. To the contrary, CAISO appears to have assessed these imbalance energy charges consistent with its treatment of similar transmission line derates and outages, which, as CAISO asserts and Powerex does not deny, number in the hundreds, or even thousands, over the years. Like other day-ahead market participants, Powerex is aware of the risks of derates and outages and the associated risk of submitting financially binding schedules in the day-ahead market that could subsequently be curtailed in real-time. Accordingly, we deny Powerex's request that the Commission direct CAISO either to reimburse Powerex for these charges under section 309 of the FPA, correct the prices for imbalance energy to day-ahead prices pursuant to section 35.3.1 of CAISO's tariff, or waive the imbalance energy charges entirely.

29. Powerex's comparison of the August 2013 Pacific DC Intertie derate to the 2011 San Diego outage is unavailing. As CAISO notes, the 2011 incident involved a widespread failure of the southwest grid, which resulted, significantly, in the loss of approximately 7,900 MW of load. In other words, the outage not only prevented delivery of the energy, but also meant that there was no load to which the energy could be delivered, obviating the need to procure replacement real-time energy for the bulk of the energy scheduled in the day-ahead market. The August 2013 Pacific DC Intertie derate at issue here not only had a more limited physical impact, but also did not prevent load from receiving delivery of energy, nor did the derate prevent Powerex from making further attempts to remedy its inability to perform under its schedule upon learning of the effects of the Spring Peak Fire. Thus, this circumstance is not comparable to the 2011 San Diego outage in scope or effect. By assessing imbalance energy charges to Powerex for the energy it did not deliver due to the derate, CAISO appears to have acted in

conformity with its usual practice for allocating the costs of outages and derates that may be caused by events beyond the sellers' control, yet fall short of the extraordinary circumstances experienced in the 2011 San Diego outage. Powerex presents no evidence that CAISO has treated in-state generator market participants preferentially under similar circumstances. Furthermore, we agree that granting Powerex's requested relief could have unintended and potentially undesirable market consequences, such as reducing the incentive for suppliers to provide replacement energy.

30. Further, we reject Powerex's contention that CAISO's inclusion of a "safe harbor" in the Hour Ahead Scheduling Process is unduly preferential. Powerex's reliance on the differences between the settlement provisions in the day-ahead market and the Hour Ahead Scheduling Process to support an allegation of undue discrimination is misplaced. The day-ahead market and the Hour Ahead Scheduling Process occur at distinct times and have distinct purposes, and the relevant provisions in CAISO's tariff reflect these differences.⁷² Additionally, we find that Powerex's arguments regarding market settlement differences between the day-ahead market and the Hour Ahead Scheduling Process are irrelevant to our determination here because Powerex's transaction was a day-ahead market issue and not an Hour Ahead Scheduling Process issue.

31. Although we deny Powerex's complaint based on the record before us, there appears to be confusion by stakeholders as to the applicability of the Uncontrollable Force provision in section 14.1 of CAISO's tariff. The tariff does not, on its face, explain the limits of applicability of section 14.1. Neither the day-ahead market tariff provisions nor the Hour Ahead Scheduling Process tariff provisions make reference to section 14.1, or vice versa. While CAISO represents that it has resumed the administrative pricing

⁷² CAISO Tariff, section 31 (Day-Ahead Market) and section 34.2 (The Hour-Ahead Scheduling Process). *See also Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,087, at PP 3-4 (2013) ("In the day-ahead market, CAISO procures supply to meet its bid-in demand for the day. After CAISO receives and clears all bids submitted, CAISO establishes the final day-ahead schedules in the [Integrated Forward Market] process and sets a day-ahead locational marginal price (day-ahead price). If the amount of physical energy procured in the final day-ahead schedules is below CAISO's projected load forecast, CAISO procures additional resources to meet its load forecast in the [Residual Unit Commitment] process on a least-cost basis.... Subsequent to the day-ahead market, CAISO operates both a [Hour Ahead Scheduling Process] and a real-time market, together referred to as the 'dual real-time market structure.' The [Hour Ahead Scheduling Process] procures energy based on forecasted demand and determines how much additional energy to import from and export to neighboring systems based on bids submitted for imports and exports at the intertie scheduling points.") (citation omitted).

stakeholder process, it is important that this initiative continue to completion without further interruption, and that it resolve the interplay between the Uncontrollable Force provision in section 14.1 and CAISO's settlement rules of its tariff. Given the number of parties to this proceeding that have expressed concerns about this matter, we believe that CAISO should make the stakeholder process a priority. To that end if the administrative pricing stakeholder process has not concluded prior to July 31, 2015, we instruct CAISO to file an informational report regarding the status of the stakeholder process.⁷³ Such report should include a description of the discussion with respect to the applicability of the Uncontrollable Force provision to derates and outages and planned next steps.

The Commission orders:

(A) Powerex's complaint is hereby denied, as discussed in the body of this order.

(B) CAISO is hereby directed to file an informational report, if necessary, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷³ This report is for informational purposes only and will not require Commission action, nor will a notice of filing be issued with respect to the report.