

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

Refinements to Horizontal Market	)	
Power Analysis for Sellers in Certain	)	Docket No. RM19-2-000
Regional Transmission Organization	)	
and Independent System Operator	)	
Markets	)	

**COMMENTS OF POWEREX CORP. ON  
COMMISSION NOTICE OF PROPOSED RULEMAKING**

Powerex Corp. ("Powerex") respectfully submits the following comments in response to the December 20, 2018 Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission ("Commission") in the above-captioned proceeding, which proposes to revise the horizontal market power analyses requirement for certain market-based rate ("MBR") sellers studying Regional Transmission Organization ("RTO") or Independent System Operator ("ISO") markets and submarkets therein ("Horizontal Market Power NOPR" or "NOPR").<sup>1</sup>

**I.  
COMMUNICATIONS**

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<sup>1</sup> *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, 165 FERC ¶ 61,268 (2018).

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## II. INTEREST OF POWEREX

Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at Vancouver, British Columbia, Canada. Powerex is the wholly owned power marketing subsidiary of the British Columbia Hydro and Power Authority (“BC Hydro”), a provincial Crown Corporation owned by the Government of British Columbia. Powerex sells power at wholesale in the United States, pursuant to market-based rate authority originally granted by the Commission on September 24, 1997.<sup>2</sup> Powerex sells power from a portfolio of resources in the United States and Canada, including Canadian Entitlement resources made available under the Columbia River Treaty, BC Hydro system capability, and various other power resources acquired from other sellers within the United States and Canada.

Powerex’s market activity is primarily directed towards physical markets within North America, with an emphasis on markets in the Pacific Northwest and the rest of the

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<sup>2</sup> See *British Columbia Power Exch. Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exch. Corp.*, Docket No. ER97-4024-012 (Sept. 12, 2000) (unpublished letter order); *Powerex Corp.*, Docket No. ER01-48-002 (Oct. 30, 2003) (unpublished letter order); *Powerex Corp.*, Docket No. ER01-48-007 (July 26, 2007) (unpublished letter order); *Powerex Corp.*, Docket No. ER01-48-018 (Oct. 29, 2010) (unpublished letter order); *Powerex Corp.*, Docket Nos. ER10-3297-003, *et al.* (Aug. 29, 2014) (unpublished letter order); *Powerex Corp.*, Docket Nos. ER17-704-000, *et al.* (Jan. 25, 2018) (unpublished letter order).

WECC region, including the wholesale market operated by the California Independent System Operator Corporation (“CAISO”). As an MBR seller in RTOs and ISOs, Powerex has an interest in the Commission’s proposed revisions to the market power analyses required to sell energy, capacity, and ancillary services in those markets.

### **III. BACKGROUND**

In the Horizontal Market Power NOPR, the Commission proposes to relieve MBR sellers of the requirement to submit indicative screens for certain RTO/ISO markets and submarkets and for certain products. The Commission explains that its proposal is intended to reduce the filing burden on MBR sellers in RTO/ISO markets without compromising the Commission’s ability to prevent the potential exercise of market power in RTO/ISO markets.

Specifically, the Commission proposes to relieve MBR sellers from performing the Commission’s horizontal market power analysis to obtain or retain authorization to make market-based rate sales into RTO/ISO-administered energy, ancillary service, and capacity markets subject to Commission-approved RTO/ISO monitoring and mitigation. For RTOs/ISOs that lack an RTO/ISO-administered capacity market, MBR sellers would not need to submit the indicative screens if those MBR sellers do not sell capacity.<sup>3</sup> However, the Commission intends to continue requiring MBR sellers to submit the indicative screens for authorization to make capacity sales to any RTO/ISO that lacks an RTO/ISO-administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation, namely CAISO and the Southwest Power Pool, Inc. (“SPP”).<sup>4</sup>

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<sup>3</sup> NOPR at P 23.

<sup>4</sup> *Id.* at P 41.

#### **IV.** **COMMENTS**

Powerex supports the principle of reducing the regulatory burden as outlined in the NOPR, while allowing the Commission to continue meeting its statutory obligations. However, an ambiguity within the text of the NOPR appears to have the potential to increase, rather than decrease, the burden on MBR sellers—seemingly introducing a requirement that “any seller” perform indicative screens in order to make capacity sales in CAISO and SPP markets, even where *neither CAISO nor SPP represents a relevant geographic market for the seller under existing Commission regulations*. Powerex asks that the Commission clarify in any final rule that it is not expanding the scope of the default relevant markets that an MBR seller must evaluate pursuant to the Commission’s regulations or imposing a new filing obligation on MBR sellers.

Existing Commission regulations require an MBR seller to perform horizontal market power analyses only within identified default relevant geographic market(s). For markets outside an RTO/ISO, the Commission defines the default relevant market(s) as (1) the balancing authority area(s) where the seller’s generation is physically located, and (2) the markets (including RTOs/ISOs) directly interconnected (“first-tier” markets) to the seller’s balancing authority area.<sup>5</sup> MBR sellers that both are located within an RTO/ISO and are members of that RTO/ISO may consider the geographic region under the control of the RTO/ISO to be a relevant default market for purposes of the Commission’s

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<sup>5</sup> NOPR at P 4 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 232, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012)).

indicative screens.<sup>6</sup>

The NOPR, however, introduces an ambiguity about which markets an MBR seller would be required to evaluate for purposes of making capacity sales. Specifically, Paragraph 49 of the NOPR states that the Commission proposes “to require **any seller** seeking to sell capacity at the market-based rates in CAISO or SPP, either as a bundled or unbundled product or on a short-term or long-term basis, to submit the indicative screens.”<sup>7</sup> Read literally, the foregoing statement would require all MBR sellers wishing to sell capacity in CAISO or SPP to study these markets as a relevant market and to submit the indicative screens, even though many MBR sellers making sales in CAISO and SPP do not presently submit indicative screens for those markets because they do not own or control generation in those markets and because those markets are not first-tier markets. As such, Powerex believes Paragraph 49’s expansive language requiring “any seller” seeking to sell capacity in CAISO or SPP to submit indicative screens is ambiguous and potentially over-broad.

The Commission uses the narrower language of “**RTO/ISO seller**” (rather than “**any seller**”) elsewhere in the NOPR when describing MBR sellers’ continuing obligation to submit indicative screens for RTO/ISO sales. For instance, in the “Introduction” portion of the NOPR the Commission defines “RTO/ISO sellers” as those MBR sellers “that have an RTO/ISO market as a relevant geographic market.”<sup>8</sup> Similarly, in the beginning of the “Discussion” section of the NOPR, the Commission explains that it is proposing to “continue to require RTO/ISO sellers to submit indicative screens for authorization to

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<sup>6</sup> *Id.* (citing Order No. 697 at PP 15, 231).

<sup>7</sup> NOPR at P 49 (emphasis added).

<sup>8</sup> *Id.* at P 2, fn 2.

make capacity sales in [CAISO and SPP].<sup>9</sup> These two recitations of the proposed requirement to submit indicative screens for CAISO and SPP markets when making capacity sales in those markets address “RTO/ISO sellers” – a substantially narrower subset of sellers than the “any sellers” discussion found later in the “Proposal Implementation” portion of the NOPR.<sup>10</sup>

The stated intent of the NOPR appears consistent with a more narrowly stated obligation for submission of indicative screens to support capacity sales in CAISO and SPP markets. For example, the Commission explains that the NOPR is intended to “relieve” MBR sellers from submitting indicative screens in certain circumstances.<sup>11</sup> Further, the Commission “believes that this proposal would reduce the filing burden on market-based rate sellers in RTO/ISO markets....”<sup>12</sup> Given the Commission’s intent to “streamline” filing obligations on MBR sellers,<sup>13</sup> it would be discordant with those objectives to impose a new indicative screen filing obligation on MBR sellers that do not study CAISO and SPP as default relevant markets pursuant to the Commission’s existing requirements, but who otherwise make or seek to make capacity sales in those markets.

Notwithstanding the broad “any seller” terminology in Paragraph 49, the narrower reading in the rest of the NOPR—which appears to limit the filing of horizontal market power analyses in CAISO and/or SPP when (and only when) that market represents a

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<sup>9</sup> *Id.* at P 24. Again, the NOPR defines “RTO/ISO seller” as those MBR sellers “that have an RTO/ISO market as a relevant geographic market.” *Id.* at fn.55. The NOPR also uses “RTO/ISO seller” when describing the applicability of the proposed revisions. See *e.g.*, NOPR at PP 47, 48.

<sup>10</sup> See NOPR at P 49.

<sup>11</sup> *Id.* at Summary.

<sup>12</sup> *Id.* at P 1.

<sup>13</sup> *Id.* at P 74.

relevant geographic market for the MBR seller—is consistent with the Commission’s existing regulations and precedent and with the stated objectives of the NOPR. To expand the existing indicative screen requirement to include organized markets in which an MBR seller has no generation and which is not a first-tier market would represent a significant change to the horizontal market power analysis requirements set forth in the Commission’s regulations and Order No. 697 and progeny.<sup>14</sup> The NOPR does not purport to make such a drastic change.

By clarifying that the Commission proposes to require “RTO/ISO sellers” as defined, and not “any seller,” to submit indicative screens for CAISO and/or SPP when proposing to make capacity sales in those markets—that is, to submit such analyses only when one or both markets represent a relevant geographic market—the NOPR can be understood to be generally harmonious with the Commission’s existing regulations that define the default relevant markets. For instance, an MBR seller with CAISO or SPP as a default relevant market would continue to submit indicative screens if it intends to sell capacity in those markets, but this obligation would not be imposed on MBR sellers that do not identify CAISO or SPP as a relevant geographic market.

In sum, Powerex respectfully requests that the Commission clarify in any final rule that the Commission is neither expanding the definition of relevant geographic markets nor imposing a new filing obligation on MBR sellers that do not study CAISO and SPP as relevant geographic markets under the Commission’s current regulations.

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<sup>14</sup> See 18 C.F.R. § 35.37 (describing the required market power analysis); Order No. 697 at PP 231-291 (adopting as the default relevant geographic market the seller’s balancing authority area and first tier market or the RTO/ISO market, as applicable).

**V.**  
**CONCLUSION**

For the foregoing reasons, Powerex urges the Commission to issue a final rule consistent with the foregoing discussion.

Respectfully submitted,

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*On Behalf of Powerex Corp.*

February 11, 2019

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