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106 FERC ¶ 61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Powerex Corporation (f/k/a/ British Columbia Power Exchange Corp.)	Docket No. EL03-166-000
Powerex Corporation (f/k/a/ British Columbia Power Exchange Corp.)	Docket No. EL03-199-000

ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

(Issued March 26, 2004)

1. On October 31, 2003, the Commission's Trial Staff (Trial Staff) and Powerex Corporation (Powerex) filed an Agreement and Stipulation (Settlement Agreement). The Settlement Agreement resolves all issues related to Powerex that were set for hearing in Docket No. EL03-166-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order)[1] and in Docket No. EL03-199-000 in its Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information (Partnership Order).[2]

2. On November 20, 2003, the California Independent System Operator Corporation (ISO), the California Parties[3] and Port of Seattle, Washington (Seattle) filed comments

[1] American Electric Power Service Corporation, et al., 103 FERC ¶ 61,345 (2003), reh'g denied, 106 FERC ¶ 61,020 (2004).

[2] Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al., 103 FERC ¶ 61,346 (2003), reh'g denied, 106 FERC ¶ 61,024 (2004).

[3] The California Parties are the People of the State of California ex rel. Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company and Southern California Edison Company.

opposing the Settlement Agreement. On November 20, 2003, Certain Pacific Northwest Parties[4] filed comments partially opposing the Settlement Agreement. Public Service Company of New Mexico (PSNM) filed comments partially supporting the Settlement Agreement on November 20, 2003. On December 1, 2003, Trial Staff filed specific reply comments in support of the Settlement Agreement. Also on December 1, 2003, Powerex filed reply comments in response to the California Parties, the ISO and Certain Pacific Northwest Parties. On January 1, 2004, the California Parties filed a supplement to their comments. On January 12, 2004, Powerex and Trial Staff filed responses opposing the supplemental comments of the California Parties. On January 16, 2004, the California Parties filed an answer to the January 12, 2004 response of Powerex. On February 24, 2004, the presiding judges certified the Settlement Agreement to the Commission as contested, but recommending its approval.[5]

3. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Powerex that were set for hearing in the Gaming and Partnership Orders. In this regard, Powerex will be returning $1,300,000.00, the total revenues (and not merely the profits - - and thus more than could be achieved in litigation[6]) from Powerex's participation in alleged gaming practices.

4. Issues raised in the comments filed by the ISO, the California Parties, Seattle and Certain Pacific Northwest Parties go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming and Partnership Orders and, in fact, were addressed and denied in the Show Cause and Partnership Orders on rehearing.[7] Such matters thus need not be further addressed here.

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[4] Certain Pacific Northwest Parties include the Public Utility District No. 1 of Snohomish County, Washington, the City of Tacoma, Washington, and the Port of Seattle Washington (collectively, the Pacific Northwest Parties).

[5] The terms of the Settlement Agreement and these various pleadings are described in more detail in the Presiding Judges' certification. Powerex Corporation, 106 FERC ¶ 63,019 (2004).

[6] Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71; Partnership Order, 103 FERC ¶ 61,346 at P 2, 3, 48.

[7] Gaming Order, 106 FERC ¶ 61,020 at P 85; Partnership Order, 106 FERC ¶ 61,024 at P 47.

5. This order terminates Docket Nos. EL03-166-000 and EL03-199-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas
Secretary.