

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, Chairman;
William L. Massey, and Nora Mead Brownell.

Powerex Corporation

v.

Docket No. EL03-50-000

California Power Exchange Corporation

ORDER DENYING COMPLAINT

(Issued March 27, 2003)

1. On February 20, 2003, Powerex Corporation (Powerex) filed a complaint against the California Power Exchange Corporation (PX or CalPX) requesting that the Commission direct the PX to: (1) release Powerex's \$67 million letter of credit, which Powerex provided to the PX as a condition for participating in the PX's core markets; and (2) return Powerex's Chargeback Amount of \$3.6 million, which was paid to the PX to cover the defaults of Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company (PG&E). In this order, we deny Powerex's complaint and direct the PX to retain Powerex's letter of credit and Chargeback Amount, pending the resolution of various proceedings currently before the Commission.

2. Our decision in this order benefits customers because it will ensure that Powerex meets its outstanding obligations and, thereby, ensures that the ultimate PX creditors are paid.

I. Notice of Filing and Responsive Pleadings

3. Notice of Powerex's complaint was published in the Federal Register, 68 Fed. Reg. 9,068 (2003), with interventions, comments, and protests due on or before March 12, 2003. The following parties filed timely motions to intervene raising no substantive issues: PG&E, SoCal Edison, and Duke Energy Trading and Marketing. The following parties filed timely motions to intervene and comment: the California Electricity Oversight Board (EOB), PG&E, SoCal Edison, and Coral Power, L.L.C. (Coral).

II. Background

4. The PX provided auction markets for the trading of electricity. These auction markets included both the spot market for day-ahead and day-of electricity trading (core markets or short-term markets) and the block forward market for long-term electricity contracts. The PX suspended operations in its core markets on April 30, 2001, and its rate schedules in those markets terminated on May 1, 2001.¹ On March 9, 2001, the PX filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code.²

5. Before the PX's bankruptcy, as a condition for participating in the PX markets, sellers of power into those markets, including Powerex, were required by Schedule 2, Section 2 of the PX Tariff to "maintain sufficient collateral to cover [their] aggregate outstanding liabilities . . . to and from the PX between cash clearing cycles or during the period in which the liabilities are incurred and when payment is billed and settled." In accord with this requirement, Powerex posted a letter of credit with the PX, which varied depending on its activity in the PX's markets.

6. In addition, based upon non-payments by SoCal Edison and PG&E to the PX in January and February of 2001, beginning on or about January 20, 2001, the PX issued a number of invoices to market participants in the PX (PX Participants) that charged back³ the shortfalls from SoCal Edison's and PG&E's defaults to the non-defaulting PX Participants. These invoices were issued based on the PX's chargeback methodology, pursuant to Schedule 2, Section 5.3 of the PX Tariff, which uses a PX Participant's gross sales into the core markets to determine the amount that it will be required to pay.⁴

¹See San Diego Gas & Elec. Co., et al., 93 FERC ¶ 61,294 at 61,999 (2000).

²See 11 U.S.C. §§ 101, et seq. (1994).

³A chargeback is an allocation mechanism intended to allow the PX to recover the uncollected receivables of a defaulting PX debtor from the remaining PX Participants.

⁴Specifically, Schedule 2, Section 5.3 of PX's Tariff states that: "In the event that amounts owed to the PX Participants on a payout date cannot be fully paid due to an insufficiency of funds in the PX clearing accounts, the PX will allocate the shortage to the PX Participants using the proportional charge-back methodology. . . ." That section further provides that the default chargeback to the PX Participants shall be assessed using the following methodology: "The PX Participant's outstanding default amount will
(continued...)

7. On March 5, 2001, the U.S. District Court for the Central District of California issued an injunction against the PX.⁵ The court noted that the injunction would preserve the status quo until the Commission issued a ruling on the propriety of the use of the chargebacks to cover SoCal Edison's and PG&E's defaults and directed the PX to refrain until then from, among other things: (1) issuing invoices for chargebacks; (2) declaring further defaults based on chargebacks; (3) taking actions to collect funds from market participants for the purpose of paying chargebacks; and (4) requiring the posting of any additional collateral or security, based on chargeback assessments. On April 6, 2001, as discussed further below, the Commission issued such an order.⁶

A. Complaint

8. Powerex states that in order to meet the credit support required in the PX's short-term market, it had a bank issue a letter of credit in the amount of \$67 million, which names the PX as the beneficiary. Because the PX has suspended operations in its core markets and its rate schedules in those markets have terminated, Powerex states there is no longer a potential for it to participate in those markets.

9. Powerex claims, based on the record developed in the Findings on Refund Liability,⁷ that the PX owes it approximately \$60.1 million for power purchased from

⁴(...continued)

be charged back to all current PX Participants based upon the percentage of its gross sales in MWhs to the total gross MWhs sales in the Core Market during the three calendar months preceding the event plus the current month-to-date." See California Power Exch. Corp., 92 FERC ¶ 61,096 (2000) (accepting the PX chargeback mechanism).

⁵Enron Power Mktg., Inc. v. California Power Exch. Corp., Case No. 01-00901 CM (C.D. Cal. March 5, 2001), as modified, (C.D. Cal. May 8, 2001).

⁶See Pacific Gas & Elec. Co., et al., 95 FERC ¶ 61,020 at 61,040 (2001), reh'g pending (PG&E).

⁷San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corp. and the California Power Exch. Corp., 101 FERC ¶ 63,026 (2002) (Findings on Refund Liability). In that proceeding, the Administrative Law Judge made findings of fact with respect to: (1) the mitigated price in each hour of the Refund Period; (2) the amount of

(continued...)

Powerex during the period from October 2, 2000 to June 20, 2001 (the Refund Period), and that the California Independent System Operator (CAISO) owes Powerex approximately \$224 million for power purchased from Powerex during that same period. Thus, Powerex states that the PX and the CAISO owe a total of approximately \$284 million to Powerex for sales to the PX and the CAISO markets during the Refund Period.

10. Furthermore, Powerex maintains that after considering the amount that Powerex owes for power it purchased from the PX (approximately \$3.4 million) and the CAISO (approximately \$1.7 million) and the refunds it owes to the PX (approximately \$44 million) and the CAISO (approximately \$134 million), as determined in the Findings on Refund Liability,⁸ Powerex will still be owed on a net basis approximately \$12.7 million by the PX and approximately \$88.3 million by the CAISO. Consequently, Powerex claims that the PX and the CAISO will owe it on a net basis a sum of \$101 million, plus interest.

11. Therefore, even assuming that the Commission believes it is appropriate to extend Powerex's collateral obligation to both the PX and the CAISO markets, Powerex contends that the funds being held by the PX and the CAISO are more than sufficient to cover Powerex's potential gross refund liability to both the PX and the CAISO in the Findings on Refund Liability. In light of these net cash positions that Powerex has with the PX and the CAISO, Powerex argues that, consistent with Constellation II⁹ and

⁷(...continued)

refunds owed by each supplier, including Powerex, according to a methodology prescribed by the Commission; and (3) the amount currently owed to each supplier (with separate quantities due from each entity) by the CAISO, the investor owned utilities, and the state of California.

⁸Powerex notes that it does not endorse the PX's and the CAISO's refund claims; however, it is using them to show that under its maximum potential refund liability in the Findings on Refund Liability, Powerex still will be owed money by these parties after factoring in refunds.

⁹Constellation Power Source, Inc. v. California Power Exch. Corp., 100 FERC ¶ 61,214 (Constellation I), order on reh'g, 100 FERC ¶ 61,380 at P 14 (2002) (Constellation II) (requiring the PX to reduce Constellation's collateral "to a level sufficient to cover [Constellation's] potential refund liability"), reh'g pending.

PGET,¹⁰ the PX should release Powerex's \$67 million letter of credit. Powerex states that such relief is in the public interest because it "will help increase liquidity in the financial markets" and ensure that Powerex meets its outstanding obligations.¹¹ Furthermore, unless that collateral is released prior to the next reporting date, March 31, 2003, Powerex states it will be required to repost the letter of credit at a cost of \$6,979.00.

12. Powerex also maintains that its letter of credit should be released because the collateral provided under the PX Tariff was intended to ensure the settlement of PX Participants' accounts when they are billed by the PX. In addition, Powerex argues that the conversion of the collateral into a guarantee for payment of refunds is not a purpose specified in that tariff and, therefore, violates the filed rate doctrine because it represents a modification of the PX's Tariff on a retroactive basis. Powerex also maintains that such a conversion is contrary to the Commission's policy that, absent extraordinary circumstances, the Commission does not require a guaranty for payment of refunds.¹²

13. In addition to directing the release of Powerex's letter of credit, Powerex requests that the Commission direct the PX to immediately return Powerex's Chargeback Amount of \$3.6 million, which is the result of chargeback payments made by Powerex to the PX beginning in January 2001 to cover the defaults of SoCal Edison and PG&E. Powerex states, in PG&E, the Commission found the PX's use of chargebacks to be unjust and unreasonable and directed the PX to: "(1) rescind all prior chargeback actions related to PG&E's and SoCal Edison's liabilities; and (2) refrain from taking any future chargeback action related to PG&E's and SoCal Edison's liabilities."¹³ However, according to Powerex, the PX has not fully followed that directive because it has not returned the

¹⁰PG&E Energy Trading-Power, L.P., 102 FERC ¶ 61,091 at P 16 (2003) (PGET) (denying PGET's request that the PX release its collateral because PGET's "potential refund liability for the PX and [CA]ISO transactions substantially exceeds the amount of its collateral").

¹¹See Powerex's Complaint at 11-12 (quoting Constellation II, 100 FERC ¶ 61,380 at P 2).

¹²See Powerex's Complaint at 12 n.12 (citing Transcontinental Gas Pipe Line Corporation, 61 FERC ¶ 61,074 at 61,303 (1992); Columbia Gas Transmission Corp., 57 FERC ¶ 61,271 at 61,869 (1991); Resources Recovery, Inc., 19 FERC ¶ 61,188 at 61,359 (1982)).

¹³95 FERC ¶ 61,020 at 61,045.

money that was paid to the PX under those chargeback invoices. Powerex maintains that this a result of the fact that the PX interprets PG&E as merely requiring it to not issue further chargebacks and to credit back the chargebacks on the statements that it issues to PX Participants.

14. Powerex also requests that the Commission order the PX to return chargeback payments, plus interest, and that the interest on these payments should be distributed on a pro rata basis. However, Powerex notes that if the Commission directs the PX to include interest on the chargeback amounts at the Commission's rate, a shortfall in interest would occur due to the difference between the Commission's interest rate and the actual interest rate that the PX is receiving for the chargeback funds, which it is holding in a segregated escrow account. Furthermore, Powerex claims that this shortfall would have to be collected from PX Participants, which would be the same entities that will receive the interest (such as Powerex). As a result, to the extent any such shortfall exists, Powerex maintains that it should be allocated to SoCal Edison and PG&E, whose default was the catalyst for the chargeback invoices being issued.

B. Responsive Pleadings to the Complaint

1. PX's Answer

15. The PX maintains that, consistent with the Commission's holdings in PGET and Constellation II, market participants should be required to maintain sufficient collateral, in order to protect the PX and PX Participants from risk of default, pending: (1) the resolution of issues in Docket No. EL00-95-045, et al., and the other refund proceedings affecting the PX markets (collectively, the Refund Proceedings); and (2) the completion of the final billing and settlement process in the PX markets, which has not yet taken place.¹⁴ If the Commission orders the release of collateral, the PX claims that the PX and PX Participants would be exposed to a greater chance of defaults. Therefore, the Commission should establish a shortfall methodology that details how the PX would deal with defaults, if any cash shortfalls exist upon a final accounting and there is not sufficient collateral to cover them.

16. Furthermore, the PX states that the release of collateral, prior to a final accounting, is a matter affecting all PX Participants, not just Powerex. Consequently, the PX further requests that if the Commission directs that any portion of Powerex's collateral be released, the Commission issue a generic ruling that: (1) applies to all PX

¹⁴See PX's Answer at 2 n.3 (citing Commission orders in support of the proposition that final billing and settlement have not yet occurred).

Participants; and (2) sets forth the formula and criteria for determining the amount of collateral to be released for all PX Participants. The PX argues that such a decision will avoid a multiplicity of suits by PX Participants that request the return of their collateral. The PX notes that the Commission, rather than the PX, is the proper adjudicator of whether a PX Participant's financial status or current account summary statement should have a bearing on the release of its collateral; therefore, the PX does not propose what formula the Commission should use to determine a PX Participant's collateral obligations, if any.

17. The PX states that it has no objection to returning the money it received from the chargebacks. However, the PX states that it needs a specific and detailed allocation methodology for distributing the interest earned on the chargebacks that would be applicable to all the appropriate parties.¹⁵

2. Comments and Protests

18. The EOB, PG&E, and SoCal Edison oppose the release of Powerex's \$67 million letter of credit, which the PX is holding as collateral. These parties state that the Commission should not allow the release of Powerex's collateral until its accounts in the PX have been finally billed and settled and that this cannot occur until the Commission has made a final determination in the Refund Proceedings on what those amounts are.

19. PG&E and SoCal Edison also state that pursuant to the 100 Days of Discovery,¹⁶ on March 3, 2003, various parties submitted supplemental evidence of market manipulation by sellers that alleged that a pervasive pattern of market manipulation by sellers existed, including Powerex, that requires the Commission to expand the time period for which refunds will be available and to revise the methodology for calculating refunds from that adopted in the Findings on Refund Liability. As a result, they argue that the evidence adduced in the 100 Days of Discovery could result in Powerex's, as well as other sellers, potential refund liability being substantially increased. In addition, PG&E, SoCal Edison, and the EOB state that revisions, as a result of other proceedings,

¹⁵The PX attached to its answer a schedule describing the principal owed to each entity as of February 28, 2003, and a proposed allocation method for the interest earned on the chargeback payments. See PX Answer at Attachment 1-2.

¹⁶See San Diego Gas & Elec. Co., 101 FERC ¶ 61,186 (2002) (100 Days of Discovery), reh'g order, 102 FERC ¶ 61,164 (2003), reh'g pending.

in inputs needed to calculate potential refund liability may also lead to an increase in Powerex's refund obligations.¹⁷

20. Accordingly, PG&E and SoCal Edison state that until the myriad of proceedings affecting the financial obligations of PX Participants are concluded, all of the collateral and cash retained by the PX, including Powerex's, should be retained by the PX. They state that if billing and settlement determinants are revised and refunds are ordered by the Commission, the PX must have adequate collateral or cash to insure that there are sufficient funds that will guarantee that PX Participants meet their obligations until liabilities are finally billed and settled.¹⁸ The EOB is not opposed to the release of collateral. However, the EOB believes that an evidentiary hearing should be held that would determine what amount exceeds the maximum potential refund liability of PX Participants and, therefore, should be released. Furthermore, SoCal Edison maintains that the Commission has already rejected a similar argument to Powerex's that the PX's failure to release collateral is inconsistent with the PX Tariff and violates the filed rate doctrine.¹⁹

21. PG&E and SoCal Edison also protest Powerex's request that the PX return its Chargeback Amount. These parties maintain that the amounts received from the chargeback actions should be retained until the Commission has determined how to deal with any shortfalls in the PX's markets in the pending request for rehearing of PG&E. Additionally, they maintain that the chargeback payments should not be released because it is not just and reasonable for PX Participants (such as Powerex), who possibly owe substantial refunds, to be reimbursed by the PX when the amounts these participants owe has not yet been settled.

¹⁷For instance, these parties argue that the use of an alternative gas price proxy for the Refund Period could significantly change the calculations for refunds and, therefore, could increase Powerex's liability. See Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations: Published Natural Gas Price Data; and Enron Trading Strategies Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 at 34 (August 13, 2002) (recommending the use of a substitute input for the cost of natural gas in the rate formula for the Refund Proceedings).

¹⁸In addition, SoCal Edison states that collateral may be needed to pay the PX Wind-Up Charges.

¹⁹See SoCal Protest at 4 & nn.9-10 (citing Constellation I, 100 FERC ¶ 61,214; PG&E, 102 FERC ¶ 61,091 at P 6, 14).

22. Coral states that it supports Powerex's arguments regarding chargebacks. According to Coral, Powerex's complaint demonstrates that there is no basis for the PX to retain the chargeback payments. Coral argues that the Commission, in PG&E, did not state that chargeback payments should not be returned when it stated in that order that it would resolve the "ultimate question of how to account for any shortfalls in the PX market after other, related cases, have been completed."²⁰ Coral claims that the Commission's reference to the "ultimate question" pertained to how the PX will account for SoCal Edison's and PG&E's defaults in lieu of the chargeback payments, not to the issue of whether the chargeback payments had to be returned. In addition, Coral maintains that the difference in the amount between the interest earned by the chargeback funds in the account that the PX has held them in and the Commission's interest rate will only continue to increase; therefore, the chargeback payments should be promptly returned to PX Participants that paid the chargebacks.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission's Response

1. Letter of Credit

24. Powerex argues that if the Commission decides to extend its collateral obligation to both the PX and the CAISO markets, any collateral held by the PX and the CAISO in excess of Powerex's potential gross refund liability in the Findings on Refund Liability should be released, consistent with Constellation II. In that order, we stated "that Constellation must maintain collateral with CalPX in the amount of 10 million dollars, which by our conservative estimate will be sufficient to cover the potential refund liability resulting from Constellation's transactions in the CalPX's and CAISO's markets."²¹ However, Powerex's potential refund liability, as discussed further below, is

²⁰See Coral's Comments at 3 (quoting PG&E, 95 FERC ¶ 61,020 at 61,046).

²¹Constellation II, 100 FERC ¶ 61,380 at P 14.

not yet known due to ongoing matters. Thus, Powerex's complaint does not warrant the same treatment as Constellation's.²²

25. When Constellation II was decided, the Commission was faced only with the issue of whether Constellation's collateral was sufficient to cover the refund claims in the Findings on Refund Liability. However, subsequent to that order, the Commission issued its 100 Days of Discovery order²³ that allowed parties to conduct discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001 and submit additional evidence to the Commission that was either indicative or counter-indicative of market manipulation. As noted, in response to that order, various parties submitted evidence that alleges that various sellers, including Powerex, engaged in market manipulation. Accordingly, these same parties argue that the amount of potential refund liability of sellers, such as Powerex, in the Refund Proceedings should be expanded beyond the refunds detailed in the Findings of Refund Liability. The Commission is currently in the process of determining whether this additional evidence adduced by these parties to the 100 Days of Discovery proceeding warrants additional remedies and procedures than those contemplated in the Findings on Refund Liability.

26. The Commission does not want to prejudge the important issues raised by parties in the 100 Days of Discovery proceeding. Moreover, we find that it is premature for the Commission to release Powerex's letter of credit based solely on an examination of Powerex's potential refunds as determined in the Findings on Refund Liability, because we do not yet know if those amounts represent the extent of Powerex's ultimate potential liability in the Refund Proceedings. Only after the Commission has determined the impact that the evidence submitted in the 100 Days of Discovery will have on the Refund Proceedings can we begin to determine whether Powerex's collateral exceeds its potential refund liability and, therefore, whether its letter of credit should be released. In addition, as discussed below, until those figures can be determined, the process of final billing and settling, with regard to Powerex's transactions that occurred in the PX's markets, cannot take place because its outstanding liabilities have not yet fully been resolved; in other

²²Compare with PGET, 102 FERC ¶ 61,091 at P 16 ("We also disagree with PGET's assertion that PGET and Constellation are similarly situated, which, in PGET's opinion, would warrant similar treatment of PGET's complaint. The refunds claimed to be owed by Constellation for both CalPX and ISO transactions were several times less than the amount of Constellation's collateral posted with CalPX. In accordance with the numbers provided by PGET, PGET's potential refund liability for both CalPX and ISO transactions substantially exceeds the amount of its collateral.")

²³See supra note 16.

words, until that time, we cannot calculate what the shortfall is and, therefore, what collateral is excess collateral.

27. Powerex also claims that the PX's use of Powerex's letter of credit as collateral is inconsistent with the PX's Tariff, the Commission's policy, and a violation of the filed rate doctrine.²⁴ The Commission has addressed similar arguments in two other proceedings, Constellation I and PGET, and stated that the PX Tariff permits the PX to retain collateral until all of the PX Participants', such as Powerex, trades in the PX's market are fully resolved (*i.e.*, their liabilities are finally determined, billed, and settled).²⁵ In fact, under the provisions of the PX's Tariff, a PX Participant is required to post collateral as security for potential defaults arising from a participant's failure to pay its outstanding liabilities to the PX and its outstanding obligations are not extinguished until they are billed and settled.²⁶ Accordingly, because Powerex's final billing and settlement have not yet taken place,²⁷ we find, as we have stated before, that the PX's retention of Powerex's letter of credit is not inconsistent with the PX's Tariff, a violation of the filed rate doctrine, or contrary to the Commission's policy.

²⁴Schedule 2, Section 2.2 (Collateral Requirement) of PX's tariff states in pertinent part: "Each PX Participant shall maintain sufficient collateral to cover its aggregate outstanding liabilities . . . to and from the PX between clearing cycles or during the period in which the liabilities are incurred and when payment is billed and settled."

²⁵Specifically, in those orders, the Commission stated that:

Based on our review of PX's tariff, we find that the tariff language provides a basis for retaining the collateral, since outstanding liabilities have not been billed and settled, as required by the tariff. . . . Only after [the] completion [of the Refund Proceedings] can the Commission begin to determine the liabilities of each supplier. Until those figures are determined, the process of final billing and settling cannot start. See, e.g., PGET, 102 FERC ¶ 61,091 at P 14.

²⁶See, e.g., Constellation I, 100 FERC ¶ 61,214 at PP 28-29; Constellation II, 100 FERC ¶ 61,380 at P 10; PGET, 102 FERC ¶ 61,091 at 14.

²⁷See California Power Exch. Corp., 98 FERC ¶ 61,097 at 61,305 (2002) ("Although the PX markets are closed, the trades made previously in the PX markets are not yet fully resolved.")

28. For the reasons stated above, we deny Powerex's complaint that we direct the PX to release Powerex's letter of credit.

2. Chargebacks

29. In PG&E,²⁸ the Commission found that the application of the chargeback mechanism by the PX to sellers in its markets to cover the defaults of SoCal Edison and PG&E was unjust and unreasonable, because using the chargeback provision in those circumstances would cause virtually all participants to default.²⁹ Therefore, the Commission "directed the PX to: (1) rescind all prior chargeback actions related to PG&E's and SoCal Edison's liabilities; and (2) refrain from taking any future chargeback action related to PG&E's and SoCal Edison's liabilities."³⁰

30. To date, the PX has only provided activity statements to PX Participants that account for its rescissions (*i.e.*, voidance) of the chargeback invoices and set forth each participant's new receivable/payable positions.³¹ However, Powerex states that PG&E not only required the PX to reverse all the chargeback invoices but, in addition, the Commission's use of the word "rescind" in that order was intended to mean that the PX must return the money actually paid by PX Participants to the PX under the chargeback invoices. The PX responds that it is willing to reimburse the chargeback amounts it has previously collected; however, it requests that the Commission approve an allocation method for the interest earned on the chargeback payments.

²⁸PG&E, 95 FERC ¶ 61,020 at 61,045.

²⁹Id. ("[W]e find that the PX's use of the chargeback mechanism has had and will continue to have an impact on otherwise creditworthy PX participants that will exacerbate the existing adverse market conditions in California. Simply put, we believe that the chargebacks, were they to be assessed under those circumstances, would cause virtually all PX participants to default, thereby compounding adverse market conditions throughout the entire Western region. Therefore, we conclude that the chargeback provision in the PX tariff was not designed to address default of this magnitude and, thus, its application in these circumstances is unjust and unreasonable.") (citations omitted).

³⁰Id.

³¹In addition, the PX has stopped using the chargeback procedures, as required in PG&E.

Docket No. EL03-50-000

-13-

31. Because PG&E is pending rehearing and a final determination in that proceeding could have significant implications regarding the issues before us, we defer further action on this matter pending the resolution of that order. Therefore, we deny Powerex's complaint that we require the PX to return Powerex's Chargeback Amount of \$3.6 million.

The Commission orders:

Powerex's complaint is hereby denied for the reasons stated in the body of this order.

By the Commission. Commissioner Brownell dissenting in part and concurring in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Powerex Corporation

v.

Docket No. EL03-50-000

California Power Exchange Corporation

(Issued March 27, 2003)

BROWNELL, Commissioner, dissenting in part and concurring in part

1. This order takes collateral pledged for one legal purpose—ensuring Powerex's settlement of accounts when billed by the CalPX—and converts it into a guaranty for a totally different purpose—payment of any future Commission-ordered refunds that Powerex may owe. For the same reasons I stated in my partial dissents to Constellation Power Source, Inc. v. California Power Exchange Corporation, et al., 100 FERC ¶ 61,124 (2002), and PG&E Energy Trading-Power, L.P. v. California Power Exchange Corporation, 102 FERC ¶ 61,091 (2003), I find no basis for doing this.
2. With regard to the chargeback issue, I am willing to defer action until the Commission acts on the rehearing of the PG&E case, in which the Commission found application of the chargeback mechanism by the CalPX to sellers in its markets to cover defaults of SoCal Edison and PG&E to be unjust and unreasonable. However, I do so with the expectation that the Commission will take action on that rehearing promptly.

Nora Mead Brownell