

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
104 FERC ¶ 61,005

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

California Power Exchange Corporation  
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Docket No. ER03-791-

ORDER ON COMPLIANCE AND  
ACCEPTING SPECIAL PURPOSE RATE SCHEDULE  
SUBJECT TO CONDITION

(Issued July 1, 2003)

1. On April 30, 2003, the California Power Exchange Corporation (CalPX) submitted for filing its proposed amendment to its Rate Schedule No. 1 to recover expenses projected for the period July 1 through December 31, 2003, to be effective July 1, 2003, pursuant to the order issued in Docket No. ER02-2234-000.<sup>1</sup> In this order, the Commission accepts the CalPX's filing, subject to condition. This order benefits the public by ensuring that the CalPX will have an effective rate schedule for recovering the expenses of its operations to wind-up its business affairs.

**I. Background**

2. On July 3, 2002, as amended on July 10, 2002, the CalPX proposed a rate schedule which was intended to provide it with a means of funding its ongoing activities while it winds-up its affairs. In the August 8 Order, the Commission found that the proposed rate schedule, subject to condition, was an appropriate mechanism to allow the CalPX to fund its continuing operations. The Commission accepted the CalPX's proposed six-month budget of approximately \$6.3 million, with a matching reserve from the Settlement Clearing Account, for the initial six-month period, and required the CalPX to renew its request for subsequent six-month periods.

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<sup>1</sup>California Power Exchange Corp., 100 FERC ¶ 61,178 (2002) (August 8 Order).

3. In subsequent orders, the Commission provided additional clarification and directives with respect to the CalPX's rate filings for the first and second six-month periods.<sup>2</sup>

## **II. CalPX's Filing**

4. In its April 30, 2003 filing, the CalPX submitted its proposed rate schedule for the third six-month period. CalPX states that its projected wind-up expenses for the third rate period are \$5,715,229 and the cash shortfall is projected to be \$2,526,770. CalPX's filing is also supported by the testimony of David K. Gottlieb, the interim chief executive officer of the reorganized CalPX.

5. CalPX also contends that the full filing requirements of Part 35 are not appropriate for the CalPX's unique situation. CalPX therefore requests waiver of all Part 35 regulations that might otherwise apply and, in particular, requests waiver of Sections 35.13(d) and (h) which deal respectively with cost of service test period requirements and cost of service statements AA through BM.

## **III. Notices of Filing and Responsive Pleadings**

6. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 25,599 (2003), with motions to intervene and protests due on or before May 21, 2003. The City of Santa Clara, the Modesto Irrigation District, Pacific Gas and Electric Company (PG&E), Powerex Corp. (Powerex), and Southern California Edison Company (SoCal), filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely unopposed motions to intervene serve to make these entities parties to this proceeding. PG&E, Powerex, and SoCal also filed protests.

## **IV. Protests**

7. PG&E states that the allocation of costs is based upon the absolute value of the cash balances in each customer's individual Account Summary based on the March 13, 2002 balances (March 13 Account Balances). PG&E contends that this date has no relationship to the costs being allocated and that using these balances constitutes illegal

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<sup>2</sup>See California Power Exchange Corp., 101 FERC ¶ 61,330 (2002) (December 20 Order); 101 FERC ¶ 61,403 (2002) (December 31 Order); 102 FERC ¶ 61,208 (2003) (February 25 Order); 103 FERC ¶ 61,220 (2003) (May 22 Order).

retroactive ratemaking since the CalPX will bill charges based on historic balances. PG&E also argues that the CalPX's proposal violates the filed rate doctrine since net buyers and sellers have already paid for the operations related to those sales and purchases. Additionally, PG&E claims that the use of March 13 Account Balances, without a refund mechanism, improperly allocates costs that exaggerate the amounts owed by some participants, and reduces the amounts owed by other participants, and results in improper retroactive charges based on balances unrelated to the current charge.

8. Powerex opposes the line item in the CalPX's budget in the amount of \$210,000 for "PG&E Bankruptcy Litigation" and the line item in the amount of \$925,000 for "Block Forward Contract Commandeering Litigation." Powerex claims that the PG&E Bankruptcy Litigation expense is inappropriately allocated to only those market participants that were formerly represented by the Official Committee of Participant Creditors (Participants Committee), instead of all market participants. Powerex finds this result to be inappropriate because: (1) the Participants Committee no longer exists; and (2) this litigation is being pursued on behalf of all market participants.

9. Additionally, Powerex argues that projected expense of \$925,000 associated with the "Block Forward Contract Commandeering Litigation" is excessive in light of the fact that the state court has stayed this litigation pending the outcome of the refund and long-term contracts proceedings before the Commission. Powerex states that during the first quarter of 2003, only \$2,514 of such litigation expenses was actually incurred by the CalPX. As a result, Powerex requests that this line item be modified to be more reflective of the actual expenses that are projected to be incurred.

10. SoCal states that the CalPX projects that costs related to the Participants Committee will be incurred during the month of July 2003. SoCal explains that there is a line item for "Participants Committee" in the amount of \$855,000 and another for "Financial Consultants to the Committee" in the amount of \$106,000. SoCal questions why any of the Participants Committee's expenses are included in the CalPX rates since the Participants Committee was terminated on April 1, 2003.<sup>3</sup> SoCal argues that there is no need to include projected expenses for the activities of the Participants Committee for July 2003 since the Committee is no longer in effect. Notwithstanding, SoCal asserts that at a minimum, the Commission should order that future expenses related to the Participants Committee should not be included in the CalPX's rates.

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<sup>3</sup>See California Power Exchange Corp., 103 FERC ¶ 61,001 (2003) (On April 1, 2003, the Commission approved the funding and governance provisions for the reorganized CalPX).

## V. Discussion

11. The Commission finds that the CalPX's proposed amendment to its rate schedule is in accord with our prior orders in Docket Nos. ER02-2234 and ER03-139, and the rate schedule is hereby accepted. The Commission will deny the protest filed by PG&E. PG&E has raised these arguments on numerous occasions and the Commission has addressed them in the August 8, December 20, and February 25 Orders. Accordingly, PG&E's protest is denied for the reasons discussed in our prior orders.

12. In response to Powerex's claims that the "PG&E Bankruptcy Litigation" expense is inappropriately allocated to only those market participants that were formerly represented by the Participants Committee, we disagree. As we have previously stated, in any rate case, costs should be allocated, where possible, to customers based on customer benefits and cost incurrence.<sup>4</sup> In the February 25 and May 22 Orders, the Commission did not find that the pursuit of this litigation benefits all market participants.<sup>5</sup> Instead, we found that these expenses appear to only benefit those represented by the Participants Committee. Notwithstanding the fact that the Participants Committee has since been dissolved, the Commission finds that the expense of resolving these bankruptcy claims will benefit market participants that were formerly represented by the Participants Committee.

13. With respect to Powerex's argument that projected expense associated with the "Block Forward Contract Commandeering Litigation" is excessive in light of the fact that the state court has stayed this litigation, we agree. While we recognize that the court-imposed stay may be lifted without notice, we find that this projected level of expense may be unreasonable since the stay has continued to remain in effect. CalPX is therefore directed to revise the estimate for this projected expense or submit a detailed explanation fully supporting the \$925,000 allocation.

14. The Commission also agrees with SoCal that the CalPX should not be incurring any new expenses related to the Participants Committee. However, the Commission finds it reasonable that the CalPX may incur residual expenses related to the Participants Committee through the end of July 2003. Therefore, while the Commission will allow the CalPX to include these final expenses in its rate schedule, any new or additional expenses related to the Participants Committee that are incurred after July 2003, may not be included in future rates or recovered from the market participants.

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<sup>4</sup>December 20 Order at P 15.

<sup>5</sup>February 25 Order at P 19; May 22 Order at P 16.

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15. Finally, given the CalPX's unique characteristics, we find that it is not necessary for the CalPX to adhere to the full requirements of Part 35. Accordingly, we hereby grant the requested waivers and accept the CalPX's proposed rate schedule for filing as discussed above.

The Commission orders:

(A) CalPX's proposed rate schedule is hereby accepted, subject to condition, as discussed in the body of this order, effective for six months beginning July 1, 2003.

(B) CalPX is hereby direct to make a compliance filing within 15 days of the date of this order, either revising or fully supporting its projected expense associated with the "Block Forward Contract Commandeering Litigation," as discussed in the body of this order.

(C) CalPX's petition for waiver of the full requirements of Part 35 is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.