No. 06-888

IN THE
Supreme Court of the United States

CORAL POWER, L.L.C., ET AL.,
Petitioners,
v.

PEOPLE OF THE STATE OF CALIFORNIA
EX REL. EDMUND G. BROWN, JR., ATTORNEY GENERAL, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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May 29, 2007

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CORRECTED
LIST OF PARTIES TO THE PROCEEDINGS

Petitioners Coral Power, L.L.C., AES Placerita, Inc., Portland General Electric Company, Powerex Corp., PPL EnergyPlus, LLC, PPL Montana, LLC, Public Service Company of New Mexico, Puget Sound Energy, Inc., Sempra Energy Solutions LLC (f/k/a Sempra Energy Solutions), Sempra Energy Trading Corp., and Sempra Generation (f/k/a Sempra Energy Resources) were intervenors in the court of appeals proceedings and participated in the agency proceedings.

Respondent People of the State of California ex rel. Bill Lockyer, Attorney General, was the petitioner in the court of appeals proceedings and participated in the agency proceedings. Edmund G. Brown, Jr., has since replaced Bill Lockyer as California's Attorney General.

Respondent Federal Energy Regulatory Commission was the respondent in the court of appeals proceedings.

The following respondents were intervenors in the court of appeals proceedings and participated in the agency proceedings:

AES Delano, Inc. (f/k/a Delano Energy Company Inc.)

Arizona Public Service Co.

Avista Corporation

Avista Energy, Inc.

BP Energy Co.

Cabrillo Power I LLC

Cabrillo Power II LLC

City of Tacoma, Washington

Duke Energy North America, LLC

Duke Energy Trading and Marketing, LLC

Dynegy Power Marketing, Inc.

El Paso Merchant Energy LP

El Segundo Power LLC

Enron Energy Services, Inc.
Enron Power Marketing, Inc.
Long Beach Generation LLC
Mirant Americas Energy Marketing LP
Mirant California, LLC
Mirant Delta, LLC
Mirant Potrero, LLC
Morgan Stanley Capital Group Inc.
Mountainview Power Company
Pacificorp
Pacificorp Power Marketing, Inc.
Pinnacle West Capital Corporation
Public Service Company of Colorado
Reliant Energy Services, Inc.
Riverside Canal Power Company
Strategic Energy LLC
TransAlta Energy Marketing (California) Inc.
TransAlta Energy Marketing (U.S.) Inc.
TransCanada Energy Ltd.

CORPORATE DISCLOSURE STATEMENTS

Petitioners' Statements pursuant to Rule 29.6 were set forth at pages iv-vi of the petition for a writ of certiorari, and, with the exception of Coral Power, L.L.C.'s revised Statement below, there are no amendments to those Statements.

Coral Power, L.L.C. is owned by Coral Energy Holding, L.P., which is indirectly owned by Shell Oil Company. Shell Oil Company is owned by Royal Dutch Petroleum Company, which in turn is owned by Royal Dutch Shell plc, a publicly traded corporation. Royal Dutch Shell plc has no parent company, and no publicly held company owns 10% or more of its stock.

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The Ninth Circuit created a retroactive refund remedy out of whole cloth, inferred that remedy from powers "implied" under § 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and ordered FERC on remand to apply a novel legal standard that no court in the seven-decade history of the FPA has ever imposed. In a report to Congress, FERC described the court's opinion below as an expansion of the Act beyond the limits long-recognized by the Commission. *See* Pet. 27. Now, FERC takes a completely different approach. It largely abandons its defense of the Commission's orders and asserts that the Ninth Circuit's judgment is best understood not as an interpretation of § 205, which the Ninth Circuit cited 10 times, but rather as an application of FPA § 309, 16 U.S.C. § 825h, a provision that was not cited in FERC's or California's briefs below, not mentioned by the Ninth Circuit in its opinion, and not relied on as a basis for relief in California's original complaint. On the question presented – and addressed by the Ninth Circuit – there is an undisputed conflict among the circuits. The efforts by FERC and California to recast the decision below as relying on § 309 and a re-characterization of petitioners' tariffs should not obscure the critical importance of the issue or the circuit conflict. Only this Court can now rein in the Ninth Circuit's expansion of FERC's powers beyond their statutory limits. Left uncorrected, the Ninth Circuit's judgment will foster market uncertainty and ultimately harm consumers by chilling investment in much-needed electricity infrastructure.

I. THE NINTH CIRCUIT CREATED A NEW REFUND POWER UNDER FPA § 205

The Ninth Circuit reached the unprecedented conclusion that FERC has a general power under FPA § 205 to order retroactive refunds for sales at unjust-and-unreasonable rates, *see* Pet. App. 15a-17a – an interpretation that FERC itself has described as "'provid[ing] the Commission with broader authority than [FERC] believed the Act provided.'" Pet. 26-27 (quoting FERC, Report to the United States Congress, *The Commission's Response*

to the California Electricity Crisis and Timeline for Distribution of Refunds 7 n.12 (Dec. 27, 2005) ("FERC 2005 Report")). Respondents do not defend the lower court's judgment that "[t]o cabin FERC's *section 205* refund authority under the circumstances of this case would be manifestly contrary to the fundamental purpose and structure of the FPA." Pet. App. 17a (emphasis added). Nor do they contest that the same panel of judges subsequently reaffirmed that conclusion, describing this case as holding that "FERC erred as a matter of law in concluding retroactive refunds were not available under § 205." *Public Utils. Comm'n v. FERC*, 462 F.3d 1027, 1045 (9th Cir. 2006).

Unable to defend the Ninth Circuit's holding on the statutory ground the court articulated, California and FERC offer new theories to rationalize the court's decision. California claims the court held that FERC has authority under FPA § 309 to order refunds because petitioners' filing of aggregated (rather than individualized) transaction data failed to comply with FPA § 205(c). Cal. Opp. 14. FERC also now invokes § 309 as the basis for the Ninth Circuit's opinion, abandoning the arguments it made to the Ninth Circuit in defense of its orders so that it can retain a precedent that greatly inflates its refund authority. But FERC does not join California's argument that petitioners violated § 205(c), instead characterizing the Ninth Circuit as holding that petitioners failed to comply with a provision of their tariffs. FERC Opp. 13-14. Respondents' assertions are unsustainable, and their attempts to divert the Court's focus from the Ninth Circuit's erroneous interpretation of § 205 are unpersuasive.

A. The Ninth Circuit Did Not Rely On FPA § 309

Contrary to respondents' post-hoc rationalizations of the decision below, the Ninth Circuit neither explicitly nor implicitly rested its holding on § 309. Rather, the Ninth Circuit reasoned that FERC must have authority to order retroactive refunds under § 205 because, "if no retroactive refunds were legally available, then the refund mecha-

nism under a market-based tariff would be illusory" and "[p]arties aggrieved by the illegal rate would have no FERC remedy." Pet. App. 15a. The court recognized FERC's position, based on settled principles, that the refund powers in § 206(a) and § 205(e) do not apply here. *See id.* at 18a ("the purgatorial [refund] period contemplated [in § 205(e)] does not exist" and, under § 206, "the only remedies are prospective"). But the Ninth Circuit expressed alarm that "the § 205(e) refund remedy is, practically speaking, eliminated under the scheme as FERC would have us interpret it." *Id.* The court then proclaimed that FERC's "interpretation comports neither with the statutory text nor with the [FPA]'s 'primary purpose' of protecting consumers." *Id.* But, rather than interpreting the statutory language (which it never quoted), the Ninth Circuit asserted that retroactive refunds *must* be available because the "FPA cannot be construed to immunize those who overcharge and manipulate markets in violation of the FPA." *Id.* Thus, the court held that § 205 authorizes "*implied* enforcement mechanisms sufficient to provide *substitute* remedies for the obtaining of refunds for the imposition of unjust, unreasonable and discriminatory rates." *Id.* at 16a (emphases added).

Indeed, California embraces the natural reading of the Ninth Circuit's opinion, stating that, "to avoid an interpretation that would cut Section 205(e) out of the scheme entirely, the court held that FERC must provide '*substitute*' procedures and *remedies*." Cal. Opp. 19 n.12 (quoting Pet. App. 16a) (emphases added). California thus acknowledges that the Ninth Circuit implied a new retroactive-refund remedy to "substitute" for the one expressly set forth in § 205(e).[1] It is simply untenable for either FERC or California to contend that the decision

[1] California claims, however, that the particulars of that new substitute remedy are not at issue in this case. Cal. Opp. 18 n.12. But that claim cannot be squared with the Ninth Circuit's opinion, which nowhere suggests that the issue of "substitute remedies" was being left for a future case. On the contrary, the court remanded the case to FERC "to reconsider its remedial options." Pet. App. 18a.

below did not do what it expressly did – expand the remedies available under § 205. That unwarranted expansion of § 205 blurs the historical distinctions between § 205 and § 309 in profoundly harmful ways.[2]

B. The Ninth Circuit Did Not Hold That Petitioners Violated FPA § 205(c)

California recasts the decision below to make it appear defensible by claiming that the Ninth Circuit held that FERC could order refunds because deficiencies in transaction reports meant that petitioners failed to file their rates as required by FPA § 205(c). Cal. Opp. 13-19. California relies heavily on the court's statements that the reporting requirements were "integral" to the tariff and that, when no transaction reports have been filed, "[p]ragmatically, . . . there is no filed tariff in place at all." Pet. App. 15a. But, far from holding that petitioners violated § 205(c), those statements simply emphasized the Ninth Circuit's belief that FERC should have taken petitioners' reporting deficiencies more seriously. *See*, *e.g.*, *id.* at 12a (referring to "the crucial nature of the transactional reporting").[3]

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[2] It is implausible to suggest – as FERC and California essentially do – that the Ninth Circuit mistook § 205 for § 309 and implicitly rested its decision on the latter section while exclusively citing the former. Section 309 confers a residual authority on FERC to remedy certain discrete, seller-specific violations with equitable remedies, such as a disgorgement of profits when a seller has violated the FPA and that violation has led specifically to ill-gotten gains. *See* Pet. 19 n.33. But it is well established under § 309 that a connection must be shown between the seller-specific violation and the equitable remedy selected by FERC. *See id.* When the limited refund authority in § 205(e) applies – and it indisputably does not here – FERC's analysis in determining that refund is wholly different from the analysis of whether to order one of the limited equitable remedies available under § 309. The Commission awards the difference between the price charged and the just-and-reasonable rate. The just-and-reasonable rate in turn must permit the seller to recover its costs and a reasonable return, and to operate within the market conditions ascertained by the Commission. *See* Pet. 17-18.

[3] Contrary to California's claim (at 17-18), the petition for rehearing that several petitioners filed did not contend that the Ninth Circuit

Even if a complete failure to file transaction reports could be described as "eviscerat[ing] the tariff," *id.* at 15a (and it could not, *see infra* note 4 & p. 7), FERC did not find that petitioners failed to file reports. Rather, FERC concluded that some sellers filed transaction information in aggregated, rather than transaction-specific, form – a breach that FERC acknowledged resulted from "legitimate confusion as to the Commission's expectations," confusion that was "due at least in part to the fact that many sellers filed aggregated data in their quarterly reports for years without having been challenged by any market-participant." Pet. App. 78a. Moreover, the Ninth Circuit never came close to speaking with the kind of clarity that would have been required to overturn the Commission's repeated conclusions that petitioners had in fact complied with § 205(c), although they reported aggregated transaction information.[4]

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had held that petitioners violated § 205(c). Instead, that filing quoted language from the panel's opinion and described the "risk" that plaintiffs might perceive that language as "signal[ing]" that misreported sales lack the protection of the filed rate doctrine. Petition for Panel Rehearing and Suggestion for Rehearing *En Banc* of Indicated Intervenors at 19 (filed Oct. 25, 2004). That filing also argued that the panel had "misapprehend[ed]" the function of the transaction reports, *id.* at 8, but it did not say that the court had held that reporting deficiencies violated § 205(c).

[4] Specifically, FERC explained that "the on-file market-based umbrella tariff (which was the subject of Commission approval) preauthorizes the seller to engage in market-based sales and puts the public on notice that the seller may do so," Pet. App. 43a; that "[p]ower sales made pursuant to a previously accepted market-based rate tariff are, in effect, pre-authorized pursuant to the acceptance for filing of the market-based rate tariff," *id.* at 53a; that market-based rate tariffs fulfill the notice function of § 205(c) because "purchasers know in advance that . . . the rates could 'fluctuate widely and rapidly . . . according to supply and demand,'" *id.* at 45a (quoting Complaint, *California ex rel. Lockyer v. British Columbia Power Exchange Corp.*, Docket No. EL02-71-000 (FERC filed Mar. 20, 2002)); that it was sellers' market-based rate tariffs, "not the quarterly reports," that "constitute[d] the authorization to sell at market-based rates," *id.* at 53a; that California was wrong to assert that deficiencies in transaction reports meant that "no rates were lawfully on file in the first instance," *id.*; that "reporting

Finally, California's attempt (at 7) to paint the reporting deficiencies as serious transgressions that prevented FERC from regulating California's markets is inconsistent with FERC's factual findings that "[t]he Commission as well as all market participants *were aware* that energy prices in California were rising beginning in early 2000" and that "[t]he filing of aggregated data *did not conceal the fact that prices were going up*." Pet. App. 75a-76a (emphases added). Moreover, FERC found that California had failed "to demonstrate specific instances of alleged unjust and unreasonable rates or prohibited schemes – or that they resulted from sellers' non-compliance with the filing requirements." *Id.* at 75a. Because the Ninth Circuit nowhere held that those findings of fact lacked substantial evidence, they are conclusive.[5] Thus, without any finding of a § 205(c) violation or any other support in § 205, the Ninth Circuit nonetheless "agree[d] with California that FERC improperly concluded that retroactive refunds were not legally available." *Id.* at 18a. That judgment creates a conflict with the D.C. Circuit and other circuits warranting this Court's review. *See* Pet. 24-26.

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deficiencies . . . d[id] not invalidate market-based pricing tariffs as lawful filed rates," *id.*; and that transaction reports "simply report the actual transactions that were previously authorized by the Commission, and thus do not constitute new § 205 rate filings," *id.* at 68a n.12.

[5] *See* 16 U.S.C. § 825*l*(b) ("The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."). California misleadingly claims (at 7) that "FERC staff reviewed the sellers' quarterly reports and determined that they provided no useful information." FERC staff in fact stated that "the information contained in the reports [was] not useful for the [staff's] fact-finding investigation" into whether Enron and other entities manipulated short-term prices in the Western wholesale electricity markets. *See* Letter Order to All Jurisdictional Sellers and All Non-jurisdictional Sellers in the West at 1, Docket No. PA02-2-000 (FERC Mar. 5, 2002), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=8306988. That the staff required additional information to conduct its in-depth and wide-ranging fact-finding investigation does not mean that petitioners' transaction reports were not useful for their intended purpose.

C. The Ninth Circuit Did Not Hold That Petitioners Violated Their Tariffs

For its part, FERC struggles to preserve the Ninth Circuit's expansion of its authority under § 205 by claiming that the court merely held that petitioners violated their tariffs by reporting aggregated information. FERC Opp. 14-15. In addition to being contrary to the Ninth Circuit's own repeated citation of § 205 as the authority for its holding (Pet. App. 17a-18a), FERC's interpretation of the Ninth Circuit's opinion loses all plausibility when viewed in light of sellers' filed tariffs. Powerex's then-current market-based rate tariffs, which are typical of petitioners' tariffs during the 2000-2001 period, contain *no* reporting requirement. *See* Add., *infra*, 1a-2a. Rather, during the period at issue here, FERC's reporting requirements were found only in its *orders* approving sellers' market-based rate tariffs. For example, FERC's order approving Powerex's market-based rate tariff provided that, "[c]onsistent with previous Commission decisions, we will require Powerex to file quarterly reports." *British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343, at 62,141 (1997). Although the order said nothing about the content of those reports, FERC later held that sellers should have been aware of its expectation that they file individualized (not aggregated) transaction information, *see* Pet. App. 48a-50a, even while acknowledging "legitimate confusion as to the Commission's expectations," *id.* at 78a.[6]

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[6] FERC's interpretation of the Ninth Circuit's opinion relies on stray comments that the reporting requirements were an "integral" part of the tariff. FERC Opp. 13 n.3. But other portions of the opinion contradict that reading and correctly state that the reporting requirements were part of "*the authorizations* under § 205." Pet. App. 17a (emphasis added). Even California apparently recognizes that FERC's reporting requirements were contained in the Commission's orders, not the sellers' tariffs. *See* Cal. Opp. 6 ("FERC imposed these reporting requirements on the petitioners and other sellers at the time they sought and obtained market-based rate authority.").

In addition, respondents' interpretations of the Ninth Circuit's opinion are not supported by the court's references to FERC's orders in *Washington Water Power Co.*, 83 FERC ¶ 61,282 (1998), and *Delmarva*

FERC's characterization here of the Ninth Circuit's opinion as resting on petitioners' supposed tariff violations also conflicts with FERC's representation to Congress that "'[t]he Ninth Circuit interpreted *the FPA* to provide [FERC] with broader authority than [FERC] believed *the Act* provided.'" Pet. 27 (quoting FERC 2005 Report at 7 n.12) (emphases added). The strained interpretation of the decision below that FERC advances now to oppose certiorari is most naturally read as an effort to preserve a decision enlarging its statutory powers. That kind of lower-court aggrandizement of an agency's powers, however, is precisely the kind of decision that must be reversed by this Court.

II. THIS COURT'S REVIEW IS REQUIRED NOW

The Ninth Circuit's holding creates enormous uncertainty for sellers in the nation's wholesale energy markets because it provides a means for disgruntled buyers to reopen closed transactions and to bring litigation to recover refunds that until now were uniformly prohibited by the FPA. As *amici* in the industry attest, that uncertainty will harm consumers by discouraging participation in, and thereby reducing the competitiveness and liquidity of, wholesale electricity markets. *See* Brief of Electric Power Supply Ass'n *et al.* at 10-15 (filed Apr. 25, 2007) ("EPSA Br."); *see also* Brief in Opp. to Conditional Cross-Pet. at 20-22, No. 06-1100 (filed May 16, 2007) ("No. 06-1100 Opp.") (explaining the importance of short-term power

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Power & Light Co., 24 FERC ¶ 61,199 (1983) (subsequent history omitted). *See* Pet. App. 14a-15a, 18a. The court understood those cases to hold that FERC has discretion to order retrospective relief, such as disgorgement of profits, when a seller violates "the terms of an accepted rate" (*i.e.*, its tariff) or charges "rates without first seeking approval under FPA § 205." *Id.* at 14a. Neither circumstance is present here. First, the Ninth Circuit did not say (and thus did not hold) that petitioners violated their tariffs, and such a holding would not have made sense in light of the absence of such requirements in the tariff. Second, petitioners did not sell without first seeking FERC's approval because, as the Ninth Circuit recognized, FERC had granted petitioners authority to sell at market-based rates. *See id.* at 4a; *see also supra* note 4; Pet. 19 n.33.

markets); Pet. 27 n.41. Regardless of whether FERC actually orders refunds in this proceeding, the Ninth Circuit's decision confers on FERC a power that it never had before. The potential exercise of that power has had and will continue to have a chilling effect on much-needed power investments. *See* EPSA Br. 12, 14-15.[7] For that reason as well, FERC's contention (at 17) that this case is in an interlocutory posture overlooks the illegitimacy of such a remand proceeding: where the statute's plain text fails to support the novel legal standard adopted by the court below, it would be inefficient to require the parties to litigate remand proceedings before the Commission only to have this Court rule later that the whole exercise was not permitted under the FPA.

Nor should the Court be swayed by FERC's lulling assertion (at 17 n.5) that the California energy crisis was a singular, non-recurring event. History belies that claim. In 1998, prices in the Midwest spot markets skyrocketed from an average of $25 to as high as $7,500 per megawatt-hour; similar price spikes occurred there the next year.[8] As summers grow warmer, demand for energy will rise,[9] risking the same problems that plagued California's markets. Indeed, Illinois recently has filed a complaint under § 205 requesting refunds on transactions executed in September 2006, asserting that the prices for those transactions exceed the "'zone of reasonableness.'" Complaint at

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[7] The destabilizing precedential impact of the decision below was felt when the Ninth Circuit relied on it to strip market-based rate sellers of the fundamental protections of the *Mobile-Sierra* doctrine. *See* Pet. 29-30; EPSA Br. 4, 18-20. Petitions for certiorari (Nos. 06-1454, 06-1457, 06-1462, 06-1468) have been filed challenging those decisions.

[8] *See* FERC Staff, *Report on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998*, at vi (Sept. 22, 1998), *available at* http://www.ferc.gov/legal/maj-ord-reg/land-docs/mastback.pdf; 1 Energy Information Administration, U.S. Dep't of Energy, *Electric Power Annual 1999*, at 3 (Aug. 2000), *available at* http://tonto.eia.doe.gov/FTPROOT/electricity/0348991.pdf.

[9] *See* FERC, *2007 Summer Energy Market Assessment* at 10-11 (May 17, 2007), *available at* https://www.ferc.gov/market-oversight/mkt-views/2007/05-17-07.pdf.

4, *Illinois ex rel. Madigan v. Exelon Generation Co.*, Docket No. EL07-47-000 (FERC filed Mar. 16, 2007) (quoting *Public Util. Dist. No. 1 of Snohomish County v. FERC*, 471 F.3d 1053, 1089 (9th Cir. 2006)).

For its part, California asserts (at 21-23) that the Ninth Circuit's decision was issued more than two years ago and, yet, the sky has not fallen. But California overlooks that the Ninth Circuit's mandate has not issued and the Commission has not been required to abide by the Ninth Circuit's misguided decision.[10] California also asserts (at 23-24) that the decision below will *not* affect FERC's resolution of disputes arising from the Western energy crisis because several sellers have recently settled their disputes with California. But such settlements are irrelevant to sellers that are wrongly accused of excessive charges and that choose to defend themselves by standing on their legal rights.[11]

CONCLUSION

The petition for a writ of certiorari should be granted.

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[10] The Ninth Circuit waited 21 months to deny a rehearing petition. *See* Pet. App. 80a-81a. Subsequently, the court issued multiple orders staying, and extending the stay of, its mandate. *See* Order (Aug. 7, 2006) (staying mandate until November 2, 2006); Order (Oct. 23, 2006) (extending stay until March 2, 2007); Order (Feb. 16, 2007) (extending stay until April 29, 2007); Order (Apr. 25, 2007) (extending stay until June 13, 2007).

[11] California also contends that the Ninth Circuit's judgment is supported on the alternative ground, which the Ninth Circuit rejected, that market-based rate tariffs do not comply with the FPA. But the decision below cannot be defended on that basis because accepting that argument would expand the relief California obtained in the Ninth Circuit by permitting it to seek refunds from sellers that provided transaction-specific information in their quarterly reports. *See* Robert L. Stern et al., *Supreme Court Practice* 445-46 (8th ed. 2002) (citing cases). Because there is no conflict on the legality of market-based rate tariffs and that question need not be resolved to decide the question presented here, the Court should deny the cross-petition and await the development of a conflict in the courts of appeals before considering whether to decide that issue. *See* No. 06-1100 Opp. 9-16, 18-19.

Respectfully submitted,

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ADDENDUM

ADDENDUM
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ER97-4024-000
British Columbia Power Exchange
FERC Electric Rate
Schedule No. 1
Filing Date 7/31/97
Effective Date 8/1/97

EXHIBIT F

BRITISH COLUMBIA POWER EXCHANGE CORPORATION

FERC RATE SCHEDULE NO. 1

1. **Availability**: The British Columbia Power Exchange Corporation ("Powerex") makes electric energy and capacity available under this Rate Schedule to any purchaser for resale.

2. **Applicability**: This Rate Schedule is applicable to all sales of energy or capacity by Powerex to customers located in the United States not otherwise subject to a particular rate schedule of Powerex.

3. **Rates**: All sales shall be made at rates established by agreement between the purchaser and Powerex.

4. **Other Terms And Conditions**: All other terms and conditions shall be established by agreement between the purchaser and Powerex.

5. **Affiliate Sales Prohibited**: No sale may be made by Powerex pursuant to this Rate Schedule to any Powerex affiliate with a franchise service area in the United States.

6. **Effective Date**: This Rate Schedule shall be effective on the date specified by the Federal Energy Regulatory Commission.

Powerex Corp. Original Sheet No. 1
First Revised Rate Schedule No. 1
(Supersedes Original Rate Schedule No. 1)

DOCKET NO ER01-48-000
COMPANY Powerex Corp.
1ST REV FERC ELEC RATE SCH NO. 1
FILING DATE 10/4/00
EFFECTIVE DATE 9/6//00

POWEREX CORP.

FERC RATE SCHEDULE NO. 1

1. **Availability**: Powerex Corp. ("Powerex") makes electric energy and capacity available under this Rate Schedule to any purchaser for resale.

2. **Applicability**: This Rate Schedule is applicable to all sales of energy or capacity by Powerex to customers located in the United States not otherwise subject to a particular rate schedule of Powerex.

3. **Rates**: All sales shall be made at rates established by agreement between the purchaser and Powerex.

4. **Other Terms and Conditions**: All other terms and conditions shall be established by agreement between the purchaser and Powerex.

5. **Affiliate Sales Prohibited**: No sale may be made by Powerex pursuant to this Rate Schedule to any Powerex affiliates with a franchise service area in the United States.

6. **Effective Date**: This Rate Schedule shall be effective on the date specified by the Federal Energy Regulatory Commission.

Issued by: Doug Little, Vice President, Trade & Development
Effective: September 6, 2000
Issued on: October 4, 2000

Filed to comply with Order No. 614, Docket No. RM99-12-000, issued March 31, 2000