

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF POWEREX CORPORATION ON THE PROPOSED
DECISION OF ADMINISTRATIVE LAW JUDGE SIMON**

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November 1, 2011

Attorneys for Powerex Corporation

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, Powerex Corporation (“Powerex”) hereby respectfully submits its reply to comments on the Proposed Decision (“PD”) of Administrative Law Judge Ann E. Simon issued October 7, 2011.

Upfront Showing and Compliance Determination

Powerex disagrees with SCE’s notion that ESPs and CCAs should be required to make an upfront showing.”¹

As the PD makes clear, **IOUs** are required to do this because the Commission approves their contracts and is required to ensure just and reasonable rates.² On the other hand, the Commission generally does not review the contracts of non-IOU retail sellers to determine whether the rates associated with such transactions are just and reasonable as non-IOU retail sellers are responsible for managing their own ratepayer/customer risk. The IOUs’ up-front showing with regard to the categorization of each procurement transaction is for the purpose of allowing the Commission to evaluate the value to

¹ Southern California Edison Company’s Comments to Proposed Decision of ALJ Simon Implementing Portfolio Content Categories for the RPS Program.

² PD at p. 12, fn. 27 (emphasis added).

ratepayers and price reasonableness of the transactions.³ This is not and should not be required for non-IOU transactions. Thus, any up-front showing regarding categorization of procurement transactions should apply to IOUs only, and *not* non-IOU retail sellers.

In its opening comments, Powerex recommended that the detailed information required by the Energy Division for up-front showing of procurement transaction categorization should include a delivery plan in the advice letter to allow the Commission to adequately determine the likelihood that a product will meet the requirements of §399.16 (b)(1)(A). Powerex understands and appreciates SCE's comment that the commercial reality is that not all of the information about dynamic transfer agreements, transmission arrangements, and firming and shaping arrangements may be in place at the time the advice letter for contract approval is filed.⁴ Powerex would like to clarify that the purpose of the upfront showing is not necessarily to have all commercial agreements in place to guarantee delivery categories, but simply to require IOUs to provide the Commission with sufficient information to ensure a degree of certainty and confidence that there is actually a high likelihood of delivery in each category. Powerex believes that delivery plans should be made public in order to validate the representations made as to the likelihood of delivery under a particular category.

³ PD at p. 12.

⁴ SCE Comments, pgs. 3-4.

Respectfully submitted this 1st day of November, 2011 at San Francisco,
California.

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By /s/ James D. Squeri
James D. Squeri

VERIFICATION OF COUNSEL

I, James D. Squeri, declare:

I am an attorney at law, duly admitted and licensed to practice before all courts of this state, and I have my professional office at Goodin, MacBride, Squeri, Day & Lamprey, LLP, 505 Sansome Street, Suite 900, San Francisco, California 94111.

I am an attorney for Powerex Corp. (“Powerex”) in the above-entitled matter.

No officer of Powerex is present in the county in which I have my office and, for that reason, I am making this verification on behalf of Powerex.

I have read the foregoing REPLY COMMENTS OF POWEREX CORPORATION ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SIMON and know the contents thereof.

I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on this 1st day of November, 2011.

/s/ James D. Squeri
James D. Squeri