

141 FERC ¶ 61,089  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Powerex Corp.

Docket No. ER11-2664-002

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS

(Issued November 2, 2012)

1. In this order, the Commission accepts a notice of change in status filed by Powerex Corporation (Powerex) relating to increases in control of generation capacity due to an agreement Powerex has entered into with Public Utility District No. 1 of Chelan County, Washington (Chelan). As discussed below, the Commission concludes that Powerex continues to satisfy the Commission's standards for market-based rate authority.
2. Additionally, we designate Powerex as a Category 2 seller in the Northwest region. Accordingly, Powerex must file updated market power analyses for the Northwest region in compliance with the regional reporting schedule adopted in Order No. 697.<sup>1</sup>

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<sup>1</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9<sup>th</sup> Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

## I. Background

3. On April 13, 2012, as amended on May 25, 2012, May 29, 2012, and July 27, 2012,<sup>2</sup> Powerex submitted a notice of change in status pursuant to the reporting requirements of Order No. 652<sup>3</sup> and section 35.42 of the Commission's regulations.<sup>4</sup> Powerex explains that the primary purpose of the notice is to inform the Commission that Powerex is entering into a Real-Time Scheduling and Marketing Agreement (RT Agreement) with Chelan.

4. Powerex is a wholly-owned subsidiary of the British Columbia Hydro and Power Authority (BC Hydro), a Provincial Crown Corporation owned by the Government of British Columbia.

5. Chelan is a balancing authority located in central Washington near the Mid-Columbia Trading Hub. Chelan owns and operates the Rocky Reach and Rock Island Hydroelectric Projects. Chelan's first-tier balancing authority areas include Public Utility District No. 2 of Grant County, Washington (Grant), Bonneville Power Authority (BPA), Public Utility District No. 1 of Douglas County, Washington (Douglas), and Puget Sound Energy, Inc. (Puget). Chelan has long-term contracts selling percentages of the output of the Rocky Reach and Rock Island Hydroelectric Projects to Douglas and Puget. Additionally, Chelan has offered slice of system contracts for varying percentages of output from the two projects. Chelan also has a long-term power purchase agreement with Alcoa Power Generation, Inc. and Alcoa, Inc. (collectively, Alcoa) for output equivalent to 26 percent of the energy and capacity from both the Rocky Reach and

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<sup>2</sup> On May 22, 2012, the Division of Electric Power Regulation – West issued a deficiency letter seeking additional information from Powerex regarding its filing. *Powerex Corp.*, Docket No. ER11-2664-002 (May 22, 2012) (delegated letter order). On May 25, 2012, as amended on May 29, 2012, Powerex submitted a response to the May 22, 2012 request for additional information. On July 20, 2012, the Division of Electric Power Regulation – West issued a deficiency letter seeking further information from Powerex. *Powerex Corp.*, Docket No. ER11-2664-002 (July 20, 2012) (delegated letter order). On July 27, 2012, Powerex submitted a response to the July 20, 2012 request for information.

<sup>3</sup> See *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

<sup>4</sup> 18 C.F.R. § 35.42 (2012).

Rock Island Projects to be used at Alcoa's Wenatchee Smelter or to be sold to Alcoa under certain circumstances.

6. Powerex explains that Chelan issued a request for pricing for real-time services, under which Chelan sought a new entity to manage its real-time activities, and that it selected Powerex as the winning bidder. Powerex states that as the real-time scheduling entity for Chelan, Powerex, along with Chelan's system operators, will monitor Chelan's generation, load, and scheduled energy flowing into and out of the Chelan balancing authority area to ensure that Chelan has a balanced power system and that Chelan's loads and other obligations are met in real-time. Further, Powerex states that it will buy and sell energy or reserves to meet changes in Chelan's load or changes affecting Chelan's generating resources and make real-time schedule adjustments as necessary to satisfy Chelan's obligations.

7. Powerex represents that it will have access to buy and sell approximately 394 megawatts (MW) of the Rocky Reach and Rock Island Hydroelectric Projects' hourly residual generating capacity and storage.<sup>5</sup> Powerex represents that this residual generating capacity and storage consists of the excess remaining after meeting Chelan's obligations, which include Chelan's load and all of its contractual requirements to deliver energy and capacity. Powerex represents that it will not take title to any of Chelan's power within the Chelan balancing authority area, but rather at four specified interconnections to certain first-tier balancing authority areas. Powerex represents that it will not have dispatch control of Chelan's physical system and that Chelan's system operators will retain final authority to maintain system reliability. Powerex states that Chelan retains its rights prior to the real-time period to conduct normal business, including continuing to sell slices of its system to third parties, subject to agreed-upon limitations.

8. Powerex states that under the RT Agreement, Chelan will provide Powerex with access to the hourly residual generating capacity and storage of the Rocky Reach and Rock Island Hydroelectric Projects. Upon entering the operating day, any remaining intra-day flexibility of Chelan's remaining share of the projects and pond storage account will be available to Powerex in real-time. Powerex will have the option to schedule energy or capacity to and from Chelan, subject to system constraints. On average, there

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<sup>5</sup> Powerex notes that the actual quantity of available capacity to Powerex at any given time will vary depending on operating conditions such as river flows, unit outages, Chelan's load, Chelan's trading commitments, contingency reserve requirements, and other system restrictions. Powerex estimates that the range of Chelan's capacity that Powerex will have access to buy and sell is between 0 to 625 MW daily.

is no net energy sold to Powerex under the RT Agreement, except under spill conditions. Powerex states that the RT Agreement provides Powerex with access to the residual generating capacity of the projects with delivery points at the borders between Chelan and four specified interconnected balancing authority areas and that Powerex will not control any energy within the Chelan balancing authority area.

9. On May 30, 2012, Powerex submitted an informational filing stating that Powerex and Chelan entered into an interim agreement that will provide for real-time e-Tag monitoring and approval services by Powerex to Chelan.<sup>6</sup> Powerex states that the interim agreement does not provide Powerex with any access to or control of Chelan's residual generating capacity. Powerex further states that the agreement will be effective June 1, 2012 and will be in place only until shortly after a Commission order accepting Powerex's April 13, 2012 filing.

## **II. Notice of Filings and Responsive Pleadings**

10. Notice of Powerex's April 13, 2012, May 25, 2012, May 29, 2012, and July 27, 2012 filings were published in the *Federal Register*,<sup>7</sup> with interventions and comments due on or before August 10, 2012.

11. Morgan Stanley Capital Group, Inc. (Morgan Stanley) and Chelan filed motions to intervene and comments on May 4, 2012 and May 21, 2012, respectively. Exelon Corporation, NatureEner USA, LLC and Southern California Edison Company filed timely motions to intervene.

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<sup>6</sup> Powerex states, in its July 27, 2012 filing, that the RT Agreement tasks it with ensuring that parties submitting e-Tags with generation sources or sinks in Chelan's balancing authority area have appropriate and sufficient contract rights to do so, as set forth in their publicly available slice auction agreements, and that the parties have provided all applicable information required on the e-Tag. Powerex further states that slice auction customers' rights to Chelan generation output change in quantity frequently throughout each day based on Chelan's physical system conditions, requiring significant real-time monitoring and approval of e-Tags from a generation and load serving perspective. Powerex contends that the e-Tagging services do not involve any discretion by Powerex to allocate rights to Chelan's generation or slice products among Chelan's customers and that Powerex's e-Tag review functions are administrative in nature.

<sup>7</sup> 77 Fed. Reg. 24,695 (2012); 77 Fed. Reg. 33,209 (2012); 77 Fed. Reg. 46,751 (2012).

12. On May 8, 2012, Powerex filed an answer to Morgan Stanley's May 4, 2012 comments. On May 11, 2012, Morgan Stanley filed an answer to Powerex's May 8, 2012 answer.

13. On June 5, 2012, Morgan Stanley filed comments in response to the data request response Powerex filed on May 25, 2012, as amended May 29, 2012. On June 5, 2012, Powerex filed an answer to Morgan Stanley's June 5, 2012 comments.

14. On August 10, 2012, Morgan Stanley filed comments in response to the data request response Powerex filed on July 27, 2012. On August 15, 2012, Powerex and Chelan filed answers to Morgan Stanley's August 10, 2012 comments.

### **III. Discussion**

#### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Powerex, Chelan and Morgan Stanley because they have provided information that assisted us in our decision-making process.

#### **B. Analysis**

17. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>8</sup> As discussed below, the Commission has reviewed Powerex's change in status filing and concludes that Powerex continues to satisfy the Commission's standards for market-based rate authority.

##### **1. Horizontal Market Power**

18. The Commission adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>9</sup> The

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<sup>8</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>9</sup> *Id.* P 62.

Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>10</sup>

19. Powerex's change in status filing includes a horizontal market power analysis containing the indicative screens for the Puget and BPA balancing authority areas, which, as noted above, are first-tier to the Chelan balancing authority area. Powerex notes that a horizontal market power analysis typically centers on and examines the balancing authority area where the seller's generation is physically located.

20. With regard to the Chelan balancing authority area, Powerex states that it will not control, but rather will have access to buy and sell, energy and capacity as Chelan's real-time scheduling entity. Further, Powerex will not take title to any energy within the Chelan balancing authority area, but rather at the points where Chelan interconnects with the Puget, BPA, Grant, and Douglas balancing authority areas; thus no transactions occur within the Chelan balancing authority area. In addition, Powerex states that it does not have any long-term firm transmission reservations into the Chelan balancing authority area, and that the Simultaneous Transmission Import Limit (SIL) into the Chelan balancing authority area is zero. Powerex represents that its market share would be zero in the Chelan balancing authority area and it would pass the Commission's screens. Given the specific facts provided by Powerex in the instant filings, particularly that Powerex does not own or control any generation in the Chelan balancing authority area or have any long-term firm reservations into the Chelan balancing authority area, and that the SIL into the Chelan balancing authority area is zero, the Commission finds that Powerex has satisfied our concerns with regard to horizontal market power in the Chelan balancing authority area.

21. Powerex represents that the SIL into the Grant balancing authority area is zero and that the SIL would likewise be expected to be zero for the Douglas balancing authority area because the latter area exports a relatively large share of its generation. Powerex states that it had no long-term firm transmission reservations into those two balancing authority areas during the study period. Powerex notes that although it has an entitlement to a share of the Priest Rapids Project owned by Grant, the instant change in status does not affect the Grant balancing authority area. Powerex states that it did not own any generation in the Douglas balancing authority area during the study period. Powerex represents that it would pass the screens in both areas. Given the specific set of facts detailed by Powerex in the instant filings, including that Powerex does not own or control any additional generation in either balancing authority area or have any long-term firm

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<sup>10</sup> *Id.* PP 33, 62-63.

reservations into either balancing authority area, Powerex has satisfied the Commission's concerns with regard to horizontal market power in the Grant and Douglas balancing authority areas.

22. Powerex concludes that the BPA and Puget balancing authority areas are appropriate markets for purposes of its analysis, given that Powerex either had long-term transmission reservations into them (in the case of the BPA balancing authority area) or would be deemed to have the ability to import into them (in the case of the Puget balancing authority area). Therefore, Powerex submitted screens for these two balancing authority areas. Powerex's market power analysis demonstrates that it passes both the pivotal supplier and the wholesale market share screens for these two balancing authority areas with market shares ranging from 5.7 to 6.8 percent in the BPA balancing authority area and from 3.2 to 4.7 percent in the Puget balancing authority area. Powerex's pivotal supplier analysis indicates that the net uncommitted supply in the BPA and Puget balancing authority areas exceed Powerex's uncommitted capacity.

23. The Commission has reviewed Powerex's pivotal supplier and wholesale market share screens and has determined that Powerex passes both screens in the Puget and BPA balancing authority areas.

**a. Responsive Pleadings Regarding the Potential for Market Power**

24. Morgan Stanley, in its May 4, 2012 comments, states that it is concerned that Powerex does not adequately describe the manner in which the RT Agreement may impact the bilateral real-time and ancillary service markets in the Pacific Northwest. Morgan Stanley states that the indicative screens do not fully assess the specific impact to competition in the Northwest region that may arise pursuant to the RT Agreement, particularly in light of Powerex's other generation and transmission positions in that region. Morgan Stanley states that the indicative screens do not explicitly test for control of a single subset of energy market services.

25. Morgan Stanley states that Powerex, through its relationship with BC Hydro and its large transmission portfolio, is currently the preeminent supplier of real-time energy and related balancing products and services in the Pacific Northwest. Morgan Stanley contends that Powerex's access to and control of Chelan's balancing resources further consolidates these scarce services with potentially negative impacts on competitive markets in the region. Morgan Stanley also expresses concern that, as Chelan's real-time manager, Powerex will gain access to slice participants' schedules and e-Tags.

26. Morgan Stanley states that it does not oppose Chelan's right to outsource services or the RT Agreement *per se*. However, Morgan Stanley believes that the Commission must take a closer look at the potential market repercussions of the RT Agreement and work with Chelan, Powerex and interested market participants to implement solutions

that will help ensure the RT Agreement does not interfere with the ability of all market participants to have access to competitively-priced real-time balancing products.

27. Morgan Stanley requests that the record address specific questions and that the Commission impose certain conditions on Powerex that will apply during the term of the RT Agreement. These questions and conditions primarily concern whether Powerex will see information not available to other market participants, whether the RT Agreement imposes certain contractual limitations, such as limitations on Chelan's ability to offer slice or other real-time products to the market, and what role Powerex will play with respect to Chelan's future slice auctions and contracts. Morgan Stanley requests that the Commission establish an appropriate timeline to identify risks and implement solutions needed to protect the market and impose appropriate conditions on Powerex that will apply as needed.

28. Powerex, in its May 8, 2012 response to Morgan Stanley's comments, states that it has fully complied with the Commission's two indicative market power screens. Powerex states that Morgan Stanley's argument that the indicative screens do not test for a single subset of energy market services amounts to a collateral attack on the Commission's prior orders adopting the indicative screens, rather than challenging the results of the Commission's screens when applied to the RT Agreement. Additionally, Powerex responds to the specific questions and conditions articulated by Morgan Stanley.

29. Specifically, Powerex explains that it will have access to information necessary to act as Chelan's real-time entity. Powerex represents that it will not have any access to market participants' non-public commercial information beyond the limited information contained on e-Tags and the aggregate information about slice customers' scheduling totals and limits. Powerex states that most of the e-Tag information that it will have access to is publicly available to all market participants within a matter of days, including source, sink, and transmission path information. Powerex represents that it is unaware of any additional information it will receive about Mid-C assets relevant to slice agreements that is not also disclosed to slice participants.

30. Powerex states that under the RT Agreement, Chelan may continue to sell slice products just as it has done historically and that the RT Agreement does not impose limitations on the ability of slice customers to use their slice product to integrate or balance variable energy resources, beyond the current restrictions that Chelan itself has established in the existing slice contracts and in Chelan's existing business and operational practices. Powerex states that it will have no role in structuring Chelan's future slice auctions or negotiating contract terms with Chelan slice auction participants or winners. Powerex states that it does not currently own any slice output from Chelan but that it will have the same ability as any other market participant to bid for future slice products offered by Chelan. Powerex states that the RT Agreement does not provide

Powerex with any priority, right of first refusal, or other special treatment in future Chelan slice auctions.

31. Morgan Stanley, in its May 11, 2012 answer, states that Powerex has failed to demonstrate that the RT Agreement does not give it undue market power over the bilateral real-time and ancillary service markets in the Pacific Northwest, particularly intra-hour services. Morgan Stanley states that it remains concerned about the ability of Powerex trade floor personnel having access to slice participants' e-Tag information. Morgan Stanley states that the past real-time manager did not have the same market presence in the real-time energy market that Powerex does, with its access to fast ramping resources in British Columbia and its large transmission portfolio that can be used to restrict access into and out of the Pacific Northwest on constrained paths. Morgan Stanley is concerned that Powerex would be able to take immediate market action in response to the e-Tag information.

32. Chelan, in its May 21, 2012 comments, requests that the Commission not impose conditions that would impact the slice contracts. Chelan also requests that the Commission not preclude the real-time provider from bidding on Chelan's slice contracts.

33. On May 31, 2012, Morgan Stanley filed comments in response to Powerex's May 30, 2012 filing regarding the interim agreement that Powerex and Chelan agreed to while the instant change in status filing is pending. Morgan Stanley argues that the interim scheduling agreement will give Powerex access to all of Chelan's and Chelan's slice owners' pre-schedule and real-time energy and capacity schedules, as proposed in the RT Agreement. Morgan Stanley also states that Powerex will be responsible for curtailing e-Tags due to generation or transmission constraints and will have approval rights for all slice participants' real time e-Tags. Morgan Stanley is concerned that the RT Agreement would give Powerex access to commercially sensitive information about its competitors at a point in time when its trading personnel can act on that information to the detriment of the market. Morgan Stanley requests that the Commission require Powerex to segregate the employees who will have access to certain data from its trade floor personnel and to secure a commitment that there will be no direct or indirect information sharing between the two, or, in the alternative, have BC Hydro's transmission group provide these services in accordance with the Commission's Standards of Conduct policy, which governs information access and information sharing between the transmission provider and its marketing affiliate.

34. Morgan Stanley, in its June 5, 2012 comments, reiterates its concerns that the RT Agreement will adversely impact the bilateral real-time and ancillary services markets in the Pacific Northwest and that the RT Agreement significantly increases Powerex's control over real-time balancing products and gives it access to information about its competitors that could be used to the detriment of the market.

35. With respect to Powerex's market power analysis, Morgan Stanley states, in its June 5, 2012 comments, that the analysis is deficient in that it failed to include the Avista Corp. (Avista) balancing authority area, which is interconnected with Chelan, in the relevant geographic market and that it appears to have discounted the direct transmission interconnections from B.C. Hydro to Puget and BPA.

36. Additionally, in response to Chelan's comments, Morgan Stanley clarifies that it fully supports intra-hour scheduling and would be concerned by any conditions or limited market access to intra-hour scheduling or real-time balancing products as a result of the RT Agreement.

37. Powerex, in its July 27, 2012 filing, provides sample e-Tags and explains that the e-Tag monitoring, validation, and approval service that Powerex will provide to Chelan relates exclusively to the generation and load sections of the e-Tag and does not implicate transmission related to e-Tags. Powerex emphasizes that the e-Tagging services Powerex will be providing to Chelan do not relate to transmission on Chelan's system. Powerex also states that the e-Tagging services do not involve any discretion by Powerex to allocate rights to Chelan's generation or slice products among Chelan's customers.

38. Morgan Stanley, in its August 10, 2012 comments, states that Powerex will be responsible for curtailing e-Tags due to generation or transmission constraints and will have approval rights for all slice participants' real time e-Tags. Morgan Stanley discusses the sample e-Tags Powerex provided in its July 27, 2012 filing and notes that day-ahead e-Tags are submitted after the trading day in the day-ahead market has concluded; thus, access to commercially sensitive information contained in a day-ahead e-Tag does not present the same opportunity to act on information as access to a real-time e-Tag. Morgan Stanley maintains that Powerex will have access to the commercially sensitive information between Morgan Stanley and a counterparty that the rest of the market will not have in real time. Morgan Stanley reiterates its request that the Commission require Powerex to segregate the employees who will have access to commercially sensitive real time market information from its trade floor personnel.

39. In response to Morgan Stanley's August 10, 2012 comments, Powerex and Chelan both state, in their respective August 15, 2012 answers, that Morgan Stanley is incorrect in its statement that Powerex will be responsible for curtailing e-Tags due to constraints. Chelan emphasizes that it has not granted Powerex any right or responsibility for operating Chelan's transmission facilities. Likewise, Powerex states that it will have no transmission rights or responsibilities under the RT Agreement. Both Chelan and Powerex urge the Commission to refrain from placing conditions on Powerex's role as Chelan's real-time scheduling entity. Additionally, Powerex states that Morgan Stanley's attempts to differentiate the availability and/or sensitivity of real-time e-Tag information relative to day-ahead e-Tag information are unfounded. Powerex contends that the

information on real-time e-Tags is as visible to downstream parties and to their third-party service providers as the information on day-ahead e-Tags.

40. Powerex, in its June 5, 2012 answer to Morgan Stanley's June 5, 2012 comments, states that it did not examine the Avista balancing authority area because the delivery points defined in the RT Agreement do not include an interconnection point between the Chelan and Avista balancing authority areas. Therefore, Powerex states that a separate analysis of the Avista balancing authority area is irrelevant.

41. Additionally, Powerex contends that Morgan Stanley is incorrect in arguing that Powerex discounted the direct transmission interconnections from BC Hydro to Puget and BPA. Rather, Powerex maintains that it directly accounted for all of its long-term firm transmission reservations in the relevant geographic markets.

**b. Commission Determination Regarding Responsive Pleadings**

42. As discussed above, even with the increases in control of generation capacity due to the RT Agreement, Powerex has demonstrated that it passes the indicative screens, which establishes a rebuttable presumption that it does not possess horizontal market power. The Commission agrees with Morgan Stanley that a closer look at the potential market repercussions of the RT Agreement was necessary, and has done that; however, the Commission does not agree that the RT Agreement interferes with the ability of all market participants to have access to competitively-priced real-time balancing products. We find that Morgan Stanley has not presented adequate evidence to rebut the presumption that Powerex does not possess horizontal market power. We also find that Morgan Stanley has not provided evidence that Powerex or BC Hydro present undue market power over real-time energy and related balancing products and services in the U.S.

43. We recognize Morgan Stanley's concerns regarding Powerex's access to commercially sensitive information and note Powerex's explanation that it will only have access to information necessary to act as Chelan's real-time scheduling entity and that such information is limited to the minimal commercial information contained on e-Tags, other market participant information that becomes publicly available, and information under the Mid-C Hourly Coordination Agreement that is available to all slice transaction customers. Like Powerex, many third parties serve as scheduling coordinators and have similar access to information. In fact, several entities have served the same function for Chelan that Powerex is now serving, with access to the same commercially sensitive information.

44. The ultimate concern arising from access to commercially sensitive information is through misuse, including through the exercise of market power. Powerex has demonstrated that it passes the Commission's market power screens, and no compelling

argument has been posed to the contrary. With respect to the potential for misuse, we conclude that there are already adequate rules in place that prohibit Powerex from misusing any non-public information it may receive. Section 205 of the Federal Power Act (FPA) prohibits a public utility from making or granting any undue preference or advantage to any person or subjecting any person to any undue prejudice or disadvantage with respect to any transmission or sale subject to the jurisdiction of the Commission.<sup>11</sup> In addition, section 222 of the FPA and the Commission's anti-market manipulation rules prohibit entities, in connection with the purchase or sale of electric energy or transmission services subject to the Commission's jurisdiction, from engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.<sup>12</sup> Additional conditions on Powerex's market-based rate authority are not being imposed as sections 205 and 222 of the FPA prohibit Powerex from engaging in unduly preferential behavior or market manipulation. However, our findings here do not exempt a future challenge in the event that specific misconduct is identified.

45. With respect to Morgan Stanley's contention that Powerex's market power analysis is deficient in that it failed to include the Avista balancing authority area, we note that we agree with Powerex that the Avista balancing authority area is not relevant here. Powerex represents that it does not own, operate or control generation or transmission facilities within the Avista balancing authority area. Further, Powerex represents that the Delivery Points defined in the RT Agreement do not include an interconnection point between the Chelan and Avista balancing authority areas. Therefore, under the RT Agreement, there will be no transfer of title of energy or capacity at an interconnection point between these two balancing authority areas. Additionally, with respect to Morgan Stanley's contention that Powerex's analysis is deficient with regard to transmission interconnections from B.C. Hydro to Puget and BPA, we will rely on Powerex's representation that it directly accounted for all of its long-term firm transmission reservations in the relevant geographic markets, and that Morgan Stanley has presented no evidence to show otherwise. We also note that BC Hydro operates its transmission facilities pursuant to an open access transmission tariff.<sup>13</sup>

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<sup>11</sup> 16 U.S.C. § 824d (2006).

<sup>12</sup> 16 U.S.C. § 824v (2006). *See also* 18 C.F.R. § 1c.2 (2012).

<sup>13</sup> *See British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343, at 62,139 (1997).

46. Based on these determinations and Powerex's representations in this proceeding, we find that Powerex satisfies the Commission's requirements for market-based rates regarding horizontal market power.

## 2. Vertical Market Power

47. Powerex represents that the change reported in the instant notification does not raise any vertical market power concerns or change any of the characteristics the Commission relied upon in granting Powerex market-based rate authority. Powerex states that it and its affiliates have not erected barriers to entry in the relevant market and will not erect barriers to entry into the relevant markets. Additionally, Powerex states that it has no transmission rights or responsibilities under the RT Agreement, and will not have any ability to access, operate or control any of Chelan's transmission facilities. Powerex represents that Chelan's transmission facilities are solely and exclusively owned, operated, and controlled by Chelan. Based on Powerex's representations, we find that Powerex's instant notification raises no vertical market power issues.

## 3. Category Status

48. In Order No. 697, the Commission created two categories of sellers.<sup>14</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888<sup>15</sup>); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power

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<sup>14</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>15</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

issues.<sup>16</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>17</sup>

49. In its change in status filing, Powerex discusses its acquisition of control of the residual generating capacity of the Rocky Reach and Rock Island Projects under the RT Agreement and states that it will no longer qualify for Category 1 status in the Northwest region. Powerex commits to revise its market-based rate tariff to reflect that it is a Category 2 seller in the Northwest region and to submit updated market power analyses pursuant to the regional reporting schedule adopted in Order No. 697. Powerex maintains that it continues to qualify as a Category 1 seller in all other regions.

50. Based on Powerex's representations, we designate Powerex as a Category 2 seller in the Northwest region. Powerex must file updated market power analyses for the Northwest region in compliance with the regional reporting schedule adopted in Order No. 697.<sup>18</sup> The Commission also reserves the right to require such an analysis at any intervening time.<sup>19</sup>

51. Additionally, because Powerex is designated as a Category 2 seller in the Northwest region, we direct Powerex to submit a compliance filing, within 30 days of the date of this order, revising its tariff to reflect its designation as a Category 2 seller in the Northwest region.

The Commission orders:

(A) Powerex's notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(B) Powerex is directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

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<sup>16</sup> 18 C.F.R. § 35.36(a) (2012).

<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>18</sup> *Id.* PP 848-850.

<sup>19</sup> *See id.* P 853.

(C) Powerex is hereby directed to file updated market power analyses for the Northwest region according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.