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Via Electronic Submission

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of Powerex Corp. on the Proposed 15-Day Amendments to the Cap-and-Trade Regulation

Dear Chairwoman Nichols and Members of the Board:

On behalf of Powerex Corp. (“Powerex”), I submit the following comments on the California Air Resources Board’s (“ARB’s”) March 21, 2014 proposed 15-day rulemaking amendments to the Cap-and-Trade Regulation (the “CTR”), scheduled for consideration by the Board at its April 25, 2014 board meeting.

Powerex is a corporation organized under the Business Corporations Act of British Columbia, with its principal place of business in Vancouver, British Columbia, Canada. Powerex is the wholly-owned energy marketing subsidiary of the British Columbia Hydro and Power Authority (“BC Hydro”), a provincial Crown Corporation owned by the Government of British Columbia. Powerex sells power wholesale in the United States, pursuant to market-based rate authority granted by the Federal Energy Regulatory Commission in October 1997, renewed most recently effective January 1, 2009.

Powerex sells power from a portfolio of resources in the United States and Canada, including Canadian Entitlement resources made available under the Columbia River Treaty, BC Hydro system capability, and various other power resources acquired from other sellers within the United States and Canada. Powerex also buys and sells power in Canadian provinces other than British Columbia and in Mexico. Powerex has been delivering power to California since shortly after receiving its market-based rate authority and is currently registered with ARB as an Asset Controlling Supplier (“ACS”).

Powerex appreciates ARB’s efforts to create and implement a comprehensive greenhouse gas (“GHG”) cap-and-trade program. It is clear that important issues remain to be resolved if the

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GHG emissions and electricity markets are to function efficiently. Powerex offers the following comments and clarifying questions on the proposed amendments to the CTR with the goal of improving and refining the cap-and-trade program, and clarifying the CTR.

1. Clarification of Proposed CTR Subsections 95802(a)(338) and 95852(b)(2) Regarding the Prohibition on Resource Shuffling.

On October 23, 2013, Powerex submitted comments on the proposed amendments to the CTR considered by the Board at its October 2013 meeting (“Powerex’s October letter”). Among other issues, Powerex’s October letter addressed proposed changes to the rules governing resource shuffling. However, ARB has not made any clarifying amendments or additions to the resource shuffling modifications now proposed. Powerex continues to support ARB’s ongoing effort to provide clarity and specificity to the rules prohibiting resource shuffling, but Powerex believes that further clarification is necessary on a few specific and important issues.

In Powerex’s October letter, we requested clarification that the resource shuffling prohibition does not apply to transactions and deliveries *within* an ACS’s system. In its October letter, Powerex suggested that ARB address this uncertainty by adding an additional “safe harbor 14” to exempt transactions and deliveries within an ACS system from the resource shuffling prohibition. If ARB chooses not to adopt the proposed additional safe harbor, Powerex specifically requests that in the upcoming Final Statement of Reasons for these CTR amendments (the “2014 FSOR”) ARB confirm that:

The resource shuffling prohibition does not apply to transactions and deliveries within an ACS’s system that occur during the reporting year for which the entity has been designated as an ACS.

ARB can realize broad program benefits by providing the requested clarity, either in the 2014 FSOR or by further modification of the resource shuffling rule. Clarification of applicability of the resource shuffling prohibition to ACS entities will give assurance to current ACS entities, as well as those entities considering applying for ACS status, of the value of the ACS program. The ACS program provides ARB a more robust oversight framework, and ARB should not jeopardize the continued viability of this important tool by allowing the current regulatory uncertainty to persist.

2. Proposed CTR Subsection 95852(b)(4) Regarding the Renewable Portfolio Standard (“RPS”) Adjustment.

Powerex supports the currently proposed additional modifications to CTR subsection 95854(b)(4)(A)(2), which amend the provision to eliminate the previously proposed requirement that an importer have a contract with an RPS-covered entity that assigns rights to the renewable energy certificates (“RECs”) associated with the delivery of electricity covered by that contract to the RPS-covered entity. Powerex is appreciative of staff effort and consideration of the issue.

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ARB also proposes to amend CTR subsection 95854(b)(4)(B). For clarity of the amendments to that subsection, Powerex requests that ARB explicitly address the following response it provided in the October 2011 FSOR:

... The RPS adjustment applies to electricity procured, during the same data year from eligible renewable facilities to meet the requirements of California's RPS program. The equation for the calculation of the RPS adjustment that allows a reduction of covered emissions is based on the default emission factor for unspecified sources, pursuant to MRR. We require the same data year because our program is based on annual emissions reported to support the implementation of triennial compliance periods, in which there are annual surrender requirements.

Oct. 2011 FSOR at 2110. Powerex interprets the currently proposed amendment to modify the previous condition that the RPS adjustment was only claimable for the same data year in which the electricity from the eligible renewable facility was procured. If Powerex's interpretation is correct, we propose that the following be included in the 2014 FSOR:

Subsection 95854(b)(4)(B) no longer limits the reporting entity's ability to claim the RPS adjustment to "the same data year" but rather allows the RPS adjustment to be claimed in a later data year provided that the REC retirement conditions of section Subsection 95854(b)(4)(B) (as well as other relevant sections of the regulation) are met.

3. Proposed CTR Subsection 95830(c)(1)(I) Requiring CITSS Registering Entities to Report Certain Employees.

Powerex appreciates that in its proposed amendment of CTR subsection 95830(c)(1)(I) CARB has narrowed the category of employees that would need to be disclosed in registrations. However, the currently proposed requirement, which would require disclosure of all employees "with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions)" remains very broad, burdensome, and impractical. This language would require Powerex to disclose all employees involved in trading, scheduling, and the settlement and accounting of power transactions — in sum, a significant percentage of Powerex's total staff. Such a result would dilute and undermine the purpose of subsection 95830(c)(1)(I), while unnecessarily burdening CITSS registered entities.

Powerex understands the need for disclosure of key employees, but urges ARB to take a more pragmatic approach to the disclosure requirement. Powerex supports WPTF's suggested amendment to subsection 95830(c)(1)(I), which would further narrow the category of employees

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that must be reported to those employees who “are authorized by the entity to initiate or approve compliance instrument transaction agreements or transfer requests.”

Thank you for your review and consideration of these comments. Again, Powerex compliments ARB for its excellent work to implement the mandate of AB32, and, in particular, its work on market-based compliance mechanisms. If you have any questions on the above comments, please contact me at 415-262-4008 or nvanaelstyn@bdlaw.com.

Sincerely,

A handwritten signature in cursive script that reads "Nicholas W. van Aelstyn".

Nicholas W. van Aelstyn