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Via Email

Climate Change Emission Inventory Branch
Attention: Joelle Howe
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of Powerex Corp. on the Proposed Amendments to the Mandatory Reporting Regulation (July Discussion Draft)

Dear Ms. Howe:

On behalf of Powerex Corp. (“Powerex”), I submit the following comments on the California Air Resources Board’s (“ARB’s”) July 2013 Discussion Draft of Proposed Amendments to the Mandatory Reporting Regulation (the “MRR”).

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.

Powerex appreciates ARB’s efforts to create and implement a comprehensive GHG emission reporting program and a cap-and-trade program. In Powerex’s view, both programs serve to fulfill the mandate in the California Global Warming Solutions Act (“AB 32”) to reduce greenhouse gas emissions in California and to combat global climate change. With the proposed

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amendments to the MRR, ARB is making significant progress toward making the two programs consistent and thereby achieving the goals of AB 32.

Powerex offers the following comments on the proposed modifications to the MRR with the goal of improving and refining the two programs. We focus these comments on the most critical of the changes needed. Based upon the experience with the first seven months of the Cap-and-Trade Program, it is clear that important issues remain to be resolved if the GHG emissions and electricity markets are to function efficiently, incorporating economic signals one from the other.

Powerex's comments fall into three categories. To facilitate ARB's consideration of these comments, we've identified the three categories below and included a brief summary of the specific comments within each category.

1. **International Treaties:** Various provisions of the MRR need to be amended to recognize the fact that an asset-controlling supplier ("ACS") may receive power pursuant to an international treaty.
 - a. Add two new definitions to MRR Section 95102(a), and;
 - b. Make minor additions to MRR Sections 95111(b)(3) and (f)(5).
2. **Written Power Contracts for Specified Power:** The definition of "power contracts" should be clarified to require that such contracts actually be written. This critical proposal impacts several different specific sections of the MRR:
 - a. ARB's proposed new language for MRR Section 95111(a)(4) is not sufficient;
 - b. Clarify the proposed new language in MRR Section 95111(a)(5)(B) regarding ACS power that "was not properly acquired";
 - c. Adopt an e-Tag protocol to connect the written power contract with the direct delivery of electricity to California;
 - d. Clarify the requirement in MRR Section 95111(b)(2) that ACSs must report their sales of specified ACS power, and;
 - e. Establish an option for generators to voluntarily report sales of specified power.
3. **Specific Clarifications and Cleanups:** Various other provisions of the MRR also require attention:

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- a. The proposed amendments to MRR Section 95111(a)(5)(D) clarifying ACS path out power needs refinement;
- b. MRR Section 95111(a)(5)'s requirement that ACSs must be identified on e-Tags must be clarified to include ACSs that are exclusive marketers;
- c. MRR Section 95111(b)(5)'s proposed new provision regarding "system power imports" needs more detail, and;
- d. Certain definitions in MRR Section 95102(a) should be modified.

1. Various Provisions of the MRR Need to be Modified to Account for Power within an ACS's Portfolio Obtained Pursuant to an International Treaty.

The MRR Discussion Draft includes several valuable improvements. However, one important and urgently needed change is not included: changes to account for the fact that an ACS may have a source of power within its portfolio that does not fit within the definitional framework of the MRR – namely, power received pursuant to an international treaty. As discussed below, this directly affects Powerex, which receives power pursuant to the Columbia River Treaty. There is at least one other power generator with similar treaty rights, and there may be others of which we are not aware. The particular facts of Powerex's case illustrate this.

Powerex receives a significant volume of electric power each year pursuant to the Columbia River Treaty (the "Treaty"), an international treaty between the United States and Canada.¹ The Treaty governs and coordinates stream flows and reservoir levels to facilitate the operation and management of hydropower generation facilities in the US and Canadian portions of the Columbia River Basin. Pursuant to the Treaty, Canada constructed, operates and maintains a number storage dams that help to prevent flooding and maximize electricity generation downstream in the US. Under the Treaty, a certain amount of electricity must be delivered each year by the United States to Canada to reflect and compensate Canada for its 50% share of the downstream power benefits derived from operation of the Canadian storage dams. This is known as the Canadian Entitlement ("CE"). Canada assigned the right to receive CE energy to the Province of British Columbia, which later assigned it to Powerex.

The Treaty obligation to deliver CE energy is an obligation of the United States to deliver a certain fixed amount of power each year, not an obligation to provide a certain percentage of power from any specific sources. Under the Treaty and its corollary agreements, the Bonneville Power Administration ("BPA") fulfills the US treaty obligation by delivering the CE energy to

¹ See *Treaties in Force, A List of Treaties and Other International Agreements of the United States in Force on January 1, 2012* at i (pdf page 3) (United States Department of State) (available at www.state.gov/s/l/treaty/tif/index.htm); see also <http://www.crt2014-2024review.gov/>.

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Powerex at the Canadian border. Pursuant to other inter-governmental agreements, 72.5% of the CE energy is supplied by BPA and 27.5% is supplied collectively by five independently owned and operated Mid-Columbia River hydroelectric facilities.²

The current version of the MRR does not cleanly account for international treaty power like CE power. While it is abundantly clear that CE power should be treated as zero EF power (the CE reflects Canada's 50% share of the downstream power benefits derived from hydroelectric generation in the United States), CE power does not fit within the MRR's framework of specified source electricity. First, it does not fit within the definition of "specified source," as a treaty obligation is not "a facility or unit." MRR 95102(a)(432). Second, in 2012 the MRR's definition of "written power contract" was modified to add a sentence at the end that requires that a "power contract for a specified source" be "contingent upon delivery of power from a particular facility, unit, or [ACS]'s system that is designated at the time the transaction is executed." MRR 95102(a)(351). CE power does not meet this "unit contingency" requirement both because an international treaty is not a "written power contract" and because CE power is not necessarily sourced from any particular facility, unit, or ACS system.

Thus, the MRR must be amended to account for the fact that an ACS may have international treaty power within its power portfolio. Set forth below are a few discrete changes that would achieve this without otherwise altering the ACS framework. In sum, this set of proposed amendments adds definitions to MRR Section 95102(a) for "international treaty" and "treaty power," and proposes minor modifications to MRR Sections 95111(b)(3) and (f)(5) to include "treaty power" within the formula for calculating an ACS's emission factor and an ACS's reporting requirements. The language of the specific proposals follows.

a) **Add Definitions for "International Treaty" and "Treaty Power."**

Add the following two definitions to MRR Section 95102(a):

"International treaty" means an international agreement made by the President of the United States with the advice and consent of the Senate in accordance with Article II, section 2 of the Constitution of the United States, or an international agreement concluded by the executive branch of the United States government (a) pursuant to or in accordance with existing legislation or a prior international treaty, (b) subject to congressional approval or implementation, and/or (c) under and in accordance with the President's constitutional power.

² See *Canadian Entitlement Allocation Extension Agreements Record of Decision* (United States Entity, April 29, 1997) (available at <http://energy.gov/nepa/downloads/eis-0170-record-decision-april-1997>).

“Treaty power” means electricity received by an asset-controlling supplier or a generation providing entity pursuant to an international treaty. The source of treaty power is neither specified nor unspecified. Treaty power shall be accorded an emission factor of zero.

b) Modify the Formula for Calculating an ACS’s Emission Factor and the Reporting Requirements for ACSs to Include “Treaty Power.”

Incorporate the concept of treaty power within an ACS’s emission factor and within an ACS’s reporting requirements. First, amend the formula for calculating the emission factor for an ACS in MRR Section 95111(b)(3) to add treaty power to the definition of “PEsp.” Specifically, add the highlighted language below such that the relevant portion of the formula in the subpart reads as follows:

PEsp = Amount of electricity purchased wholesale and taken from specified sources by the asset-controlling supplier for the data year as reported to ARB under this article (MWh). **For the purposes of this calculation, treaty power is included within PEsp.**

Second, add language to subpart (E) to MRR Section 95111(f)(5) to require ACS reporting of treaty power as follows:

(E) A list and description of electricity generating facilities for which the reporting entity is a generation providing entity pursuant to 95102(a), **and the total amount of treaty power received and the name of the international treaty pursuant to which it was received**

2. The Delivery of Energy from Specified Sources Must be Clarified to Require Actual Written Power Contracts.

Powerex is concerned that a tremendous amount of ambiguity still exists within the wholesale power market for power contracts that are eligible for treatment at less than the unspecified rate. This ambiguity has the potential short-term effect of distorting the wholesale power markets and the potential longer-term effect of frustrating the goals of the Program. Powerex urges ARB, particularly in the initial stages of the Program, to require a high level of transparency and auditability in the reports filed by electricity importers.

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As set forth in more detail below, the proposed amendments do not do nearly enough to ensure transparency and enable auditability. Concerns that such requirements will make the MRR inefficient or will unduly burden commercial activity in the short term wholesale power market are more than outweighed by the necessity to ensure the integrity of the Program and the proper functioning of the wholesale power markets.

a) **The Proposed Addition to MRR Section 95111(a)(4) is Not Sufficient to Address Major Problems in the Market.**

ARB has proposed to add a new sentence at the end of MRR Section 95111(a)(4):

The sale or resale of specified source electricity is permitted among entities on the e-tag market path insofar as each sale or resale is for specified source electricity in which sellers have purchased and sold specified source electricity, such that each seller warrants the sale of specified source electricity from the source through the market path.

Based on ARB's presentation at the July 23 stakeholder webinar, we understand that this language has been proposed to clarify that "sellers must warrant the sale of specified source electricity to ensure integrity of the claim," and to address "concerns particularly with Short-Term Transactions which are transactions that are less than one week in duration." (July 23, 2013 ARB Presentation Slide 4.)

We welcome the effort to clarify that sellers must warrant any sales of specified power as actually generated by a specified source, particularly in the context of short-term market transactions. However, Powerex is concerned that this language does not go far enough and remains ambiguous. How is a seller to warrant such sales? And how can ARB impose an obligation to provide warrants on sellers that may lie outside of its borders?

We believe it is important to support the proposed level of clarity above by strengthening and clarifying the definition of "written power contract" to require *actual* written contracts such that ambiguous verbal communications cannot be mistaken for a representation that power is specified. By requiring written documentation that both buyer and seller agree upon, the intentions of all parties to a power transaction are clarified and documented. This addition to the proposed seller representations will ensure that all participants in the power markets know what they are buying and selling, all such transactions can later be audited and verified if necessary, and by applying this requirement upon importers of specified power when they file their reports with ARB, ARB will be able to clarify the integrity of the contractual chain without regulating out-of-state entities.

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To achieve this, we propose a few simple modifications to the definition of “power contracts” in MRR Section 95102(a)(351):

“Power contract” or “written power contract,” as used for the purposes of documenting specified versus unspecified sources of imported and exported electricity, means a written document, ~~including associated verbal or electronic records if included as part of the written power contract,~~ arranging for the procurement of electricity. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, electricity transactions, and tariff provisions, without regard to duration, or written agreements to import or export on behalf of another entity, as long as that other entity also reports to ARB the same imported or exported electricity. **For specified power contracts, other forms of contracting, including the use of associated electronic and verbal records generated under an enabling agreement, will meet the requirements of this definition, provided that the underlying written agreement includes express contractual terms regarding specified power.** A power contract for a specified source is a **written** contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier’s system that is designated at the time the transaction is executed.

Powerex appreciates that long term legacy contracts may not have been sufficiently clear in their contracting and agrees that contracting parties and verifiers may need to make some interpretations for historic contracts. Powerex strongly believes that this form of contracting provides value to importer and generator alike by making the intentions of all parties clear.

It is critically important to the core objectives of the Program that the carbon-related property rights associated with the investment in, and dispatch of, low carbon electricity that is delivered to California are able to be protected by sellers and only transferable with the seller’s consent. Allowing buyers to acquire the carbon-related economic benefits of low emission factor power without consent from the seller effectively nullifies the very price signals upon which the Program is founded. For all the reasons set forth above, and touched upon below as well, we therefore call upon ARB to require actual written power contracts.

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b) MRR Section 95111(a)(5)(B): Proposed Requirement that ACS Power Not Properly Acquired as Specified be Reported as Unspecified is Ambiguous and Does Not Adequately Address the Problem of Importers Claiming Purchases of Power as Specified ACS Power when they did not Contract to Purchase Specified Power.

ARB staff has proposed that MRR Section 95111(a)(5)(B) be amended to read as follows: “Report Asset-Controlling Supplier power that was not properly acquired as specified power, as unspecified power.”

Powerex suggests that “not properly acquired ACS Power” would be power that the ACS never intended to be delivered to California with the associated claim of its ACS rate.

To provide a critically important price signal to generators to incent clean generation construction and dispatch, the transaction for the right to claim the low emission factor must be explicit between the parties. Absent such clarity in the power transactions, purchasers may appropriate the ACS emission factor by mis-claiming power sourced from an ACS system simply because of the e-tag (as would be the case if the power was purchased on an electronic exchange and coincidentally scheduled from the ACS system) combined with some “implicit” transfer of the right to claim the ACS rate through a narrow reading of the ACS’s tariffs and ACS submissions (*i.e.*, the argument that the seller that is an ACS must have sold ACS power because the definition of its ACS system encompasses all sales activities permitted under their tariffs or statutes, even though the seller actually intended to sell unspecified power – and charged for it as such).

Powerex is concerned that allowing an importer to appropriate the low carbon benefits of a seller’s low emission factor ACS system by claiming the imports as specified power contrary the seller’s intent, subverts the foundation of the Program by removing the price signals for the investment in, and dispatch of, low-EF power. It also threatens to disrupt the proper functioning of western wholesale energy markets. CARB should have a zero tolerance policy on deliberate appropriation efforts from the outset of the Program and should take additional steps to ensure that such activities are prevented going forward. Proper written power contracting (as opposed to voice tapes, and other informal electronic records) would provide the necessary clarity that the seller intended to sell the specified power product and the buyer intended to buy that product.

Powerex acknowledges that the notion of the “path-out” for excess power procured as a part of a federal mandate may increase the difficulty of distinguishing between power sold that had was intended to be specified ACS power versus unspecified power (absent either a requirement for a written contract explicitly identifying ACS power or investigation of a seller’s intent on past transactions). Powerex respectfully submits that the approach proposed in the next two sections (Sections 4 & 5) address the core concern on a prospective basis while also avoiding potential confusion with federal “path-out” deliveries. (See Section 6 below.)

c) Adopt a Mandatory e-Tag Protocol to Connect the Written Power Contract for Specified Power with the Direct Delivery of Electricity to California.

In many cases the generator of the specified power is not the importer into California. By adding a predefined field into the e-tag associated with delivery of the specified power contract, all parties in both the contractual chain and the delivery chain would have clear evidence that the generation was intended to be specified.

Powerex recommends that a “GHG token” with the CARB ID of the facility be placed in the generation line of the physical path of the e-tag (a direct analog to the “RPS_ID” used by the California Energy Commission for verifying RPS delivery) to clarify that the direct delivery (the e-tag) is associated with a written power contract for specified power. (See the table below.) Verifiers then could add the spot checking of GHG tokens on the e-tags to the specified power verification process to ensure that a direct delivery claim was associated with clear, written power contracts.

First Line of the Physical Path Table on the E-Tag Power Including GHG Misc/Token Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc (Token / Value)
BA		Generating Entity 1	Source Point 1				GHG (Source1 CARBID)

Applying this e-tag requirement, coupled with the industry’s current e-tag approval/denial processes, would further enable sellers of low EF power, including ACS power, to protect the property rights associated with their investment in, and dispatch of, these resources. Buyers attempting to appropriate the carbon benefits of a seller’s specified source or ACS system, without contracting for those benefits explicitly with the seller, would have their claims to those benefits exposed to the seller during the e-tagging process. Such claims then could be denied if they had not been contracted for. This would compel parties to ensure that the buyer and seller both agree on the product transacted prior to energy delivery.

d) Clarify ACSs’ Requirement to Report Sales of Specified Power, thereby Enabling Confirmation of Importers’ Claims re: Specified Power Imports.

As discussed in Section 2(b) above regarding ARB’s proposed change to MRR Section 95111(a)(5)(B), importers are required to report imports of specified power purchased from ACSs. As discussed above, that provision should be further strengthened to require written power contracts for such purchases of ACS specified power. There is another simple change that should be made to provide ARB with a tool to verify that imports of ACS specified power were

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intended by the ACS to be sales of specified power: Clarify the requirement for ACSs that they report sales of specified power.

The formula for “Sum of System MWh” in MRR Section 95111(b)(3) requires the subtraction of ΣSE_{sp} , which is defined as the “[a]mount of wholesale electricity sold from a specified source by the [ACS] for the data year as reported to ARB.” To clarify that this provision requires reporting of sales of specified source power by an ACS – sales that then can be checked against the emission data reports filed by importers pursuant to MRR Section 95111(a)(5) – Powerex proposes the following simple addition to MRR Section 95111(b)(3):

SE_{sp} = Amount of wholesale electricity sold from a specified source by the asset-controlling supplier for the data year as reported to ARB under this article (MWh), **including sales made by the asset-controlling supplier for power at its system emission factor.**

As CARB considers sales by the ACS as specified sales (note that the title of this MRR Section 95111(b)(3) is “*Calculating GHG Emissions of Imported Electricity Supplied by Specified Asset-Controlling Suppliers*” (emphasis added)), ACSs should be required to report these sales as such in their ACS applications. Clarifying this requirement also affords ARB the opportunity to compare the ACS’s version of what it believes it has marketed as specified ACS system sales with what importers report as specified ACS system sales. This would enable ARB to establish whether or not differences exist immediately after the ACS and importers file their emission data reports or workbooks and also give verifiers additional instructions for the verifications that they conduct. To the extent that there are discrepancies in the reports of specified ACS sales, ARB could conduct further verification efforts.

e) **Establish an Option for Generators to Report Sales of Specified Power.**

Powerex also recommends that ARB adopt a process whereby generators of power can, if they choose, voluntarily file with ARB the unique e-tag IDs (the “GHG tokens”) for power they have sold as specified power. If a generator decided to file its “specified power e-tag IDs,” they should be required to file all of the relevant IDs for the reporting year. Verifiers then could compare this broad list of e-tags against the e-tags provided by the importers. If there was no e-tag ID the generator’s list corresponding with an importer’s specified power claim, further verification efforts would ensue.

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3. Miscellaneous Specific Changes Needed in the MRR.

a) The ACS Path Out Power Clarification in MRR Section 95111(a)(5)(D) Needs Refinement.

ARB staff has proposed an addition to MRR Section 95111(a)(5)(D) that provides as follows:

To claim power from an asset-controlling supplier, power must originate from the asset-controlling supplier system, as evidenced by the first line of the physical path table in the NERC e-tag which must specify the generation control area of the asset-controlling supplier, with the exception of path outs. Path outs are excess power, originally procured as part of a U.S. federal mandate to serve the operational or reliability needs of a U.S. federal system but which are no longer required due to changes in demand or system conditions.

Powerex understands that this proposed language is intended to “[clarify] ACS power tagging in 95111(a)(5) and describes ACS path out power.” (See July 23, 2013 ARB Presentation Slide 6.) We welcome the effort at clarification, but this language needs refinement.

Powerex recommends that the draft language be expanded to include both the ACS system AND the generating PSE information. The generation control area alone does not have sufficient information to document the source of the ACS power and meet ARB’s needs to verify the specified source. Some generation control areas, such as BPA’s (administered by BPA Transmission Business Line), have a large number of independent sources, with only one source representing the source associated with the ACS. The following table demonstrates the first lines of the physical e-tag for 2013 ACS.

Table 1: BPA Illustration							
First Line of the Physical Path Table on the E-Tag For Power That Originates in the BPA Control Area							
Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc (Token / Value)
BPAT		BPAP01	BPAPower				

Table 2: Powerex Illustration							
First Line of the Physical Path Table on the E-Tag Power Must Originate within the ACS System							
Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc (Token Value) /
BCHA		BCPS01	BCHA				

Powerex therefore suggests that the proposed language be modified to add the highlighted text below such that the addition to MRR Section 95111(a)(5)(D) reads as follows:

To claim power from an asset-controlling supplier, power must originate from the asset-controlling supplier system, as evidenced by the first line of the physical path table in the NERC e-tag which must specify the generation control area of the asset-controlling supplier, **the Source Point of the asset-controlling supplier and the PSE code associated with the asset controlling suppliers system**, with the exception of path outs. Path outs are excess power, originally procured as part of a U.S. federal mandate to serve the operational or reliability needs of a U.S. federal system but which are no longer required due to changes in demand or system conditions.

b) MRR Section 95111(a)(5): Requirement that ACSs be Identified on NERC e-Tags Must be Clarified to Include ACSs that are Exclusive Marketers.

MRR Section 95111(a)(5) requires that the reporting entity must separately report imported electricity supplied by asset-controlling suppliers (“ACSs”) recognized by ARB. Specifically, “*The asset-controlling supplier must be identified on the physical path of NERC e-Tags as the PSE at the first point of receipt*, regardless of whether the reporting entity and asset-controlling supplier are adjacent in the market path.” (Emphasis added.) To address what appears to be an unintended consequence of this language’s omission of any reference to ACSs that are exclusive marketers (see below), Powerex suggests an amendment to align this requirement of MRR Section 95111(a)(5) with ACSs that are exclusive marketers. One possible amendment to MRR Section 95111(a)(5) to achieve this is as follows:

Imported Electricity Supplied by Asset-Controlling Suppliers. The reporting entity must separately report imported electricity supplied by asset-controlling suppliers recognized by ARB. The asset-controlling supplier must be identified on the physical path of

NERC e-Tags as the PSE at the first point of receipt, or in the case of asset controlling suppliers that are exclusive marketers, as the PSE immediately following the associated generation owner, regardless of whether the reporting entity and asset-controlling supplier are adjacent in the market path. The reporting entity must:...

The need for this simple change can be seen by looking at Powerex’s e-tags for delivery of electricity from the BC Hydro system to California. As can be seen from the sample e-tag below, these e-tags do not identify Powerex as the PSE at the first POR on the physical path. This is because Powerex does not own or operate the generating facilities, but serves as the exclusive marketer for these facilities. Because the definition of asset-controlling supplier permits exclusive marketers of facilities to be asset controllers,³ this will be an issue for any exclusive marketer that applies for ACS status.

Physical Path							Misc(Token/Value)
CA	TP	PSE	POR	POD	Sched Entities	Contract	
BCHA		BCPS01	BCHA				
	BCHA	BCPS01	GMS.M.A.REV	BC.US.BORDER	BCHA		
	BPAT	PWX01	BC.US.Border	BigEddy	BPAT		
	BPAT	PWX01	BigEddy	NOB	BPAT		
	CISO	PWXSC	NOB	SYLMAR	LDVP		
	CISO	PWXSC	SYLMAR	SP15	CISO		
CISO		PWXSC	SP15				

c) **MRR Section 95111(b)(5): New Provision re: “System Power Imports.”**

Powerex welcomes the proposed addition of MRR Section 95111(b)(5). Our only comment at this time is that the proposal needs more clarity and detail. For example, the term “system power” needs to be defined. As discussed below, we understand that ARB is still working on proposed amendments to the MRR definitions and thus limit our comment to the

³ ““Asset-controlling supplier”” means any entity that owns or operates interconnected electricity generating facilities **or serves as an exclusive marketer for these facilities even though it does not own them**, and is assigned a supplier-specific identification number and system emission factor by ARB for the wholesale electricity procured from its system and imported into California.” MRR Section 95102(a)(19)(emphasis added).

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suggestion that the “system power imports” provision be further detailed so that it functions within the framework of the rest of the provisions regarding imports of specified power.

d) MRR Section 95102(a): Definitions.

Powerex understands that ARB is still working on proposed changes to the MRR definitions, and will include these proposed amendments as part of the formal 45-day package and Initial Statement of Reasons (“ISOR”). Nonetheless, we would like to reiterate that the following two specific sets of changes should be included in the MRR Definitions section.

First, as set forth in Section 2(a) above, we recommend that the definition of “power contract” in MRR Section 95102(a)(351) be modified to require actual written contracts.

Second, we reiterate comments on the NERC e-Tag definitions that we submitted last September when the MRR was amended and this language was adopted. As the Cap-and-Trade Program develops and matures, ARB should attempt to harmonize its regulatory terminology with standard industry definitions where possible.

Several definitions in Section 95102(a) of the MRR that relate to e-tagging (and, in particular, the source and point of receipt for e-tagged electricity) are inconsistent with standards established by the North American Energy Standards Board (“NAESB”) and the North American Energy Reliability Corporation (“NERC”). Those standards are used industry-wide. For ease of implementation, the MRR should be consistent with those standards. In addition, the proposed MRR definitions are internally inconsistent, and potentially conflict with other provisions of the MRR.

The proposed definition for “Continuous Physical Transmission Path” correctly indicates that “generation source” and “first point of receipt” (or “POR”) are two distinct elements on an e-Tag. *See* Section 95102(a)(106) (“Continuous physical transmission path” means the full transmission path shown in the physical path table of a single NERC e-tag from *the first point of receipt closest to the generation source* to the final point of delivery closest to the final sink.”) (emphasis added). The generation source is indeed different from the POR, so that distinction in the definitions is correct. The source point listed on an e-Tag is a separate and distinct field from the first point of receipt. The former refers to the facility or unit where generation physically takes place. The latter is where a facility or unit delivers its output to the bulk transmission system and could be the same point for numerous facilities or units.

The distinction is confirmed by both NAESB and NERC definitions. For example, the NERC Reliability Standards define POR as “a location that the Transmission Service Provider specifies on its transmission system where an Interchange Transaction enters or a Generator delivers its output.” *See* http://www.nerc.com/files/Glossary_of_Terms.pdf.

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However, despite the fact that source and POR are distinct concepts, the proposed definitions for “Source” and “First Point of Receipt” cross-reference each other in a way that misleadingly indicates that the two concepts are the same. Under Section 95102(a)(430), “Source of Generation” states that “imported electricity and wheels are disaggregated by the source on the NERC e-Tag, *also referred to as the first point of receipt*” (emphasis added). And “First Point of Receipt” is defined as “the *generation source* specified on the NERC e-Tag” (emphasis added). See MRR Section 95102(a)(176). To avoid conflating the two distinct definitions, Powerex recommends that these cross-references be modified to read as follows:

(176) “First point of receipt” **means the location from which a Generator delivers its output to the transmission system (the closest POR to the generation source)**~~the generation source specified on the NERC e-Tag~~, where defined points have been established through the NERC Registry. When NERC e-Tags are not used to document electricity deliveries, as may be the case within a balancing authority, the first point of receipt is the location of the individual generating facility or unit, or group of generating facilities or units. Imported electricity and wheeled electricity are disaggregated by the first point of receipt on the NERC e-Tag.

(430) “Source of generation” or “generation source” means the generation source identified on the physical path of NERC e-Tags, where defined points have been established through the NERC Registry. Imported electricity and wheels are disaggregated by the source on the NERC e- Tag,~~also referred to as the first point of receipt.~~

We note also that in the November 2, 2012 Final Statement of Reasons for the 2012 amendments to the MRR (the “FSOR”), ARB stated:

Response: The terms “first point of receipt” and “final point of delivery” are used throughout the requirements for electric power entities, including in sections 95102, 95105, and 95111 and are defined for purposes of the MRR to be synonymous with source and sink, respectively, as shown in the NERC e-Tag graphic below. ARB believes the proposed regulatory amendments are clear and necessary to identify the location of the source/first point of receipt and sink/final point of delivery. As such, ARB declines to make the suggested changes ***at this time***.

Id. at 36 (emphasis added). As ARB noted in the FSOR, these terms were defined “for purposes of [making] the MRR synonymous . . . synonymous with source and sink.” That purpose has been achieved, and we therefore respectfully submit that the time has come to make the changes proposed so that the MRR will be consistent with industry standards.

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Thank you for your review and consideration of these comments. Again, Powerex applauds ARB for its continued work to implement the mandate of AB 32 and, in particular, its work on market-based compliance mechanisms. If you have any questions on the enclosed comments, please contact me, at 415-262-4008 or nvanaelstyn@bdlaw.com.

Sincerely,



Nicholas W. van Aelstyn

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