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***Via Electronic Submission***

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 and the Mandatory Reporting Regulation**

Dear Chairwoman Nichols and Members of the California Air Resources Board,

On behalf of Powerex Corp., I submit the enclosed comments on the California Air Resources Board's proposed 15-day amendments to the Cap-and-Trade Regulation and the Mandatory Reporting of Greenhouse Gas Emissions Regulation. Powerex's comments address the Board's proposed interim solution to the inaccurate accounting of greenhouse gas emissions in the Energy Imbalance Market, as well as certain proposed clarifying amendments. Powerex thanks the Board for its consideration of these comments and its continuing effort to ensure the continued vitality of the Cap-and-Trade Program.

Sincerely,

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

Nicholas W. van Aelstyn

Enclosure

cc: Rajinder Sahota, Branch Chief, Cap-and-Trade Program (w/ *encl.*) (via *email*)  
([rsahota@arb.ca.gov](mailto:rsahota@arb.ca.gov))  
Brienne Aguila, Manager – Mandatory Greenhouse Gas Reporting, Greenhouse Gas  
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## Comments of Powerex Corp. on December 21, 2016 Proposed 15-Day Rulemaking

Powerex Corp. (“Powerex”) submits the following comments to the California Air Resources Board (“CARB”) for the 15-day rulemaking concerning (1) proposed amendments to the California Cap on Greenhouse Gas (“GHG”) Emissions and Market-Based Compliance Measures (the “Cap and Trade Regulation” or the “CTR”) and (2) proposed amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (the “Mandatory Reporting Regulation” or the “MRR”).

### Comments on Proposed Amendments to the Cap and Trade Regulation

#### GHG Accounting in the Energy Imbalance Market (the “EIM”)

As discussed in detail in Powerex’s previous comments,<sup>1</sup> the current EIM algorithm does not accurately identify the out-of-state resources that actually are dispatched in order to support EIM transfers of electricity to serve California load. Powerex believes that the current EIM algorithm is having a number of unintended adverse consequences, including:

1. Understating the actual GHG emissions associated with additional out-of-state dispatch to serve California load in the EIM, with the result that **too few GHG emissions allowances are retired** under California’s Cap-and-Trade program.
2. Under certain circumstances, the EIM algorithm can make out-of-state resources erroneously appear more economic than in-state resources. This can **result in “leakage” by improperly shifting GHG emissions from in-state resources to out-of-state resources**, even when the out-of-state resources are not lower cost (when GHG costs are included).
3. Under certain circumstances, the EIM algorithm does not consider differences in GHG emissions in the selection of which out-of-state resource to dispatch. Because GHG costs are not accurately considered by the EIM algorithm, **the EIM cannot appropriately dispatch low- or zero-emitting out-of-state resources** over higher-emitting out-of-state resources.

After CARB raised concerns regarding GHG compliance under the EIM design, the California Independent System Operator Corp. (“CAISO”) embarked on a stakeholder process to explore potential solutions to ensure accurate GHG accounting in the EIM. As part of that process, CAISO is currently in the process of finalizing the preferred “two-pass” approach that emerged from the stakeholder process.<sup>2</sup> Powerex is optimistic that, once implemented, the two-pass solution will ensure that the EIM accurately recognizes the GHG emissions from out-of-state resources dispatched to serve California load, avoiding all of the unintended consequences identified above.

Recognizing that it may not be feasible to implement the “two-pass” solution until late 2017 at the earliest, CARB proposes a bridge solution beginning January 1, 2018 to support accurate accounting while CAISO works to implement its long-term approach. Under CARB’s proposed interim solution,

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<sup>1</sup> See Comments of Powerex on CARB’s October 21 Stakeholder Workshop on Proposed Amendments to the Cap-and-Trade Regulation (Nov. 4, 2016), available at <https://www.arb.ca.gov/lists/com-attach/39-ct-amendments-ws-ViZVPFujWW9WlgFk.pdf>, and Comments of Powerex on CARB’s Proposed 45-day Rulemaking (Sept. 9, 2016), available at <https://www.arb.ca.gov/lists/com-attach/4-capandtrade16-WzhQQRoWGYGZQRq.pdf>.

<sup>2</sup> See Regional Integration California Greenhouse Gas Compliance and EIM Greenhouse Gas Enhancement – Straw Proposal (Nov. 17, 2016), available at <https://www.aiso.com/Documents/StrawProposal-RegionalIntegration-EIMGreenhouseGasCompliance.pdf>

CARB will retire additional GHG allowances to account for “outstanding emissions” that support EIM transfers to support California load, but that are not assigned to any EIM participants under the current EIM algorithm.

Powerex believes that this interim solution is an important step forward towards ensuring accurate GHG accounting in the EIM. It is important to recognize, however, that the interim solution will only address the first adverse consequence identified above; it will not do anything to ensure that GHG costs are appropriately taken into account in CAISO’s dispatch processes. Instead, it appears that until the two-pass design for GHG compliance is implemented in the EIM, the other two adverse consequences experienced to date will persist. Specifically, there will continue to be instances in which high-emitting out-of-state resources will be dispatched in connection with imports serving California load, even if lower-emitting out-of-state or in-state resources are available. For that reason, while Powerex supports the implementation of a bridging solution, it believes it remains vital that the full two-pass solution be implemented in a timely manner, consistent with appropriate pre-implementation testing and validation. Powerex understands CAISO is working towards achieving this objective.

In the event that implementation of the two-pass solution is not achieved within a reasonable timeframe, it may become both appropriate and necessary to explore additional interim measures that are designed to address the broader range of adverse consequences currently arising from operation of the EIM algorithm. One such additional interim measure, previously discussed in Powerex’s comments, would be to explore changes to CARB regulations to require EIM imports serving load in California to be reported as “unspecified energy.” Alternatively, CARB and CAISO could work collaboratively to develop other possible additional interim measures in the event that the implementation of the two-pass solution is substantially delayed.

To ensure timely implementation of the two-pass solution in the EIM, Powerex encourages CARB to continue coordinating closely with CAISO regarding implementation timelines and, if it becomes necessary, the design of additional interim measures.

#### Resource Shuffling in the EIM

In the 15 day rulemaking package, CARB indicates that it has not modified its initial proposal to modify CTR § 95852(b)(2)(A)(10) by adding language that “Electricity imported through the CAISO EIM market is not exempted from resource shuffling provisions.”<sup>3</sup> CARB staff “anticipate that the amendments now being proposed to the regulation, along with those that may be proposed in subsequent notice packages, and via anticipated changes to the CAISO tariff, will ultimately address this issue.” In other words, it appears that the proposed language would be removed if and when CAISO implements the two-pass solution, providing further encouragement for prompt implementation.

Powerex strongly supports CARB’s efforts to ensure that the EIM properly treats GHG emissions in a manner that fully complies with both the letter and the intent of California’s Cap-and-Trade program. Powerex has consistently advocated for robust GHG treatment in the EIM, including in its comments during 2013 (when the EIM design was being developed), its FERC filings in 2014 (when the CAISO tariff amendments to implement the EIM were submitted to the agency), and in its 2016 comments in both CAISO’s stakeholder process and CARB’s rulemaking proceedings.

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<sup>3</sup> CTR § 95852(b)(2)(A)(10) also adds “(except EIM)” to its existing rule that bids that clear the CAISO day-ahead or real-time market do not constitute resource shuffling.

However, Powerex does not believe that adopting the proposed language regarding resource shuffling and the EIM is an effective way to ensure timely implementation of the two-pass solution in the EIM. As a practical matter, proceeding with the proposed language may create uncertainty for out-of-state EIM participants regarding the implications of the proposed language, even though the inaccurate treatment of GHG emissions is solely the result of how the EIM algorithm is designed. Specifically, a resource that submits a bid into the EIM does not control whether the EIM algorithm deems its output as serving California load, nor does it even control whether the resource is dispatched at all. Not only does it seem to be unfair to create this uncertainty for EIM participants considering that the outcomes are the result of the current EIM algorithm, there seems to be nothing that EIM participants could do to avoid the uncertainty that would be created by the proposed rule except to avoid EIM participation altogether.<sup>4</sup>

The solution to the adverse GHG-related outcomes arising from the current EIM algorithm is to modify that algorithm. Creating new regulatory uncertainty for EIM participants—which are not in charge of the EIM algorithm or its modifications—may do little to encourage timely implementation of a two-pass solution. Moreover, the uncertainty created by the proposed rule may materially discourage EIM participation, and undermine the other benefits of that market.

Powerex strongly urges CARB to remove the proposed update to § 95852(b)(2)(A)(10). As discussed previously, Powerex believes there are far more appropriate and effective steps that CARB can take to ensure the timely implementation of a robust two-pass solution in the EIM.

#### *Definitions in the Proposed Amendments to Cap and Trade Regulation*

Powerex is appreciative of CARB’s efforts with respect to the definition of “Imported Electricity” in CTR § 95802(a), restoring the “first point of receipt” language that was originally removed in the 45-day rule-making package. While Powerex believes that CARB’s initial proposal was helpful, Powerex acknowledges industry concern that the change proposed in the 45-day rule-making process once combined with other portions of the regulation may have added unnecessary confusion.

#### **Comments on the Proposed Amendments to the Mandatory Reporting Regulation**

##### *Delivery Tracking Conditions Required for Specified Electricity Imports*

Powerex notes the proposed change made to MRR § 95111(g)(3) in the initial 45-day rulemaking package. Under the current version of this provision there has been some confusion within the industry as to whether or not an electricity importer had the discretion to claim a specified source import when it met the direct delivery requirements and the electricity importer (a) is a GPE, or (b) has a written power contract for the electricity generated. CARB has proposed to replace the word “may” with the word “must”, clarifying that an electricity importer does not have the discretion and must claim the electricity as a specified source when the electricity importer meets the prescribed requirements. Powerex appreciates CARB’s efforts to clarify this requirement and to address any remaining industry confusion about this provision.

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<sup>4</sup> Conceivably, EIM participants could inform CAISO, through their bids, that they are unwilling for their output to be deemed delivered to California. However, this would have the same practical effect on California consumers as if those out-of-state resources abandoned EIM participation entirely.

Definitions in the Proposed Amendments to the Mandatory Reporting Regulation

Powerex is appreciative CARB's efforts to modify the 45-day rulemaking's proposed changes in MRR § 95111(a) for the definitions of "First Point of Receipt", "Continuous physical transmission path", "Imported Electricity", and "Generation Source". While Powerex believes that CARB's initial proposal was helpful, Powerex acknowledges industry concern that when combined with other portions of the MRR, the proposed changes to these definitions may have added unnecessary confusion.