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Via Electronic Submission

California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of Powerex Corp. on Potential Amendments to the Cap and Trade Regulation and/or the Mandatory Reporting Regulation Concerning the Reporting of Direct Deliveries and the RPS Adjustment

Dear Air Resources Board Staff:

I write on behalf of Powerex Corp. ("Powerex") to provide recommendations to California Air Resources Board ("ARB") Staff for potential changes to the Cap-and-Trade Program (the "Program").

At its October 2, 2015 workshop, ARB Staff indicated that it is currently considering proposing amendments to several components of the Program, including the Renewable Portfolio Standard ("RPS") Adjustment provided for by Cap and Trade Regulation ("CTR") section 95852(b)(4). Powerex supports the continued inclusion of the RPS Adjustment in the Program, at least through 2020. Since the RPS Adjustment was first incorporated into the Program in 2011, importers of RPS-eligible electricity such as Powerex have structured contracts to account for the RPS Adjustment. Should ARB significantly modify or eliminate the RPS Adjustment, Powerex and other market participants will have to renegotiate contracts that provide for the import and sale of renewable electricity into California.

In Powerex's experience, there are two differing interpretations within the industry of the appropriate method for reporting direct deliveries of power in which the importer does not own the RECs from a specific facility and is (1) the generating providing entity ("GPE") or (2) has what would otherwise be a contract from a specified source:

A. The Importer reports the imported electricity from the specified source as unspecified power at the default rate (allowing the REC owner to claim the RPS Adjustment);

B. The Importer reports the imported electricity as from the specified source at 0 T/MWh, (precluding the REC owner from claiming the RPS Adjustment).

Both of the above methods avoid double counting for a zero emission RPS eligible resource. However, current ARB regulation and guidance appears to support interpretation B as the correct interpretation. Through its experience and observations as a market participant, Powerex has observed certain ambiguities in the Program's regulations that have complicated the administration of the RPS Adjustment and have resulted in these conflicting interpretations of the appropriate method of reporting direct deliveries of power.

Powerex believes that these ambiguities can be largely clarified with two minor amendments to the Mandatory Reporting Regulation (the "MRR"). By clarifying regulatory and market expectations with these small changes, ARB can help to resolve conflicts that have arisen between market participants as a result of these ambiguities, and thereby help ARB's administration of the RPS Adjustment. Making small clarifying adjustments of this kind will help to ensure regulatory certainty and avoid unnecessary major alterations in a key element of the Program that would upset the existing landscape of electricity deliveries.

1. Existing ambiguity as to whether direct deliveries of low emissions factor energy *must* be reported as specified power are easily resolved with two minor amendments.

Several provisions of the MRR have caused confusion over whether direct deliverers of imported electricity generated at a low emissions factor source must report that electricity as specified. Specifically, MRR section 95102(a)(435) defines "specified source" as "a facility or unit *which is permitted to be* claimed as the source of electricity delivered." Further, MRR section 95111(g)(3) provides that "Electricity importers *may* claim a specified source when the electricity delivery meets any of the criteria for direct delivery of electricity defined in section 95102(a), and one of the following sets of conditions: (A) The electricity importer is a GPE; or (B) The electricity importer has a written power contract for electricity generated by the facility or unit." Together, these provisions suggest that an importer of electricity that originates from a low emissions factor source *may* claim that import as specified power but is not required to do so. In this view, if one is *permitted* to claim the source as a specified source, then presumably it also is permissible to not do so.

However, ARB has clarified that a direct deliverer of electricity originating from a low emissions factor source *must* report the import as specified power when the generation source qualifies for "specified source" status, noting that MRR section 95111(a)(4) provides that an "electric power entity *must* report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity or have a written power contract

to procure electricity."[1] ARB has explained that by requiring direct deliverers of electricity to report deliveries as specified when those sources qualify as such, ARB is better able to understand the actual greenhouse gas intensity of California's overall electricity supply. The accuracy of such information is critical to the determination of the State's actual GHG emissions, which is a core requirement of AB 32.

While both ARB's position and its rationale for it are clear, the MRR unfortunately is not, and this has caused some confusion within the wholesale electricity markets. Powerex believes that the ambiguities described above can be easily resolved by making a few minor amendments to the MRR.

- **Amend MRR section 95111(g)(3) as follows:**

  Electricity importers ~~may~~ must claim a specified source when the electricity delivery meets any of the criteria for direct delivery of electricity defined in section 95102(a) . . . .

- **Amend MRR section 95102(a)(435) as follows:**

  "Specified source of electricity" or "specified source" means a facility or unit which is ~~permitted to be~~ claimed as the source of electricity delivered. . . .

Powerex believes that the above amendments will resolve any outstanding ambiguity with respect to this issue, and will clarify which parties are able to claim the RPS Adjustment (if any) associated with imports of electricity originating from specified sources.

2. Most transactions entered into on the basis of an erroneous understanding of MRR sections 95111(g)(3) and 95102(a)(435) can be remedied by private agreement.

As ARB is aware, before Staff had occasion earlier this year to clarify that direct deliveries originating from sources that qualify for designation as "specified" *must* be reported as specified power, several entities had entered into transactional arrangements wherein one entity held the rights to the RECs associated with out-of-state renewable electricity, and another entity imported that electricity into California. These transactions were often entered into with the

[1] ARB also has noted that this has been its position from the outset. Included within its explanation of its decision to adopt the RPS Adjustment in the 2010 Final Statement of Reasons (the "2010 FSOR") is the following statement: "When electricity generated by a zero GHG-emitting resource is directly delivered to California, and the electricity importer (1) is a Generation Providing Entity (GPE) defined pursuant to MRR section 95102(a) or (2) has a written power contract for electricity generated by the facility, *the electricity importer must report the delivery as a specified import* and may claim zero GHG emissions for the imported electricity (see MRR sections 95111(a)(4) and 95111(g)(3))." 2010 FSOR at 108 (emphasis added).

expectation that the entity holding the RECs would be free to claim the RPS Adjustment, and the importing entity would not hold the benefits associated with the renewable attributes associated with that electricity.

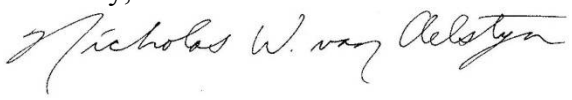
In such transactions, when the importing entity later identified the electricity as specified in order to comply with MRR section 95111(a)(4), the entity holding the RECs was barred from claiming the RPS Adjustment as the contracting parties had intended.

These market problems can be resolved by additional private party agreements. For example, Powerex ensured that its customers were kept whole for the RPS Adjustment credits they had expected to be able to claim based on REC ownership and in turn received back sufficient information such that Powerex could provide the required information under Section 95852(b)(3)(D) of the CTR.

Powerex's proposed amendments to the MRR would remove any doubt within the industry of the correct interpretation of the reporting requirements for direct deliveries to California. Some market participants appear to be of the view that an Importer has discretion as to how to report direct deliveries. Powerex's proposed amendments to the MRR will remove this confusion and provide clarity to the marketplace.

Thank you for your review and consideration of these comments. 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,



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