

DOCKETED

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Powerex Comments on RPS LT Contracting Regulation

Additional submitted attachment is included below.

June 22, 2020

California Energy Commission Docket Office
Docket No. 16-RPS-03
1516 Ninth Street
Sacramento, CA 95814

Re: Docket 16-RPS-03: Powerex Corp.'s Comments on the Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities

Powerex Corp. ("Powerex") is the wholly owned energy marketing subsidiary of British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation owned by the Government of British Columbia. Powerex sells wholesale power in the United States pursuant to market-based rate authority.

Powerex has a long history of delivering low-carbon, zero-carbon and renewable energy to California. 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, including eligible renewable energy resources, acquired from other sellers within the United States and Canada.

Powerex appreciates the opportunity to submit comments on the Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (the "Proposed Regulations"). The California Energy Commission (the "CEC") initiated this rulemaking to consider modifications to the regulations to implement changes in law under Senate Bill ("SB") 350, SB 1393, SB 100, and SB 1110 which establish additional RPS procurement requirements, including a long-term procurement requirement, and modify the Renewables Portfolio Standard Program ("RPS") for publicly owned utilities ("POUs").

At this time, Powerex does not take any position on whether the length of third-party's contract(s) with upstream suppliers is material to the CEC's determination that a POU's contract with a third party of at least 10 years in duration for eligible RPS resources meets the POU's long-term contracting requirement under Public Utilities Code section 399.13(b). However, to the extent the Proposed Regulations continue to require documentation that a third party's underlying procurement agreements with RPS-certified facilities are contracts of 10 or more years, the CEC should modify the Proposed Regulations to:

- clarify the meaning of “third party” in Sections 3204(d)(2)(A)3 and 3707(c)(2)(G) to ensure that it is not limited to one, or any, specified number of third parties; and
- revise Sections 3204(d)(2)(A)3 and 3707(c)(2)(G) to allow third parties to provide documentation such as underlying or upstream agreements directly and confidentially to the CEC.

Further, Powerex recommends that the CEC make the following further clarifications in the Proposed Regulations:

- ensure that additional RPS-certified facilities are not precluded from being added after contract execution, as long as those facilities added have 10 or more years remaining on their contract delivery term to preserve eligibility for long-term procurement; and
- exempt contracts that met requirements in then-existing regulations as long-term contracts executed prior to the passage of SB 350 to allow those contracts to count towards a POU’s long-term contracting requirements.

Third-Party Underlying Agreements

The Proposed Regulations requiring the qualification of agreements between a POU and third party notes that the third party’s underlying procurement agreement with the facility must be at least 10 years. Section 3204(d)(2)(A)3 of the Proposed Regulations, which addresses long-term contracts between a POU and an entity other than an RPS-certified facility, another POU, joint powers authorities (“JPA”), or retail seller, discusses a contract as between a “POU and third party” and establishes a requirement for the POU to provide documentation showing “the third party’s underlying procurement agreement(s) with the RPS-certified facilities supplying the procured electricity.” Additionally, to verify contract duration and other information specific to the requirements of long-term procurement, Section 3204(d)(2)(A)3 and Section 3707(c)(2)(G) of the Proposed Regulations requires the POU to provide certain information to the CEC. For instance, the POU must provide supporting documentation for all electricity products procured for the reporting year and information demonstrating the qualification for each long-term or short-term classification assigned to retired electricity products. Documentation may include “a POU’s own contracts with RPS-certified facilities, a POU’s procurement contracts with a third party, and the third party’s contracts with RPS-certified facilities, as applicable.”

During the Lead Commissioner Workshop on Modifications to the RPS Enforcement Regulations for Local POUs on June 8, 2020, the CEC Staff clarified that “third party” is as used in the Initial Statement of Reasons (“ISOR”) and refers to entities *other* than POUs, retail sellers, JPAs, as well as the RPS facilities themselves. However, the meaning of “third party” requires further clarification in the Proposed Regulations and

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ISOR to ensure that it would not preclude more than one third party in the contract chain between the facility and POU. The CEC should further clarify the meaning of “third party” in Sections 3204(d)(2)(A)3 and 3707(c)(2)(G) to ensure that it is not limited to a single third party in the contractual chain between the POU and the renewable resource. Interpreting “third party” to mean only one third party risks unnecessarily restricting the ability of POUs to acquire electricity that meet the long-term contractual requirements from certain renewable resources solely because there happens to be multiple third parties in the contractual chain.

Besides clarifying the meaning of third parties, the CEC should modify Sections 3204(d)(2)(A)3 and 3707(c)(2)(G) to allow third parties to provide documentation such as underlying or upstream agreements directly and confidentially to the CEC. Permitting third parties to submit documentation directly and on a confidential basis for consideration and verification by the CEC will help alleviate problems associated with confidentiality provisions in third party upstream contracts. Maintaining the confidentiality of the agreements will both allow the CEC to receive the documentation and also facilitate production of such documentation by third parties.

Addition of RPS-Certified Facilities

The CEC should clarify in the Proposed Regulations that a seller may add RPS-certified facilities to a long term contract after execution provided the contract with the POU for those additional facilities has at least 10 years remaining in the delivery term. The flexibility to add facilities after execution accommodates a broader array of deal structures between POUs and sellers, which will benefit both.

For example, a seller may be more willing to offer a long term contract with firm quantities to a POU if the seller can add facilities after execution; the POU gets price certainty while mitigating the volumetric risk associated with intermittent resources and the seller has the ability to cure unforeseen events, like failure of one or more projects to be developed or achieve commercial operation.

Allowing for the addition of facilities after execution in such circumstances is, in substance, identical to the seller and POU having contracted for the additional facilities independently and is consistent with the intent of the long-term requirement.

Exempt Contracts Signed Prior to Passage of SB 350

The CEC should reconsider its initial determination that there is no basis for exempting contracts signed prior to the passage of SB 350 because the energy from these contracts can still be counted towards the POU procurement allowed from short-term contracts. California, and the CEC in particular, has long upheld the sanctity of contract and looked to ensure that parties receive the bargained-for benefits associated with their contracts and that the value of a contract is not undermined by regulatory changes. Here, failure to count contracts signed prior to the passage of SB 350, which met the then-existing requirements for long-term contracts and were specifically valued

based on meeting those then-existing requirements for long-term contracts towards current POU long-term contracting requirements, will reduce the benefits associated with those pre-SB 350 contracts as they no longer provide value as long-term contracts post-SB 350. Accordingly, the Commission should allow contracts that met requirements in then-existing regulations as long-term contracts, executed prior to the passage of SB 350, to count towards a POU's long-term contracting requirements.

Powerex thanks the CEC Staff for the opportunity to provide comments on the Proposed Regulations. Powerex appreciates the time, attention and effort that CEC Staff has put into considering and responding to parties' comments and concerns and looks forward to working with the CEC on its development of the regulations governing the CEC's enforcement of the RPS Program.

Kind regards,

/s/

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Powerex Corp.