

## **Via CEC E-Comment System**

December 16, 2020

Docket Unit  
California Energy Commission  
1516 Ninth Street, MS-4  
Sacramento, CA 95814

**RE: Docket 16-RPS-03: Comments of Powerex Corp. on the Third Proposed 15-Day Language Addressing Modification to the Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities**

To California Energy Commission:

Powerex Corp. (“Powerex”) appreciates the opportunity to comment on the Proposed Third 15-Day Language on the Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (the “Proposed Regulations”) issued by the California Energy Commission (“CEC”) on December 1. Powerex submits limited comments requesting the CEC clarify an ambiguous element of Section 3207 involving compliance reporting for Publicly Owned Electric Utilities (“POUs”).

Title 20 of the California Code of Regulations Section 3207(c) currently requires each POU to submit an annual compliance report to the CEC, including POU identifying information and RPS information, accompanied by an attestation signed by an authorized agent of the POU. Proposed Section 3207(c)(2)(F)(1) adds a requirement for a POU, upon request from CEC Staff, to submit documentation to demonstrate that the underlying contract meets the requirements of Section 3204(d)(2)(A)-(C). The documentation may include an attestation by the third-party supplier for contracts executed prior to July 1, 2020. Section 3204(d)(2)(B)1.ii. and Section 3207(c)(2)(F)(2) state that documentation may be submitted directly to the Commission by a third-party supplier or another party on the POU’s behalf.

Specifically, Section 3207(c)(2)(F)(1)-(2) provides:

*1. Upon request from Commission staff, a POU with a long-term contract pursuant to Section 3204(d)(2)(B)2, shall submit documentation showing that the underlying contract(s) meet the requirements of section 3204(d)(2)(A)-(C). For contracts executed prior to July 1, 2020, this documentation may include excerpted contract information, an attestation by the third-party supplier regarding the underlying contract duration or ownership of the RPS-certified facility or facilities, or both.*

*2. Documentation demonstrating a long-term contract meets the requirements of Section 3204(d)(2)(A)-(C) may be submitted directly to the Commission by the third-party supplier or another party on the POU's behalf. The documentation may include an attestation by the POU that the contract with the RPS-certified facility or facilities meets the requirements of section 3204(d)(2)(A)-(C). An attestation may be submitted only if the POU possesses records to support the accuracy of the information to which it attests and the POU agrees to make such records available to the Commission upon request in the event of an audit or investigation.*

While Section 3207(c) requires an annual attestation accompanying the annual compliance report submission, proposed Section 3207(c)(2)(F)(1)-(2) is unclear as to whether an attestation or any contract documentation submitted to support compliance with Section 3204(d)(2)(A)-(C) must also be submitted annually. Powerex respectfully requests the CEC clarify that an attestation by a third-party supplier or any documentation submitted directly to the Commission to support compliance need only be provided by the third-party supplier one time (rather than annually) to support the POU utilizing that contract to meet its annual CEC compliance obligations.<sup>1</sup>

In other words, the POU should be allowed to utilize the same attestation or documentation from a third-party supplier demonstrating that a contract meets the requirements of Section 3204(d)(2)(A)-(C) for each and every annual compliance report submission where the POU utilizes that contract, provided that the attestation or documentation from the third-party supplier remains valid for the compliance period covered by the submission. Given that the documentation and attestation provided by the third-party supplier are contract-specific, it would be more efficient for the CEC to clarify that a contract-specific attestation made by a third-party supplier or documentation provided directly to the Commission by the third-party supplier need only be provided once, rather than annually, for the POU's use to meet its compliance obligations. This would ensure that a POU need not go through the unnecessary exercise and expense of annually seeking an attestation or documentation from the third-party supplier and the unnecessary exercise and expense of the third-party supplier annually giving a new attestation or annually submitting documentation directly to the Commission for the same contract when a single attestation or submission of documentation could cover all years where the POU submits the contract to meet its CEC compliance requirements.

In earlier iterations of the Proposed Regulations, the CEC provided insight in its Initial Statement of Reasons that modifications to Section 3207(c) were made in order to “remove reporting requirements that are unnecessary to the CEC’s verification process” and “remove requirements that are redundant.” Providing clarification regarding the specific submission requirements for RPS compliance reporting documentation would

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<sup>1</sup> In the alternative, as it relates to the contract with the RPS-certified facility, the CEC may consider limiting submission of documentation once for each such facility, as a facility may support RPS procurement by multiple POUs and could be cross-referenced to the CEC’s list of RPS certified facilities.



ensure efficiency in the compliance process for the reasons discussed above, and help achieve the CEC's goal of removing unnecessary or redundant requirements.

Thank you in advance for your consideration of these comments.

Kind regards,

/s/

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