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January 22, 2007

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California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

02-REN-1038	
DOCKET	
03-RPS-1078	
DATE	JAN 22 2007
RECD.	JAN 22 2007

Re: Docket No. 02-REN-1038 and Docket No. 03-RPS-1078

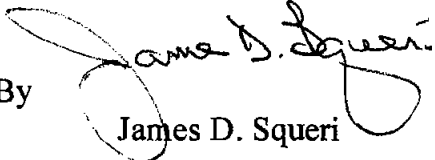
Dear Sir or Mdam:

Attached please find an original copy of the comments of Powerex Corp. regarding the Guideline Revisions for the Renewable Energy Program and RPS Implementation to be filed in the above-referenced dockets. Simultaneously with this mailing, an electronic copy of the referenced comments were e-mailed to the Energy Commission's Docket Unit.

Should you have any questions with regard to the referenced filing, please contact the undersigned.

Very truly yours,

GOODIN, MACBRIDE,
SQUERI, RITCHIE & DAY, LLP

By 
James D. Squeri

Enclosure

2879/001/X85846.v1
01/22/07

CALIFORNIA ENERGY COMMISSION

Implementation of Renewables) Docket No. 03-RPS-1078
Portfolio Standard Legislation) RPS Proceeding
(Public Utilities Code Sections 381,)
383.5, 399.11 through 399.15, and 445;)
[SB 1038], [SB 1078]))
)
and)
)
Implementation of Renewables) Docket No. 02-REN-1038
Investment Plan Legislation) Renewable Energy Program
(Public Utilities Code Sections 381,)
383.5, and 445; [SB 1038]))
)

GUIDELINE REVISIONS FOR THE RENEWABLE ENERGY PROGRAM AND RPS IMPLEMENTATION

I. Introduction

The California Energy Commission (Energy Commission) developed guidelines to implement and administer its Renewable Energy Program and its responsibilities under California's Renewables Portfolio Standard (RPS) pursuant to SB 1038 and Senate Bill 1078. These guidelines are set out in several Guidebooks and are now being revised to address changes in law, regulatory and market developments. The Energy Commission's Renewables Committee held a workshop on January 10, 2007 to discuss the proposed changes to the Guidebooks and has invited members of the public to provide written or verbal comments on the revised Guidebooks.

Powerex is submitting these comments on the RPS Eligibility Guidebook for the Committee's consideration. Powerex is the marketing subsidiary of British Columbia Hydro and Power Authority (BC Hydro). Powerex sells power at wholesale in the United States pursuant to market-based rate authority granted by the Federal Energy Regulatory Commission, including supply from competitively-priced renewable (small hydro, biomass and landfill gas) generation

facilities. Powerex wishes to support and participate in California's Renewables Portfolio Standard Program (RPS Program), and appreciates the opportunity to comment on the proposed changes to the RPS Eligibility Guidebook.

II. Comments on the Proposed Changes to the RPS Eligibility Guidebook

Powerex has the following comments on the proposed changes to the RPS Eligibility Guidebook:

1. Delivery Requirements

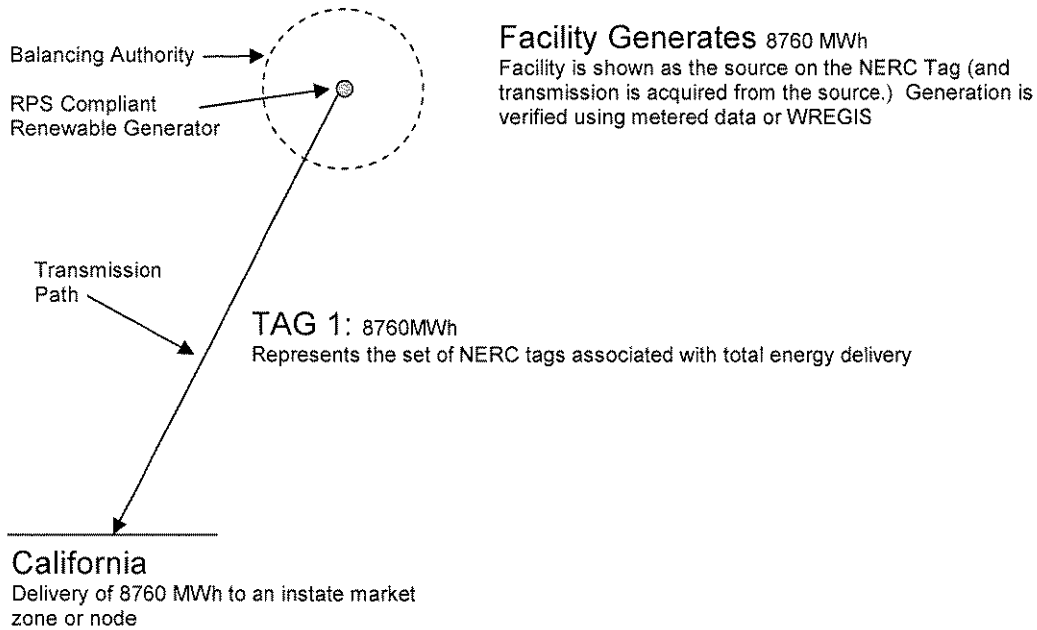
Subsection (a) of section 25741 of California's Public Resources Code, as amended by SB 107, provides that, for the purposes of RPS compliance, electricity is deemed delivered if it is generated at a location in California, or is scheduled for consumption by California end-use retail customers. This section also provides that subject to criteria adopted by the Energy Commission, electricity generated by an RPS-eligible facility may be considered delivered regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.

As the draft Guidebook is currently worded, it contemplates a model whereby a facility will meet the deliverability requirements if it either:

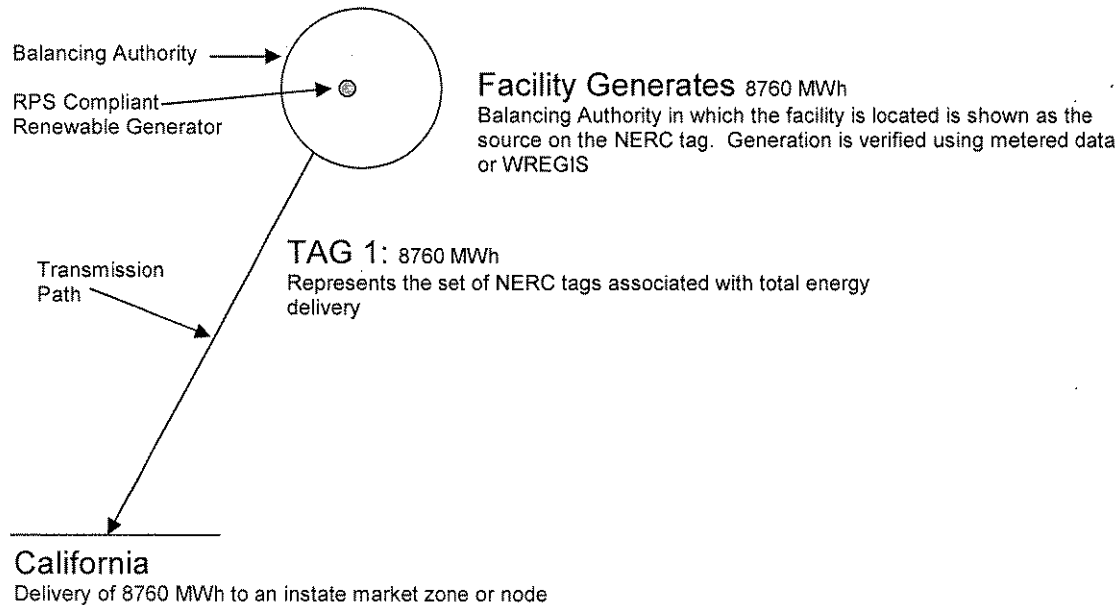
- a. Engages in an interchange transaction with the California Independent System Operator (CAISO) to deliver its generation to CAISO's control area; or
- b. Engages in an interchange transaction with the balancing authority in which the facility is located, and the balancing authority delivers an equal amount of generation to California.

The diagrams below illustrate these examples:

Example A – Facility Schedules Generation to California



Example B –Balancing Authority in which the Facility is Located Schedules Generation to California



In example B above, generation from an RPS-eligible facility is not scheduled from the facility to California; instead, the generation is scheduled to the balancing authority in which the facility is located, and that balancing authority schedules an equal amount of generation to California. The energy delivered from the balancing authority to California will be scheduled with a NERC tag; however, the intra-control area transaction from the facility to the balancing authority will not be NERC tagged. Although there is not a NERC tag for this transaction, the Energy Commission will be able to verify generation occurred by comparing meter information from the facility or, when it is operational, data from the Western Renewable Energy Generation Information System (WREGIS), with the NERC tags submitted by the applicable parties (the Generation Providing Entity and Load Servicing Entities as referenced in Section E.6 of the Guidebook).

Powerex supports the language in the draft Guidebook which indicates that the source identified on a NERC tag may be a specific RPS-eligible facility registered as a unique source or may be the balancing authority in which the facility is located. In our view, this is consistent with California's legislative requirements; the manner in which intra-control area transactions are handled by balancing authorities within the Western Electricity Coordinating Council and within the CAISO control area; and with the intent of the legislation to enable out-of-state suppliers to participate in California's RPS Program.

Powerex agrees, therefore, that the situation set out in the Guidebook (i.e. delivery of generation from a facility to the balancing authority in which it is located, and from that balancing authority to California) meets California's delivery requirements. Powerex believes, however, that there are other situations which also meet California's statutory delivery requirements and which will increase the amount of RPS-eligible energy delivered into California. In Powerex's view, the delivery requirements include situations where a facility

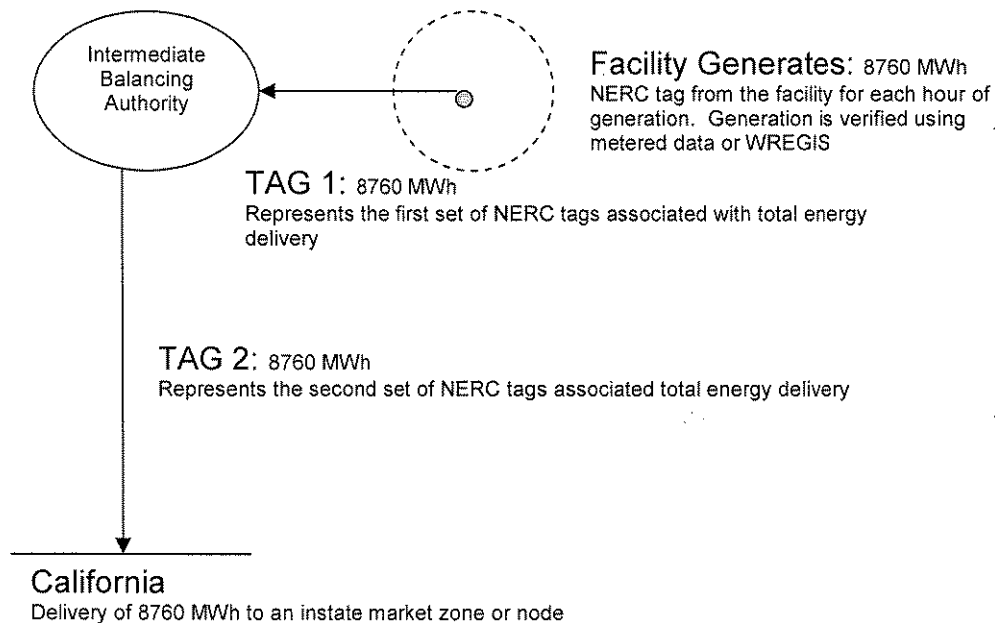
delivers generation to a balancing authority other than the balancing authority in which it is physically located.

For example, Powerex believes California's delivery requirements include situations where an RPS-eligible facility delivers and schedules generation to a balancing authority other than the balancing authority in which it is located (the Intermediate Balancing Authority), and that Intermediate Balancing Authority then delivers the generation to California. In this example, delivery can be verified by:

- NERC tags from the facility to the Intermediate Balancing Authority; and
- NERC tags from the Intermediate Balancing Authority to California.

The diagram below illustrates this example:

Example C: Facility Schedules Generation to Intermediate Balancing Authority and Intermediate Balancing Authority Schedules Generation to California Load.

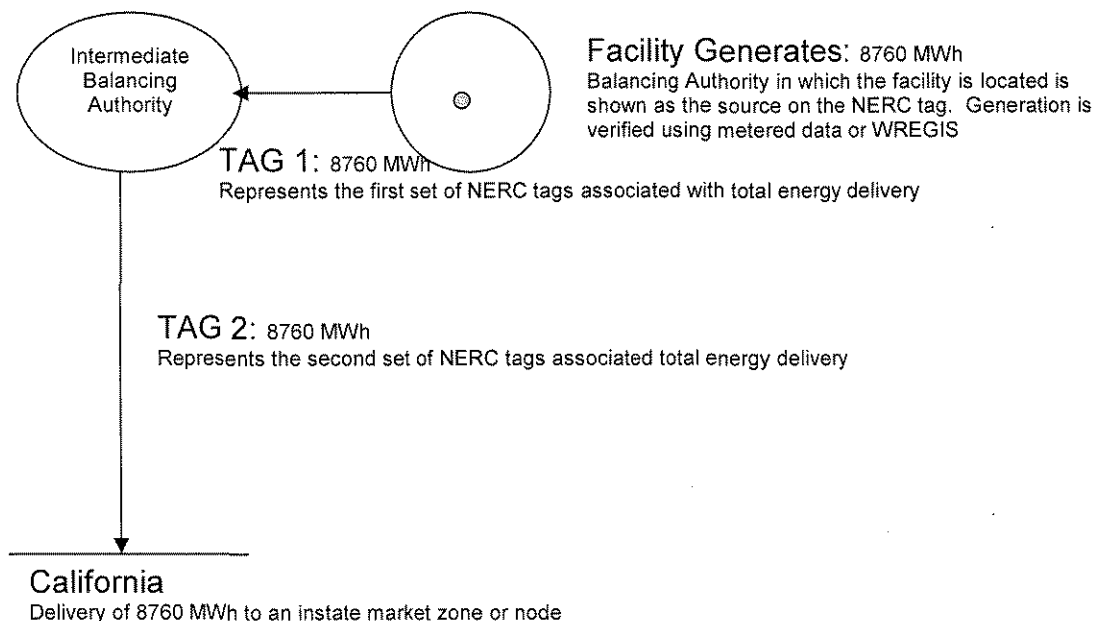


Similarly, Powerex believes that the following example also meets California's delivery requirements:

- An RPS-eligible facility generates electricity;
- The balancing authority in which the facility is located schedules an equal quantity of energy to an Intermediate Balancing Authority using a NERC tag which indicates that the facility's balancing area is the source, and which shows the facility's RPS certification number on the comment field of the tag.
- The Intermediate Balancing Authority then schedules energy to California, using a NERC tag which indicates the Intermediate Balancing Authority is the source, shows the facility's RPS certification number in the comment field, and a California load as the sink.

This example is set out in the diagram below:

Example D - Balancing Authority in which the Facility is located schedules generation to Intermediate Balancing Authority and Intermediate Balancing Authority schedules generation to California.



As with the scenario currently contemplated in the Guidebook (i.e. delivery of generation from a facility to the balancing authority in which it is located, and from this balancing authority to California), the first step of the above transaction will involve an intra-control area transaction and, as a result, will not be tagged with a NERC tag. Like the example in the Guidebook, the Energy Commission will be able to verify delivery by reviewing the facility's meter data (or WREGIS data) with the amount of energy that is shown on the NERC tags from the balancing authorities.

Powerex believes that the two examples set out above meet California's delivery and verification of delivery requirements, and will enable California's retail sellers to purchase more renewable out-of-state generation. The primary difference between the two examples presented above, and the example currently in the Guidebook, is that, in the examples Powerex presented, the RPS-eligible facility is not geographically located in the same area as the balancing authority that is delivering the generation to California. In addition, each transaction involves two NERC tags instead of one. In Powerex's view, these examples are consistent with the delivery requirements, provided that the retail seller is able to demonstrate, to the Energy Commission's satisfaction, that the generation it purchased was generated from the RPS-eligible facility; an equivalent amount of energy was delivered to California; and there is a clear and continuous link between those transactions.

By proposing these examples, Powerex is not advocating that the Energy Commission consider allowing unbundled renewable energy certificates (RECs) at this time. Rather, Powerex wishes to stress that there is a clear distinction between an unbundled REC and the transactions Powerex is proposing. With purchases of unbundled RECs, there is no physical link between the energy that is generated and the energy that is delivered. In the situations Powerex proposes, there is a clear and identifiable link – a clear and traceable path verifiable by NERC tags and

facility meter data – between the power that is generated and the power that is delivered to California. In addition, Powerex believes these examples are analogous to the example currently set out in the Guidebook.

Powerex believes that allowing facilities to transact only with the balancing authority in which they are located may reduce the amount of RPS-eligible energy that is delivered to California. Facilities may not be able to establish satisfactory commercial arrangements to accommodate banking energy with entities in the balancing authority in which the facility resides. Allowing facilities to enter into transactions with entities other than those in the balancing authority in which the facility is located provides more opportunities for the facilities; increases competition; and may result in reduced costs for California's consumers. As a result, Powerex urges the Energy Commission to consider a more flexible approach and to allow facilities to enter into transactions with balancing authorities outside of the control area in which they are located. In Powerex's view, these types of transactions meet California's statutory delivery requirements, and are consistent with the intent of the legislation to allow retail sellers to purchase out-of-state renewable generation.

For staff's convenience, Powerex has enclosed as Attachment A hereto a copy of the section of the draft Guidebook relating to delivery requirements which has been revised to show Powerex's proposed changes.

2. Supplemental Instructions for Out-of-State Facilities

Powerex would appreciate it if the Energy Commission would clarify the requirements for out-of-country facilities. The Guidebook provides that all out-of-state facilities seeking certification for the RPS must provide:

- a) a comprehensive list and description of all California environmental quality laws, ordinances, regulations and standards (LORS) that may be directly or indirectly impacted by the facility's development or operation; and
- b) an assessment as to whether the facility's development or operation will cause or contribute to a violation of any of the LORS.

Out-of-country facilities must provide:

- a) a comprehensive list and description of all California environmental quality LORS that would apply to the facility if the facility were located within California.
- b) An assessment as to whether the facility's development or operation will cause or contribute to a violation of any of the LORS.
- c) An explanation as to how the facility's developer and/or operator will meet the LORS in developing or operating the facility, including whether the developer and/or operator will secure and put in place mitigation measures to ensure that these LORS are complied with.

Powerex has several concerns about these provisions. First, at a high level, Powerex notes that the provisions are, in effect, requiring out-of-country facilities to comply with California's environmental laws in addition to the laws in the country in which they're located. Facilities in British Columbia, for example, would be required to comply with the laws of California, British Columbia and Canada.

Secondly, Powerex believes that the provisions related to out-of-country facilities are more onerous than those applied to out-of-state facilities. In addition to providing a list of applicable LORS and an assessment as to whether the facility would violate those LORS, an out-of-country facility must provide an explanation as to how it would meet the LORS.

In addition, subparagraph (a) above requires out-of-country facilities to provide a comprehensive list of all California LORS that would apply to the facility “if the facility were located within California.” However, as stated in the Guidebook in the discussion on out-of-state facilities, the LORS for a given facility will vary depending upon the facility’s location, since the LORS across California vary. As an out-of-country facility must determine the LORS that would apply to it if it were located in California, Powerex would appreciate it if the Energy Commission would clarify how an out-of-country facility determines which location it is located in for the purpose of determining which California LORS are applicable. For example, if a facility in British Columbia applies for certification, should it assume it would be located in northern California for the purpose of determining the LORS that would apply to it if it were actually located in California? Extra guidance on this issue would be appreciated.

Powerex also believes subparagraphs (b) and (c) are unnecessarily broad and go beyond what was intended by the legislation. These subparagraphs provide, in essence, that an out-of-country facility must provide:

1. an assessment as to whether it will violate California’s LORS; and
2. an explanation as to how it will meet the LORS, including whether it will put mitigation measures in place.

The definition of “in-state renewable electricity generation facility” in section 25741 of the Public Resources Code includes the following requirement:

- (v) If the facility is outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

Powerex would appreciate it if the Energy Commission would clarify whether an out-of-country facility will meet this requirement (and the requirements in the Guidebook) if it provides an attestation from an environmental expert, whose qualifications are recognized by the Energy

Commission, which states that the expert has reviewed the California LORS and the operation of the facility, and believes that the facility is developed and operated in a manner that is as protective of the environment as a similar facility located in the state. In Powerex's view, providing such an attestation from a qualified environmental expert should be sufficient to meet the requirements and intent of the legislation.

3. Conversion of RPS-eligible Fuel from Natural Gas Pipeline

The revised RPS Eligibility Guidebook contains a discussion regarding the RPS-eligibility of digester gas where the fuel is injected into the gas distribution system and mixed with non-renewable natural gas. The Guidebook provides that any production or acquisition of gas that is directly supplied to the gas transmission and distribution system and used to produce electricity may generate RPS-eligible electricity provided that, among other things, the gas is injected at a point within the California border. Powerex does not understand the rationale for this requirement and believes it is unnecessarily restrictive.

Powerex suggests that the Energy Commission revise the guidebook to provide that digester gas may be injected at any point within the interstate gas system. As the Energy Commission notes in the Guidebook, the energy content that is produced and supplied to the distribution system can be measured and reported. Accordingly, a company that injects RPS-eligible gas into the gas distribution system should be able to establish a tracking mechanism which will enable it to demonstrate to the Energy Commission how much gas it has injected into the system.

Powerex believes that enabling digester gas to be injected into any point in the interstate gas system, (and not just at a point within the California border), is consistent with the intent of the legislation to permit out of state resources to qualify under California's RPS Program.

II Conclusion

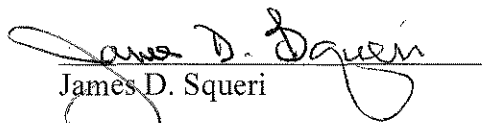
Powerex appreciates staff's efforts to draft delivery requirements which reflect the recent legislative changes. Powerex believes, however, that there are situations, other than those set out in the current draft, which also meet California's statutory delivery requirements and which would increase the amount of RPS-eligible energy delivered into California. Powerex urges the Energy Commission to include the examples Powerex has proposed in its comments.

Powerex would also appreciate receiving guidance from the Energy Commission as to the way in which out-of-country facilities can demonstrate that they have met the Guidebook's certification requirements. In addition, Powerex suggests that the Guidebook be revised to provide that digester gas may be injected at any point within the interstate gas system, and not just at a point within the California border. In Powerex's view, this would be consistent with the intent of the legislation to permit out-of-state resources to qualify under California's RPS Program.

Powerex appreciates the opportunity to comment on these issues.

Respectfully submitted this 22nd day of January, 2007 at San Francisco, California.

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ATTACHMENT A

Draft Comments on Section E – Delivery Requirements

Powerex proposes the following changes to the CEC's draft RPS Eligibility Guidebook (2nd Edition) within Section E: Delivery Requirements

Powerex defines the term “intermediate balancing authority” as follows:

Intermediate Balancing Authority: The balancing authority which acts as both sink on the NERC tag for the output of the RPS compliant generation facility and acts as the source on the NERC tag for the energy that sinks in California.

Section E paragraph 2:

“To count generation from out-of-state facilities for purposes of RPS compliance, the electricity must be delivered to an in-state market hub (also referred to as “zone”) or in-state substation (also referred to as “node”) located within California. The retail seller or procurement entity may document delivery from the control area operator (also referred to as “balancing authority”) in which the RPS-eligible facility is located or document delivery from an “intermediate balancing authority” which has received equal quantities of energy from the facility or from the balancing authority in which the facility is located.”

Powerex believes that the use of an intermediate balancing authority can satisfy the NERC tagging requirements to prove delivery of the energy from an RPS compliant resource provided that it includes the RPS Certification number in the comment field of the tag and that the retail seller or procurement entity is able to document delivery (with a set of NERC tags) from the Balancing authority in which the facility is located to the intermediate balancing authority.

Section E point 1: agreed

Section E point 2:

2. The Source identified on the NERC tag may be a specific RPS-eligible facility registered as a unique source, may be the balancing authority in which the facility is located, or may be an intermediate balancing authority .

This language is offered to clarify which generator or balancing authority is listed as the source generator on the NERC tag in which the California delivery point is the sink.

Section E point 3: agreed

Section E point 4:

4. The facility must provide the Energy Commission with its NERC identification (Source point name)¹ if it registers as a unique source, or the Source point name of balancing authority in which it is located when it applies for RPS certification.

This language is meant to clarify which balancing authority is registered with the Energy Commission.

Section E point 5:

5. The seller must request and receive acceptance of a NERC tag between a balancing authority in California and the balancing authority which is listed as the source on the NERC tag and shows the RPS certification number in the comment field.

This language permits either the balancing authority in which the facility is located or an intermediate balancing authority to be used as the source on the NERC tag.

Section E point 6:

6. The applicable parties (the Generation Providing Entity and Load Service Entities) must agree to make available upon request documentation of the NERC tags to the Energy Commission. On May 1 of each year (or the next business day), the retail seller or procurement entity must submit an annual report documenting compliance with this NERC tag requirement for the previous calendar year to the Energy Commission.

Powerex suggests that if an intermediate balancing authority is used, the applicable parties would need to be able to provide both sets of NERC tags (those from the generator to the intermediate balancing authority and those from the intermediate balancing authority to the balancing authority in California.) The applicable parties from section 6 would most likely need to secure access to these tags from the intermediate balancing authority since neither party would have direct access to the full set of tags on their own.

Section E point 7: agreed

Section E point 8: agreed

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¹ The NERC identification is the Source point name, an alpha-numeric code the generator uses to identify itself when it registers with the Transmission Services Information Network (TSIN). Registration with TSIN is mandatory for participation in the NERC tagging system.