

## Panoche Energy Center

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August 11, 2011

Clerk of the Board  
California Air Resources Board  
1001 "I" Street  
PO Box 2815  
Sacramento, CA 95814

Re: Comments on Modified Text for the Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation

Dear Sir or Madam:

On behalf of the Panoche Energy Center ("Panoche"), I am submitting comments to the California Air Resources Board ("CARB" or the "Board") for the record, regarding the modified text of the Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation. Panoche is concerned that the proposed modifications to the regulation to implement the state's greenhouse gas cap-and-trade program under A.B. 32 do not adequately address challenges faced by independent power producers with long-term power purchase agreements under which the costs of compliance cannot be recovered.

The Panoche Energy Center is a 400 MW simple-cycle natural gas peaking electrical generating facility located within western Fresno County. Panoche has a long-term contract to sell electric capacity and energy to Pacific Gas & Electric ("PG&E"). Commissioned in 2009, Panoche uses the latest turbine technology to achieve a heat rate of 8990 Btu/KWh, which is the lowest heat rate available for peaking turbines of that size. The facility has a state-of-the-art selective catalytic reduction system and carbon monoxide reduction system that allow it to be one of the greenest natural gas fired facilities. As a dispatchable facility, Panoche provides PG&E with the means to address peak demand as well as intermittency issues arising from increased renewable resources on its system. As such, Panoche provides PG&E with essential power and grid stabilization capabilities, thereby enabling PG&E to maintain and ensure reliability.

Panoche, like a number of other California independent power producers with long-term power purchase agreements – long-term contract generators ("LTCGs") – entered into power purchase agreements with utilities before A.B. 32 was enacted or the regulation of greenhouse gases ("GHGs") was under consideration by the State of California. Under many of these contracts, the power generation rates and price structures are specified and fixed. Additionally, the contract terms do not allow for price modifications arising from changes in environmental

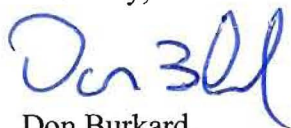
regulatory policy. Accordingly, unlike with other sources, such as merchant generators or traditional public utilities, Panoche cannot reduce contractually required output nor pass through new environmental compliance costs resulting from the implementation of A.B. 32.

The Summary of Proposed Modifications provided in the Notice of Public Availability of Modified Text issued July 25, 2011 notes that the staff considers these existing contracts, without provisions that would allow full pass-through of cap-and-trade costs, an outstanding issue at this time. We understand, as expressed in the Initial Notice of Availability, the July 15 stakeholder meeting, and the Notice of Public Availability of Modified Text, that CARB staff would prefer that LTCGs and their customers work together to resolve this issue. Knowing of this preference, we have reached out to PG&E in an effort to address the matter. Unfortunately, we have not been able to obtain a satisfactory resolution as PG&E has yet to enter into any bilateral negotiations. Without relief, the new costs associated with A.B. 32 compliance will have a substantial negative impact on the financial viability of our facility as well as a limited number of other LTCGs. This universe of similarly situated plants that have not been able to bilaterally resolve this issue with their customers is finite, minimal, and over time will diminish. These facilities should not be penalized for contracts entered into at a time when the regulation of GHGs was not contemplated. Rather, we urge the Board to provide a suitable framework for resolving this issue so as avoid impairing the financial viability of pre-existing contracts.

We would suggest the Board consider granting allowances to LTCGs with pre-A.B. 32 power purchase agreements under limited circumstances, including allowances being granted only during the remaining term of a pre-A.B. 32 contract. In addition, the Board could require in the regulation that it be demonstrated to the satisfaction of the CARB Executive Officer that a LTCG cannot reasonably expect to recover the costs of allowances needed to meet its cap-and-trade compliance obligations under its pre-A.B. 32 contract. To encourage negotiations between affected LTCGs and utilities, the Board should also consider providing that the parties engage in good-faith, bilateral negotiations to resolve the issue of cost of compliance during 2012, before compliance obligations commence on January 1, 2013. If the parties have not come to a mutually-agreeable resolution at that time, the regulation should provide that LTCGs are granted allowances under the outlined terms. Precedence for this type of solution can be found under the Clean Air Act, particularly in the Acid Rain Program and in some of the RGGI program states.

We appreciate you considering these concerns as you move forward with the regulations. We are happy to discuss these issues with you in greater detail or answer any questions you may have. I can be reached via email at [dburkard@ppmsllc.com](mailto:dburkard@ppmsllc.com) or by phone at (925) 759-0457.

Sincerely,



Don Burkard

Projects General Manager

Panoche Energy Center, LLC