

**PE-BERKELEY, INC.
67 Park Place East, 4th Floor
Morristown, NJ 07960**

August 11, 2011

Clerk of the Board
California Air Resources Board ("CARB")
1001 "I" Street
Sacramento, CA 95814

Subject: Comments of PE-Berkeley, Inc. on the Proposed Modified Cap-and-Trade Regulation

Dear Executive Officer Goldstene:

These comments are offered on behalf of PE-Berkeley, Inc ("PEB") a 22.47 MW cogeneration plant located in Berkeley, CA and Olympus Power, LLC, an independent power company which is both an equity investor in, and the Asset Manager of, this cogeneration facility. PEB supplies electric power to PG&E and thermal energy to University of California-Berkeley ("UC-B") under long term but separate agreements.

- 1) PEB has a long term steam sales agreement with UC-B that expires in August 2017. The regulations as currently proposed, effectively impose an unrecoverable cost upon PEB not contemplated by the authorizing legislation, because its steam sales contract does not explicitly contemplate recovery of the charges for GHG emissions arising from cogenerated steam and there is currently no other GHG cost recovery mechanism available to PEB.
- 2) The intent of GHG programs generally is to transfer the cost of GHG generation to the end users / consumers who, in turn, will modify their behavior in such a manner as to cause a reduction in the generation of greenhouse gasses. That intention is entirely frustrated in the case of PEB, as these costs are stranded at PEB and no mechanism is available to PEB with which it might pass these costs on to the ultimate end user of the steam.
- 3) If there is no recovery by PEB from UC-B, or otherwise, under the GHG program regulations, then the intent of the GHG program is frustrated. PEB clearly becomes a stranded asset, bearing an unrecoverable economic cost, while UC-B, the actual consumer, is essentially provided


an exemption from the cost of the GHG program in the absence of any effective incentive to modify its energy consumption behavior or reduce its carbon footprint. In fact, UC-B's thermal needs may increase over the next five years, thus locking PEB into an even greater steam load obligation and greater GHG losses – effectively a "downward spiral" for the project resulting directly from the cost of the proposed GHG regulations.

- 4) The PEB facility was developed in reliance upon California State and US Federal energy policies designed to encourage the development, financing, ownership and operation of energy efficient cogeneration facilities. Similar California policies created a variety of incentives for PG&E to purchase the generated electricity and for UC-B to purchase a reliable, cost effective and environmentally beneficial central source of steam. The proposed cap-and-trade regulations, as contemplated by CARB, would undermine these policies and would effectively cause PEB to become an economically stranded asset whose contractual framework has been frustrated by an unreasonable regulatory cost that would be inequitable and whose disparate economic impact would cause unique harm to PEB.
- 5) The financial impact of the GHG regulations, as proposed (absent an end-user pass through), is of such material economic significance as to pose a potential threat to the mechanical reliability and continued predictable operation of this cogeneration facility. Further, these regulations threaten PEB's underlying economic viability, posing a level of financial risk and uncertainty to lenders and equity investors not contemplated by PEB, or similarly situated projects, when originally structured and financed.
- 6) An equitable solution, recognizing the serious problems facing PEB under the proposed GHG regulations, will send a strong positive message to those parties contemplating new investments in the next generation of cogeneration facilities in California, to the effect that CARB recognizes the unique value and contribution of cogeneration technology in the reduction of greenhouse gasses, and will also signal CARB's affirmative support for such new investments.
- 7) CARB should recognize PEB's situation and provide the needed case-by-case relief because the current "universal solution" does not apply to PEB's unique situation. This is clearly a transition issue and needs to be dealt with as such. Beyond 2017, any new contractual agreements for electricity or steam will include a mechanism for GHG recovery. PEB believes that CARB should allocate free allowances, an exemption from the regulations until 2017 or other comparable relief to PEB so that it is no longer a stranded asset and is held harmless from the current adverse impact of the proposed regulations.

- 8) PEB is an active member of the California Cogeneration Council ("CCC") and PEB fully supports the comments made by Beth Vaughn in a letter addressed to you on August 11, 2011. The PEB comments submitted herein are in addition to the CCC letter.
- 9) In summary, PEB is requesting that CARB provide PEB with a safe harbor mechanism which will fulfill the intent of the proposed cap and trade regulations without causing discriminate economic damage to PEB.

PEB is proud of its record as a responsible environmental steward and looks forward to working with the CARB to refine the proposed cap and trade regulations to underscore California's need for efficient cogeneration technology as a critical part of any long term solution to the challenge of limiting man made greenhouse gas emissions.

Regards,



Michael Mazowita
Vice President
P.E. Berkeley, Inc.



Sean P. Lane
General Counsel and Secretary
Olympus Power, LLC

cc:

Michael R. Barr, Pillsbury Winthrop Shaw Pittman, LLC, Project Counsel & Environmental Counsel to P.E. Berkeley, Inc.

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