

Panoche Energy Center

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September 23, 2011

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

Re: Comments on the Second 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 Second Modified Text of the Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation. Panoche continues to be concerned that the proposed modifications to the regulation to implement the state's greenhouse gas cap-and-trade program under A.B. 32 still 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 allows 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.

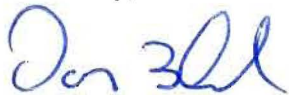
In keeping with CARB staff's preference for long-term contract generators ("LTCGs") that cannot pass through new environmental costs to work directly with their customers, Panoche has continued to try to resolve this issue with PG&E. Unfortunately, PG&E has refused to work with us to find an equitable solution. Understanding that such negotiations were likely going to prove extremely difficult, Panoche, in its August 11, 2011 comments, urged that "[t]o encourage

negotiations between affected LTCCGs 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 LTCCGs are granted allowances under the outlined terms.” Although CARB staff continues to acknowledge this issue and its need for resolution, we were disappointed to find that staff, in its Second Notice of Public Availability of Modified Text issued on September 12, 2011 neither addressed nor resolved this issue.

Having taken staff’s advice to attempt to resolve this issue in a bilateral fashion and having exhausted all avenues to try to resolve this issue with PG&E, we again urge CARB to directly address this issue through regulation. As such, we agree with the Independent Energy Producers Association’s and Wellhead Electric’s proposal for resolving this issue through an amendment of section 95834 “Disclosure of Beneficial Holding Relationships.” This equitable solution would require an electric distribution facility to hold and surrender allowances for an LTCCG’s GHG compliance requirements as long as the LTCCG is under a pre-A.B. 32 long-term contract with the electric distribution utility. Such an arrangement would be consistent with CARB’s concept and regulatory construct of “beneficial holding relationships.” Without relief provided by regulations, 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 LTCCGs.

We appreciate you considering these concerns as you move forward with finalizing 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 or by phone at (925) 759-0457.

Sincerely,



Don Burkard

Projects General Manager

Panoche Energy Center, LLC