

February 14, 2014

E-Filing: discussion-draft-ws

Ms. Rajinder Sahota
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Panoche Energy Center LLC Comments on 1.31.2014 INFORMAL DISCUSSION DRAFT of Cap-and-Trade Regulation

Ms. Sahota:

On behalf of Panoche Energy Center LLC (“PEC”), we would like to thank the Air Resources Board (“CARB” or “Board”) and its Staff for working to craft a proposed solution to address the issue of “AB 32 legacy contracts”. Consistent with the 45-day review period for the Proposed Amendments, PEC submits its comments in support of the Staff’s proposals to provide transition relief to “Legacy Contract” holders. PEC submits these comments on the INFORMAL DISCUSSION DRAFT which provide an initial look at the staff proposals to address the additional three years. PEC further understands that the official comment period for this proposal will occur when the formal regulatory 15-day amendment package is noticed and released at the beginning of March. Though PEC is appreciative of the staff extension proposal, by providing limited transition relief that is fixed to a previous operations year and not reflective of annual variances in operation, staff has only provided a partial solution. **PEC recommends amending Section 95894 (d) to more closely follow the industrial transition relief and true-up methodology.**

PEC is a large natural gas peaking plant with a tolling contract for the exclusive sale of electric power to Pacific Gas & Electric Company (“PG&E”) that was executed in March 2006 (“PEC PPTA”). PEC’s PPTA does not specifically address or allow for the recovery of GHG compliance costs. PEC’s comments are limited to the Proposed Amendments concerning relief for legacy contract generators and legacy contracts. PEC participated throughout the regulatory process and has previously submitted comments on the earlier draft proposals.

Board Resolution 12-33, issued September 20, 2012, states: “WHEREAS, entities with legacy contracts that were entered into prior to AB 32 may not have an appropriate mechanism for recovery of carbon costs associated with the Cap-and-Trade Regulation: ...” The Resolution further states: “BE IT FURTHER RESOLVED that the Board directs the Executive Officer to

California Air Resources Board
February 14, 2014
Page 2

develop a methodology that provides transition assistance to covered entities that have a compliance obligation cost that cannot be reasonably recovered due to a legacy contract.” The original Proposed Amendments were consistent with this direction, but the new extension provisions fall short of accomplishing this directive. PEC does not control its deployment schedule and could run in excess of 20% greater than its 2012 emissions to which relief is now pegged.

Though Staff has consistently expressed a preference for renegotiations between parties to these legacy agreements, these amendments concede that negotiations may not be successful at this juncture. Over the last two years, PEC has attempted to engage in good faith negotiations with our legacy contract counterparty, and remains willing to accept Staff’s offer to facilitate a renegotiation session. PEC will continue to pursue resolution of its issues but joins many other legacy contract generators in the belief that settlement of the remaining disputes between legacy contract holders and their counterparties is unlikely, as those counterparties have no business incentive to negotiate a resolution at this time. And in fact, PEC’s counterparty has consistently been the primary opposition to providing transition relief to any Legacy Contract Generator. Therefore PEC believes this issue may likely need to be revisited by CARB in the future.

For the foregoing reasons, PEC supports providing extended relief to legacy contract holders using the eligibility criteria provided.

1. COMMENT DETAILS

a. Eligibility Criteria

Only minor conforming changes made in the INFORMAL DISCUSSION DRAFT.

PEC continues to support the eligibility criteria for legacy contracts to qualify for relief applicable to PEC (Section 95894):

- Contract was executed before September 1, 2006;
- Contract does not allow for recovery of the costs associated with compliance with the Cap and Trade Regulation;
- Contract remains in place and has not been subsequently amended to address GHG compliance costs; and

- The Legacy Contract holder has made a “good faith” effort to renegotiate with contract counterparty to address GHG costs issues.

PEC supports these straightforward criteria.

b. Process for Receiving Allocations

Only minor conforming changes made in the INFORMAL DISCUSSION DRAFT.

The process for allocation of allowances to Legacy Contract Generators generally consists of a request by the legacy contract generators and a subsequent eligibility determination by the CARB Executive Officer.

PEC supports this simple administrative criteria.

c. Process for Determination of Eligibility

No changes made in the INFORMAL DISCUSSION DRAFT.

PEC understands the intent of Section 95894(b) to be relatively straightforward, but seeks clarity in either the final Board Resolution or in response to comments in the Final Statement of Reason that the “Determination of Eligibility” is a compliance process by which CARB will review and process the filings. PEC further believes that such information must be treated by CARB as confidential in that sensitive market and pricing information is required for submittal.

PEC supports the need for CARB Staff to review sufficient detail to determine whether the generator qualifies for the proposed transition relief. However, PEC requests that CARB confirm that the process will be an internal compliance process conducted by CARB, not subject to a public review and comment process, especially as market-sensitive pricing information is required for submittal.

d. Extended Transition Relief

New proposal included in the INFORMAL DISCUSSION DRAFT.

PEC understands the intent of Section 95894(d) is to extend the transition relief, which was originally based on 2012 facility emissions, for another three years. This methodology provides an administratively convenient process, but does not account for the reality of the situation. The intent of the October Board action was to provide additional relief for Legacy Contract holders to further the policy of not stranding GHG costs with generators. This goal is only partially achieved with the new staff proposal.

California Air Resources Board
February 14, 2014
Page 4

The PEC facility has a tolling agreement and its dispatch completely controlled by its legacy contract counterparty. Its 2012 run-time was less than 80% of its permitted capacity. Due to circumstances beyond PEC's control, including drought-induced reduction in available hydropower, can contribute to additional dispatch. The staff proposal leaves this additional exposure on the legacy contract holders. This is directly counter to the direction of the Board.

PEC recommends using a methodology that mirrors the transition relief provided to industrial facilities, i.e. providing allowances based on production/emissions of the most current MRR data set ("t-2") and then truing up to actual reported values in subsequent years. This method correctly sends provides that the transition relief would not be under, or over, supplied. The "grandfathering" approach proposed in the INFORMAL DISCUSSION DRAFT does not allow for variances as time moves forward. Nor has CARB expressly identified the reason to vary the methodology for transition assistance from that of the industrial sector.

PEC recommends amending Section 95894(d) to more accurately track actual legacy contract emissions.

If you have any questions, please give me a call at 415-291-7430, or Jon Costantino at 916-552-2365.

Sincerely,

/s/ David L. Huard

David L. Huard

cc: Mary Nichols-Chairman
CARB Board Members
Virgil Welch-Chairman's Advisor
Richard Corey-Executive Officer
Edie Chang-Deputy Executive Officer
Cynthia Marvin-SSD Division Chief
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