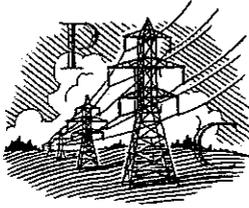


16-8-4
Robin Shropshire



Panoche Energy Center 43833 W. Panoche Road, Firebaugh CA 93622

September 22, 2016

Hand Delivered

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Panoche Energy Center LLC Comments on Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation Proposed August 2, 2016.

On behalf of Panoche Energy Center LLC ("PEC"), we would like to thank the Air Resources Board ("ARB" or "Board") and its staff for the opportunity to comment on the amendments to the Cap and Trade Regulation proposed August 2, 2016. These proposed amendments are significant as they will shape the entire Cap and Trade program for the next decade or more. The proposed amendments, however, also would have a significant negative impact on the environment and PEC's operations if adopted without further refinement. ***To avoid these impacts, and for the reasons described in this letter, ARB should not adopt the amendments as proposed on August 2, 2016, but instead should incorporate the June 24, 2016, staff workshop proposal constructed specifically to address the problem outlined below.***

PEC is a large natural gas peaking plant with a tolling agreement for the exclusive sale of electric power to Pacific Gas & Electric Company ("PG&E"). The tolling agreement was executed in March 2006 ("PPA"). PEC's "legacy contract" PPA does not include a mechanism to recover the cost of its GHG emissions. Under the PPA, PG&E controls when and how much the facility runs, and thus controls the quantity of GHG and criteria pollutant (smog-forming) emissions the facility emits. The disconnect between the party who pays for the cost of carbon (PEC) and the party in control of the emissions (PG&E), has resulted in PEC's actual dispatch (and associated emissions) being much higher than its anticipated dispatch since the inception of the Cap and Trade Program.

Fundamentally, because *PEC cannot pass the costs associated with its GHG emissions along to PG&E*, those costs (the intended AB 32 "carbon price signal") are not included in PG&E's bids into CAISO for PEC's production ("dispatch price"). Without a price of carbon included in PEC's dispatch price, the facility has been operating far more than its intended design, consequently resulting in: (1) increasing local air pollution, (2) the complete undermining

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of the regulatory “price signal” intended to be sent to consumers, (3) increasing use of scarce water resources, (4) increasing costs for PG&E ratepayers, and (5) increasing costs of operation. Unless PG&E takes on the AB 32 compliance costs for the emissions created when it runs PEC’s facility, this situation will continue unabated. It is understood that this is an unacceptable outcome.

Since the Cap and Trade Regulation’s original adoption, PEC has continually sought in good faith to secure a just and reasonable contract amendment with its counterparty *on terms consistent with other Public Utilities Commission approved Legacy Contract settlements* entered into with other entities in PEC’s position to ensure that the policies of ARB’s Cap and Trade Regulation are uniformly implemented. PEC has repeatedly approached its counterparty to negotiate a resolution directly and through the offices of the Public Utilities Commission, ARB, private channels, and others, all to no avail. The structure of ARB’s Legacy Contract Relief granted to PEC did not incentivize and may have dis-incentivized our counterparty from negotiating a settlement in good faith. Likewise, the proposed cessation of Legacy Contract relief would harm PEC and its bondholders, including public pension funds, and all other stakeholders (including PG&E ratepayers), except for PG&E who would continue to run PEC’s facility without AB 32 compliance costs.

To address this situation, in the immediate time preceding the release of the amendment package, staff presented at a public workshop a workable solution that will treat the PEC facility the same as other non-power plant Legacy Contract holders.¹ But the subsequently published proposed amendments failed to include that staff’s recommended solution (without opportunity for public input), and now propose to completely eliminate “Legacy Contract” status and regulatory relief for PEC. If adopted without change, the current draft amendments would leave the PEC facility completely exposed to the price of AB 32 compliance, stranding those costs with PEC, and would continue the ongoing environmental and economic consequences described above.

The ARB Board meeting today provides an opportunity to correct this situation, and a way to move forward with a specifically tailored, holistic solution. PEC requests that the Board direct staff to amend the amendment language to include the June 24, 2016, staff workshop proposal in a future 15-day amendment package.

There are no legal impediments that prevent ARB from implementing PEC’s request. Because the staff proposal was included in the Initial Statement of Reasons for the proposed amendments, modifying the proposed amendment to include staff’s proposal in a future 15-day package complies with law. Likewise, the recent Court of Appeal decision in litigation between PEC and Panoche (currently pending before the California Supreme Court), and the earlier arbitration award, both acknowledge the limited contractual scope of that dispute, and explicitly state that nothing written in those decisions in any way limits ARB’s power to resolve the issue of PEC’s stranded costs in order that the PEC facility be run consistent with CARB policy to protect the environment and the public.

¹ Staff’s presentation at the June 24, 2016, workshop (slide 35) https://www.arb.ca.gov/cc/capandtrade/meetings/062416/arb_and_caiso_staff_presentations_updated.pdf, is included in Appendix F to the Initial Statement of Reasons – <https://www.arb.ca.gov/regact/2016/capandtrade16/appf.pdf>.

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The prior regulatory relief (set to be eliminated) and the current proposed amendments (failing to address PEC's issue) provided no incentive for PG&E to address this situation, while the environment, the citizens of the San Joaquin Valley, PG&E's ratepayers, and PEC's bondholders are would be negatively affected. There are no winners under the current proposal, only losers.

PEC believes now is the time to finally address and resolve this lingering situation. We look forward to continuing to engage on this issue, and request that the Board include the June 24, 2016, staff workshop proposal in a future 15-day amendment package. If you have any questions, please contact me at (781) 292-7007, or Robin Shropshire at (406) 465-2231, rshropshire@ppmsllc.com.

Sincerely,

/s/

Warren MacGillivray

cc: Richard Corey – Executive Officer
Edie Chang – Deputy Executive Officer
Floyd Vergara – ISD Division Chief
Rajinder Sahota – ISD Assistant Division Chief
Mary Jane Coombs – Manager
David Allgood – CARB Staff
Eileen Hlavka – CARB Staff
Steve Cliff – Chairman's Advisor