

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

November 30, 2018

Submitted Electronically

Board Members
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Panoche Energy Center LLC Comments on November 15, 2018 Cap and Trade “15-day” Rulemaking Package

Panoche Energy Center, LLC (“PEC”) respectfully submits these comments to the 15-day Cap and Trade Rulemaking Amendment Package (Amendments). The Amendments provide PEC with Third Compliance Period Legacy Contract Transition Allowances. **PEC supports this amendment**, however additional action by CARB is still needed to reasonably solve the remaining long-term issue, as detailed below.

PEC is a large natural gas peaking plant located near Fresno, California. PEC’s quick-start capability and operational flexibility are critical in supporting grid reliability as California continues its build out of intermittent renewable generation. Those characteristics, along with PEC’s proximity to fuel supply and connectivity to the grid make PEC an essential piece of California’s energy infrastructure.

CARB’s Cap and Trade Program, first launched in late 2012, is a market-based mechanism designed to reduce the emissions of greenhouse gases (GHGs), and is a key component in the broader AB 32 Scoping Plan master policy framework to reduce GHGs. The program relies on the basic economic premise that increasing the cost of carbon emitting activities will create incentives to reduce those activities, i.e. the policy of creating a “price of carbon”. PEC’s Legacy Contract lacks this “price on carbon”, and therefore is preventing this basic policy construct from operating as intended. Over the past seven (7) years, PEC has worked diligently to ensure that the price of carbon is included in PEC’s dispatch price, by attempting to secure a contract amendment with PEC’s counterparty¹.

This is not a new issue for CARB Board Members. Last year you approved Board Resolution 17-21 acknowledging that a solution is still needed for remaining Legacy Contract Holders without an Industrial Counterparty like PEC². PEC is still hopeful that a contractual solution can be found but acknowledges that help is needed from CARB.

As noted in our 45-day comment letter³, this issue has a long and difficult history. PEC is appreciative of staff and the Board’s decision to provide Third Compliance Period relief and supports their inclusion in this amendment package, but the current amendments do not provide a long-term solution. To that end, during oral testimony at the November 15, 2018 Board Hearing, PEC requested three actions by CARB as detailed below. The Board was open to this newly proposed effort as we continue to look for a possible contractual resolution.

1. Legacy Contract Transitional Allowances should be granted for the Third Compliance Period (2018-2020) for Legacy Contract Holders without an Industrial Counterparty that previously

¹ Note: PEC has never stopped pursuing a good faith contractual solution, and in fact, has presented our counterparty numerous opportunities for settlement with conditions that PEC believes *exceed* those that have already been agreed to by PG&E and approved by the California Public Utilities Commission (“CPUC”).

² <https://www.arb.ca.gov/board/res/2017/res17-21.pdf>

³ <https://www.arb.ca.gov/lists/com-attach/74-ct2018-AHBSMVQ2UV0BaAFi.pdf>

received legacy contract transition assistance (2013-2017). This amendment is in the current 15-day package, which PEC supports.

2. Limit the additional time conceded to seek a contractual solution, with the help of a designated CARB Board Member, such that the 2019 Cap and Trade amendments could incorporate a long-term regulatory fix. The extra time would be limited to six months from the December Board Hearing.
3. If, after the six month deadline in #2 above lapses, CARB staff would propose amendments to provide an allocation mechanism to Legacy Contract Holders *without* an Industrial Counterparty that is consistent with the allocation mechanism for Legacy Contract Holders *with* an Industrial Counterparty. These amendments would apply to the third compliance period through the end of a contract term and would be included in the next Cap and Trade rulemaking to protect PEC (and the environment) against the continued increased dispatch and exposure associated with that lack of a carbon price signal.

PEC requests that these commitments be included in the December Board Adoption Resolution to codify the Board's intent.

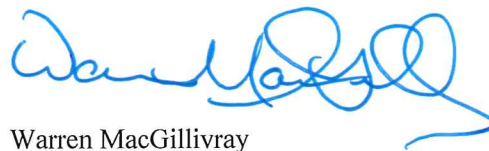
Summary

PEC remains committed to finding a contractual solution, but in the absence of this, implores CARB to follow through on its commitment to protect the integrity of the Program and provide long-term relief for Legacy Contract holders without an Industrial Counterparty. Without such relief, the Program would continue to harm PEC, its bondholders, its ultimate owners (which include public pension funds in the State of California), and all other stakeholders including PG&E ratepayers and the citizens of the San Joaquin Valley.

The Board has acknowledged that a solution is still needed. PEC supports continued efforts in this direction and looks forward to working, in parallel, with both our counterparty on a contract resolution, and with CARB on a regulatory solution. The timing of these dual-track efforts will most certainly cross as any PPA amendment would still need CPUC approval which will likely take twelve months or more. And finally, PEC fully understands that upon a CPUC-approved Legacy Contract amendment, the provisions of any regulatory solution would no longer continue.

We have actively engaged at all levels of the CARB process and we look forward to resolving this issue. If you have any questions, please contact me at (781) 292-7007, wmacgillivray@aresmgmt.com or Robin Shropshire at (406) 465-2231, rshropshire@ppmsllc.com.

Sincerely,



Warren MacGillivray