



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

April 28, 2017

Via Electronic Submittal: https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=capandtrade16&comm_period=2

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

Re: Panoche Energy Center LLC Comments on 2nd 15-day Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation Released April 13, 2017.

On behalf of Panoche Energy Center LLC (“PEC”), we appreciate the opportunity to comment on the 2nd 15-Day Amendments package, released on April 13, 2017, which follow up on the initial 15-day package released on December 21, 2016, for the Cap and Trade Regulation (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.

PEC is still a Legacy Contract Holder and respectfully asks ARB to address this issue in an expeditious manner. Facilitating a solution is even more important to ensure California’s Cap and Trade Program continues to be consistent with the principles of AB 32. It would also recognize that PEC has acted in good faith as a Legacy Contract holder and within the bounds of the Regulation for the past five years

As you know, PEC is a large natural gas peaking plant with a tolling agreement (“PPA”) for the exclusive sale of electric power to Pacific Gas & Electric Company (“PG&E”). The PPA was executed, prior to AB 32 in March 2006 which, in part, qualified PEC as a “Legacy Contract” PPA. Since the beginning of the Program, PEC has requested Transition Assistance from ARB. Each year, ARB has granted PEC’s request. Nothing has changed to alter ARB’s decision-making in connection with PEC’s contract status. Therefore, so long as the contract between PG&E and PEC remains unamended, and PEC continues to satisfy the other criteria previously established by ARB for transition relief, ARB should continue to work on a reasonable solution to this important issue.

At PG&E’s sole discretion, the price of carbon was removed from PEC’s variable energy dispatch price effective January 1, 2014 which has resulted in PEC’s actual dispatch (and

associated emissions) being much higher than its anticipated dispatch. Without a price of carbon included in PEC's dispatch price, the facility has operated far more, resulting in:

- (1) increasing local air pollution,
- (2) the complete undermining 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.

Such a situation, left unchecked should undoubtedly trigger an Adaptive Management Review.

Another key element of the historic Legacy Contract policy is that counterparties work to resolve the Pre-AB 32 contractual issues. 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*. 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. Over the past five years, PEC has only sought an equitable and reasonable renegotiation of the terms of the Legacy Contract, but this has not been achieved due to our counterparty's complete lack of good-faith effort. Additionally, 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. The most recent 15-day package proposes to continue this inequity.

A solution is still needed. There are several options available to ARB. One such solution was outlined in PEC's comments on the 1st 15-day amendment package¹, but others exist and PEC will continue to pursue an equitable resolution to this multi-year issue.

Eliminating the prior regulatory relief, as currently proposed, retains the status quo—providing zero incentive for PG&E to address this situation. Meanwhile the environment, the citizens of the San Joaquin Valley (a state-designated disadvantaged community), PG&E's ratepayers, and PEC's bondholders are negatively affected. There are no winners under the current situation, only losers.

To avoid these impacts, and for the reasons described in this letter, ARB should continue to work toward a solution as soon as possible to address the problem and to ensure the fundamental policies of the program are upheld without undue burden on Legacy Contract holders.

¹ <https://www.arb.ca.gov/lists/com-attach/166-capandtrade16-BnYCYQdlWFQBZAdo.pdf>

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PEC urges ARB to act now. We have actively engaged at all levels of the ARB process and sought in good faith to find a solution for the better part of five years, now it is up to ARB to step in and fix this problem before additional local pollution is emitted as a direct result of its implementation. 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: Mary Nichols – Chairman
ARB Board Members
Richard Corey – Executive Officer
Edie Chang – Deputy Executive Officer
Floyd Vergara – ISD Division Chief
Rajinder Sahota – ISD Assistant Division Chief
Jason Gray – Branch Chief
Mary Jane Coombs – Manager
David Allgood – CARB Staff
Eileen Hlavka – CARB Staff
Steve Cliff – Chairman’s Advisor