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

Re: Panoche Energy Center LLC Comments on 15-Day Amendments released March 21, 2014 of the Cap-and-Trade Regulation

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 15-Day Modified Regulation Order (15-Day Package) which provide a final staff proposal providing five years of relief. PEC is appreciative of the staff proposal and supports its adoption.

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 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 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." PEC supports this policy objective and views the initial five years of relief as absolutely necessary.

Though Staff has consistently expressed a preference for renegotiations between parties to these legacy agreements, these amendments concede that negotiations have not been successful for all parties at this point in time. Over the last two years, PEC has attempted to engage in good faith negotiations with its legacy contract counterparty. PEC will continue to pursue resolution of its issues but joins 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.

Additionally, on March 19, 2014, the Public Utilities Commission ("CPUC") issued a decision (14-03-003) establishing Commission policy on GHG cost responsibility for contracts executed prior to the passage of AB 32, and deferring to CARB the authority to establish the criteria by which legacy contract holders may receive transition assistance. The CPUC restated its earlier position that GHG costs, and responsibility for such costs, should be clearly articulated in Legacy Contracts in order to account for GHG costs in generation dispatch decisions. Consistent with CARB's policy, utilities were further ordered to continue renegotiating contracts to include provisions to ensure that generators party to Legacy Contracts receive compensation for their GHG costs.

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

1. COMMENT DETAILS

a. Eligibility Criteria

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

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

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. Basis for Transition Relief

Section 95894(d)(1) provides the numerical methodology for providing the Legacy Contract transition relief for a total of five years. This methodology provides an administratively convenient process, but will not account for actual legacy contract emissions. The PEC facility has a tolling agreement, and its dispatch is completely controlled by its legacy contract counterparty. In 2012, PEC's run time was only 20% (approximately) of its permitted capacity. Therefore, due to circumstances wholly beyond PEC's control, including drought-induced reduction in available hydropower, PEC's facility could be dispatched at a significantly higher level in the coming years, yet PEC's transition relief would be based on its 2012 dispatch levels. The final amendments leave the legacy contract holders exposed to this additional increase in dispatch without a corresponding increase in transition assistance. PEC would recommend that this methodology be revisited if future transition relief is considered in a subsequent rulemaking so as to more accurately reflect ongoing emission levels.

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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