



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

March 16, 2018

**Via Electronic Submittal:** [https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-3-2-18-wkshp-ws&comm\\_period=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-3-2-18-wkshp-ws&comm_period=1)

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

**Re: Panoche Energy Center LLC Comments on February 16, 2018, Preliminary Discussion Draft of the Cap and Trade Regulation**

On behalf of Panoche Energy Center, LLC (“PEC”), we appreciate the opportunity to comment on the Preliminary Discussion Draft (PDD) of the Cap and Trade Regulation released on February 16, 2018. These proposed amendments are important as they guide the Cap and Trade Program (“Program”) into its next phase, but also because there are a few issues remaining from its original implementation - ensuring a price of carbon on all electricity dispatched being a key one.

PEC remains a Legacy Contract Holder without an Industrial Counterparty, and fully supports the California Air Resources Board’s (CARB) recognition that such a category still exists and needs assistance from the Program. Facilitating a solution is important to ensure the Program continues to be consistent with the principles of AB 32<sup>1</sup> as it moves toward SB 32’s<sup>2</sup> goals under the direction of AB 398<sup>3</sup>. These amendments 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 six years.

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 under the Program. Since the beginning of the Program, PEC has requested Transition Assistance from CARB to offset the unrecoverable cost burden of the Program on the facility. Nothing has changed with respect to PEC’s Legacy Contract or ability to recover these costs. Therefore, so long as the Legacy Contract between PG&E and PEC remains unamended, PEC’s

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<sup>1</sup> [http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_0001-0050/ab\\_32\\_bill\\_20060927\\_chaptered.html](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_0001-0050_ab_32_bill_20060927_chaptered.html)

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB32](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32)

<sup>3</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB398](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB398)

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power will continue to be dispatched into the California market without a cost of carbon attached.

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 an anticipated dispatch profile for a peaking plant like PEC. Without a price of carbon included in PEC's variable energy 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 PEC's costs of operation.

Since the Program'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, CARB, and others, all to no avail. PEC remains committed to such a solution, but in the absence of this, CARB must protect the integrity of the program and reinstate relief for Legacy Contract Holders without an Industrial Counterparty. Without such relief the Program would harm PEC and its bondholders, including public pension funds, and all other stakeholders including PG&E ratepayers and the citizens of the San Joaquin Valley.

The PDD acknowledges that a solution is still needed. PEC supports the direction of the document 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 extend beyond 2018. Therefore, the regulatory solution is necessary as CARB works to finalize this rulemaking in 2018. PEC fully understands that upon a CPUC-approved Legacy Contract amendment, that the provisions of the regulatory solution would no longer continue.

There are several options available to CARB to craft language to address this issue. PEC looks forward to working with CARB on this issue.

PEC supports CARB's proposal and efforts to act now. We have actively engaged at all levels of the CARB process and sought in good faith to find a solution for the better part of six

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years, we look forward to resolving this issue. If you have any questions, please contact me at (781) 292-7007, or Robin Shropshire at (406) 465-2231, [rshropshire@ppmsllc.com](mailto:rshropshire@ppmsllc.com).

Sincerely,



Warren MacGillivray

cc: Mary Nichols – Chairman  
Richard Corey – Executive Officer  
Edie Chang – Deputy Executive Officer  
Floyd Vergara – ISD Division Chief  
Rajinder Sahota – ISD Assistant Division Chief  
Jason Gray – Branch Chief