CARDINAL COGEN, INC.
288 Campus Drive, Building 14-105 | Stanford, California 94305-4109

October 22, 2013

California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject:
Public Review Comments for 2013 Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Reference:
Disposition of Allowances, Section 95870, Universities (f) and Legacy Contracts (g)
October 16, 2013, ARB Staff Proposal for Legacy Contracts

Dear Members of the Board:

Cardinal Cogen, Inc., operates a 49MW combined heat and power plant and a steam plant in Stanford, California. We supply steam and power to Stanford University and wholesale power to the electricity grid. Cardinal Cogen operates under a legacy contract (2003) with Stanford University that pre-dates Assembly Bill 32 and the creation of the state's cap and trade program. This legacy contract does not allow for recovery of any greenhouse gas compliance costs. After several efforts, it is clear that the legacy contract cannot be renegotiated for recovery of greenhouse gas compliance costs. Cardinal Cogen is one of many combined heat and power facilities in California operating under legacy contracts, which motivated the Board to issue its September 2012 Board Resolution 12-33 that 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. While ARB staff have made progress on legacy contract issues in the draft regulation, Cardinal Cogen remains in a situation where it cannot reasonably recover greenhouse gas compliance costs, and fairness issues have now arisen between those entities serving public universities and those serving private universities if the current draft regulation is approved. To adequately address this legacy contract issue, we ask that the ARB Board approve the new ARB staff proposal of October 16, 2013, which extends the sunset date for transition assistance for legacy contracts through 2017. This is consistent with the draft regulation whereby ARB staff proposed to extend transition assistance for industry through 2017.

Under the current draft cap and trade regulation, facilities operating under a legacy contract supplying heat and power to a publicly-owned university will be allocated allowances for the duration of the legacy contract, even if it stretches through to the end of the third compliance term (see Section 95870(f) for Universities). However, facilities like Cardinal Cogen, operating under a legacy contract supplying heat and power to a privately-owned university will be allocated allowances for 2013 and 2014 compliance years only, regardless of the duration of the legacy contract (see Section 95870(g)). This draft regulation is not fair in the treatment of electric generation facilities serving the same sector (education), providing different benefits solely on the basis of the ownership status of the host university (i.e. allowances in the second and third compliance period).

With only transition assistance through 2014 and no prospect for cost recovery in the 2nd compliance period when the legacy contract ends, Cardinal Cogen stands to absorb nearly $1,000,000 in unrecovered greenhouse gas compliance costs under its legacy contract. Unfortunately, because this legacy contract situation does not allow Cardinal Cogen to pass on a price increase for greenhouse gas costs, the end users at Stanford University are not inspired to conserve energy. Cardinal Cogen is obligated to meet the heat and power demand of the university regardless of these compliance costs.

While the current draft is clearly unfair and creates an unreasonable economic hardship for the Cardinal Cogen, we believe that the situation can be easily resolved by extending the transition assistance for legacy contracts through 2017, as proposed by ARB Staff on October 16, 2013. By extending the transition assistance through 2017, the legacy contract issue involving Cardinal Cogen and Stanford University will be resolved. Making this change would create regulatory integrity in the cap and trade program and a fairer environment between all facilities providing heat and power to universities, regardless of whether the university is publicly-owned or privately owned. This change would also create consistency between 3rd party combined heat and power plants and other industrial sectors as all will fairly have their transition assistance extended through 2017.

Cardinal Cogen urges the Board to request that the ARB staff resolve the unfair situation that would develop between facilities supplying heat and power to public and private universities if the current draft regulation is approved. As its legacy contract is not able to be renegotiated, Cardinal Cogen asks the Board to approve the new ARB staff proposal to extend legacy contract transition assistance through 2017 with true-up provisions so that our facility will not bear unreasonable, unrecoverable costs. Cardinal Cogen looks forward to working with the ARB staff in November to finalize the wording of the October 16, 2013 proposal during the 15 day comment period. Thank you for this opportunity to comment on this important regulation. Should you have any questions regarding these comments or the revised benchmark, please call me at (650) 723-1779.

Sincerely,

R.S. Dahlin

Ron Dahlin
General Manager
Cardinal Cogen, Inc.

Copies:
William Buchan, Market Potential, Inc.
Beth Vaughan, California Cogeneration Council