

## **Revised Staff Proposal for Legacy Contract Treatment in Cap-and-Trade**

### **Background**

ARB staff has been working closely with generators and marketers of electricity and steam throughout the Cap-and-Trade rulemaking, and during implementation, to address their concerns regarding long-term fixed-price contracts<sup>1</sup>. Some covered entities have let contracts enacted prior to the signing of AB 32 that have no reasonable means to pass GHG compliance costs to the contract counterparty. These entities have requested transition assistance through either an exemption from a compliance obligation or freely allocated allowances. ARB has been encouraging parties to renegotiate these contracts. Despite renegotiation by many entities, approximately 20 contracts remain that have not been successfully renegotiated.

### **Current Regulation and 45-day Staff Proposal**

The current Regulation does not provide free allowances to generators with a legacy contract. As part of the 45-day proposal to be considered at its October 2013 Board hearing, ARB proposed language to allocate allowances for transition assistance to legacy contract generators for 2013 and 2014. In addition, if the counterparty is an industrial facility receiving allocation, the generator will be allocated allowances for the life of the existing contract and the industrial facility allocation would be adjusted by an equivalent amount. Industrial facilities are allocated allowances to minimize leakage related to the increased cost of steam and electricity as a result of Cap-and-Trade. Thus, if these costs do not exist due to a legacy contract, there is no need for the allocation. This method for industrial counterparties does not require additional allowance allocation from ARB and corrects the incentives for more efficient use of steam and electricity.

### **New Staff Proposal**

Staff heard from many stakeholders that the 45-day amendments do not adequately address the concerns of some legacy contract generators. The new staff proposal is to extend the sunset date for transition assistance for legacy contracts that are not with an industrial counterparty through the second compliance period (i.e. through 2017) instead of ending after 2014. This is consistent with the staff proposal to extend industry transition assistance through the second compliance period. If approved by the Board, staff would propose Regulation language in a 15-day comment period following its October hearing consistent with this new proposal. Staff believes this provides sufficient transition assistance for all legacy contract generators while they continue to renegotiate contracts.

---

<sup>1</sup> Footnote 22 of the 2010 ISOR states that “Some generators have reported that some existing contracts do not include provisions that would allow full pass-through of cap-and-trade costs. These contracts pre-date the mid-2000s and many may be addressed through the recently announced combined heat and power settlement at the California Public Utilities Commission. Staff is evaluating this issue to determine whether some specific contracts may require special treatment on a case-by-case basis.”