

ACE COGENERATION AND RIO BRAVO

September 27, 2011

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Subject: Comments of ACE Cogeneration and Rio Bravo on the September 12, 2011
Revisions to the Cap-and-trade Regulation

Dear Clerk:

ACE Cogeneration and Rio Bravo submit these comments on the September 12th, 2011 Notice of Public Hearing to Consider Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanism Regulation, including the Compliance Offset Protocol. ACE Cogeneration and the Rio Bravo Poso and Rio Bravo Jasmin facilities are three combined heat and power (CHP) plants in California with existing long-term contracts, and are in the process of converting their fuel sources from high carbon content solid fuels to lower carbon sources such as natural gas, biomass, solar or some combination of technologies.¹ The fuel / technology conversion investments will significantly reduce those facilities' existing greenhouse gas emission profiles, while allowing these CHP units to continue generating reliable baseload electricity for California and providing steam for industrial purposes. Moreover, conversion of these existing facilities will keep well-paying green-jobs in some of the more economically stressed California counties.

A transition period is required to complete fuel / technology conversion option evaluations, prepare engineering designs, obtain financing and required permits, complete construction and begin operations. During this time period, these existing plants will be subject to the state's new greenhouse gas emission reduction rules but, due to the structure of the proposed cap-and-trade regulations, the GHG allowances for these facilities are not being distributed in a manner that will allow for a transition period to lower emitting or renewable fuels or technologies. In addition, due to the structure of the existing, PUC-approved contractual agreements, the cogeneration facility owners will not be able to pass through or otherwise recover the additional, new regulatory cost burdens associated with acquiring the GHG allowances from the host electrical distribution utilities, thus jeopardizing the economic viability of the facilities during the transition period. Similarly, with respect to GHG compliance costs associated with the provision of thermal energy to unaffiliated entities under contracts that do not permit pass-through of GHG compliance costs, transition assistance for the fuel or technology conversion project should be secured from the industrial assistance (if any) provided in proportion to the thermal energy input reflected in the relevant product-based benchmark.

¹ Further detail on ACE and Rio Bravo's facilities, operations and contractual concerns is available in ACE and Rio Bravo's comments on the July 25, 2011 version of the cap-and-trade regulation, available at: http://www.arb.ca.gov/lists/capandtrade10/1532-110811_ace_and_rio_bravo_comments_on_carbs_cnt_regulation_00017266_.pdf

The current cap-and-trade regulations do not provide a formalized transition process for facilities that can potentially convert from high carbon fuels to lower carbon fuels or technologies. Without a transition mechanism, the new cap-and-trade regulations, which will begin incorporating a carbon cost into the electric sector as soon as 2013, will *discourage* transitions to lower carbon systems, particularly where those higher transition costs cannot be passed through existing power and/or steam contracts. To avoid premature closure of these facilities and associated economic impacts on employees, related industries, and local economies and governments, CARB should amend the cap-and-trade regulation to allow a limited mechanism to support these plants during the conversion from high carbon fuels to lower carbon fuels or technologies. ACE Cogeneration, Rio Bravo Poso and Rio Bravo Jasmin have identified two methods for achieving such a conversion with respect to costs associated with electric sales. Either method would provide a workable transition path for these facilities. Each proposal includes language which could be incorporated into the cap-and-trade regulation. The proposals are attached hereto as Attachment 1. With respect to costs associated with thermal energy provided under contracts without cost recovery mechanisms, a similar approach should be included for provision to unaffiliated entities in the industrial sector in a way that reflects the contribution of the thermal energy input in the product-based benchmark. General language is proposed here because it is our understanding that the detailed benchmark calculations used for industrial assistance are held in confidence by staff.

ACE Cogeneration, Rio Bravo Poso and Rio Bravo Jasmin appreciate the opportunity to present these comments.

Sincerely,

September 27, 2011

/s/

Maggie Estrada
Environmental Director, West Region
Constellation Energy
Telephone: (949) 425-4756
Email: Maggie.estrada@constellation.com

for ACE Cogeneration, Rio Bravo Poso and Rio
Bravo Jasmin

ATTACHMENT 1

Alternative Proposal 1:

Add Sub-Section 95852.2(d) to allow facilities combusting solid fuels like coal and pet-coke a transition period from the cap-and-trade program while the facilities transition to lower emitting or renewable fuels or technologies. If the transition is unsuccessful, the foregone compliance obligation would become due.

(d) The operators of existing combined heat and power and generation facilities that combust coal, pet-coke, or other solid fuels or facilities subject to Section 95601, provided they meet the requirements of Section 95852.3

Add new Section 95852.3 to specify the eligibility qualifications for transitional assistance:

95852.3 Qualifications for Transitional Assistance

(a) An operator of a facility covered by Section 95852.2(d) will be granted limited compliance transition assistance (relief) from this Article upon application and approval of the Executive Officer. The application shall establish the following:

- 1. The operator is committed to transitioning the existing facility to a lower carbon fuel or renewable technology, and has presented a plan with applicable milestones for the completion of such transition; and*
- 2. The operator is financially capable of making the transition or can demonstrate based on ownership or previous investments that the operator is an experienced developer.*

(b) An operator will receive the limited compliance transition assistance only for so long as the milestones set forth in the plan approved by the Executive Director continue to be diligently pursued. If the milestones are not met or if changes to the scope of milestones occurs, the Executive Director shall approve an extension or continuation of the limited compliance transition assistance, provided the operator demonstrates continued feasibility of the project, substantial progress towards the transition and likelihood of achievement of the revised milestones.

(c) An operator of a facility listed in Section 95852.2(d) will remain subject to the full requirements of the mandatory reporting regulation.

(d) If the operator of a facility qualifying under this section does not meet the ultimate milestone for completion of the fuel or technology transition, the Executive Officer will

determine whether to extend the milestone(s) for completion of the fuel or technology transition. If the Executive Officer determines that the fuel or technology transition is no longer feasible or that the operator is incapable of completing the transition plan, the operator will be required to surrender the quantity of allowances it would have been required to surrender, notwithstanding this section, within three years of the Executive Officer's determination under this subsection.

Alternative Proposal 2:

95850(c) *Transitional Allocations to Eligible Combined Heat and Power Generation Facilities.*

- (1) *Eligibility criteria. An operator of a combined heat and power generation facility may receive transitional allowance allocations upon application and approval of the Executive Officer. The application shall contain the following:*
 - (A) *A copy of a CPUC-approved contract with an Electrical Distribution Utility, and/or a contract with an industrial facility for the provision of thermal energy, specifying the contract start and end dates, and provisions that preclude the operator of the combined heat and power generation facility from recovering the costs of obtaining compliance instruments for purposes of this regulation.*
 - (B) *A demonstration that the operator has made a good faith effort to negotiate with the Electrical Distribution Utility, or an non-affiliated industrial facility receiving thermal energy, for a modification to the contract to allow for either recovery of costs of obtaining compliance instruments required by this regulation, or a direct grant of such compliance instruments by the Electrical Distribution Utility to the operator, or a grant from the non-affiliated industrial facility receiving thermal energy in proportion to the appropriate product-based industrial assistance benchmark, for the remaining period of the existing contract, but that such good faith efforts have failed to result in a modified contract(s) or direct grant of compliance instruments.*
 - (C) *A plan, with applicable milestones, for the completion of a transition to a lower carbon fuel or renewable technology not later than January 1, 2020.*
 - (D) *A demonstration that the operator is financially capable of making the transition or can demonstrate based on ownership or previous investments that the operator is an experienced developer.*
- (2) *Transitional Allowance Allocations: An operator will receive transitional allocated allowances equal to the compliance obligations of the eligible combined heat and power generation facility only for so long as the milestones set forth in the plan approved by the Executive Officer continue to be diligently pursued. If the milestones are not met, or if changes to the scope of milestones occur, the*

Executive Officer may approve an extension or continuation of the transitional allowance allocations, provided the operator demonstrates continued feasibility of the project, substantial progress towards the transition and likelihood of achievement of the revised milestones.

- (3) *Transitional allowance allocations granted to eligible combined heat and power generation facilities pursuant to this section shall be deducted from the allocated allowances otherwise granted to the Electrical Distribution Utility with whom the eligible combined heat and power generation facility has an existing CPUC-approved contract, or from the industrial assistance provided to the industrial facility that receives thermal energy.*
- (4) *If the operator of a facility qualifying under this section does not meet the ultimate milestone for completion of the fuel transition, the Executive Officer will determine whether to extend the milestone for completion of the fuel transition. If the Executive Officer determines that the fuel transition is no longer feasible or that the operator is incapable of completing the transition plan, the operator will be required to surrender the quantity of allowances it would have been required to surrender, notwithstanding this section, within three years of the Executive Officer's determination under this subsection.*