

- Air Resources Board Members and Staff, my name is Paul Shepard, Director of Portfolio & Asset Management, for the Indigo & Larkspur peaking facilities in Southern California.
- We appreciate the Staff's hard work and openness during the cap-and-trade rulemaking.
- However, one matter that was identified early in this process, and has not yet been resolved is the treatment of certain generators with power contracts that do not account of costs of complying with AB 32 because they were executed before AB 32. These "Pre-AB 32" contracts do not contemplate the significant compliance costs of this regulation. Most generators will be able to pass through these costs by selling their power at wholesale or through SRAC. But a limited group of generators with these "PRE-AB 32 Contracts" won't.
- The contracts of concern to us are long-term contracts executed for emergency power plants during the California Energy Crisis. The state strongly encouraged such long-term contracts for a stable and reliable energy market.
- The Pre AB 32 contract concern was identified in the Market Advisory Committee's June 2007 report; the CPUC & CEC's October 2008 recommendations to the ARB as well as the Initial Statement of Reasons and Resolution 10-42 for this regulation.
- Staff's August Fifteen day package encouraged parties to the Pre-AB 32 contracts to renegotiate the contracts. While some of the pre-AB 32 contracts have been re-negotiated as part of *portfolio* restructurings, some counterparties *do not* have an incentive to renegotiate because they can sell or use power from a Pre-AB 32 contract more cheaply.
- These affected generators have submitted several proposals during the 15 and 45 day comment periods for this regulation. These proposals would resolve the current situation. And we are asking the Board and Staff to work with the handful of generators to obtain a resolution at least 2 or 3 months before the first auction next year.
- Thank you for providing me the opportunity to present our concerns and I hope we can obtain a resolution in the very near future.